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COMMISSION ON HUMAN RIGHTS

SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND PROTECTION OF MINORITIES

Eleventh Session

SUMMARY RECORD OF THE TWO HUNDRED AND SIXTY-FOURTH MEETING

Held at Headquarters, New York,  
on Monday, 12 January 1959, at 3.15 p.m.

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PRESENT:

<u>Chairman:</u>	Mr. AWAD	(United Arab Republic)
<u>Rapporteur:</u>	Mr. SAARIO	(Finland)
<u>Members:</u>	Mr. BEYHUM	(Lebanon)
	Mr. CHAYET	(France)
	Mr. FOMIN	(Union of Soviet Socialist Republics)
	Mr. HISCOCKS	(United Kingdom of Great Britain and Northern Ireland)
	Mr. INGLES	(Philippines)
	Mr. KRISHNASWAMI	(India)
	Mr. MACHOWSKI	(Poland)
	Mr. ROY	(Haiti)
	Mr. SANTA CRUZ	(Chile)
	Mr. SPAULDING	(United States of America)

Representatives of specialized agencies:

Mr. GAGLIOTTI )	United Nations Educational,
Mr. SALSAMENDI )	Scientific and Cultural
	Organization

<u>Secretariat:</u>	Mr. HUMPHREY	Director, Division of Human Rights
	Mr. LAWSON	Secretary of the Sub-Commission

STUDY OF DISCRIMINATION IN THE MATTER OF RELIGIOUS RIGHTS AND PRACTICES  
(E/CN.4/Sub.2/L.123/Add.1) (continued)

Enunciation of Basic Rules (continued)

Mr. SPAULDING recalled that the Special Rapporteur, in introducing the supplement to the draft report, had indicated that the basic rules were derived from the principles set forth in the Declaration of Human Rights and in the draft Covenants on Human Rights and that the reason for proposing early study of the basic rules was to provide some material, however incomplete, for consideration by the Third Committee at the fourteenth session of the General Assembly. They would certainly help the Third Committee to arrive at concrete conclusions. He felt, however, that some rearrangement of the text of the basic rules along the lines suggested by Mr. Saario at the previous meeting was necessary in order to place more emphasis on the right to freedom of religion or belief and to give more positive impact to the basic rules.

Mr. CHAYET paid tribute to the effort made by the Special Rapporteur. Until a final report was prepared in the following year, the basic rules should constitute a provisional working document and the Special Rapporteur would find the comments of the members of the Sub-Commission on those rules most useful. There had been considerable discussion as to whether any of the rights could be considered absolute, but the absoluteness of any right depended on two factors: by whom the right was conferred and when. The right to freedom of conscience was undeniably absolute; it was an essential right of the individual and the Sub-Commission would be failing in its duty if it did not establish it clearly.

His first reaction to Mr. Hiscocks' suggestions concerning treatment of the limitations on the rights was favourable. The limitations could be mentioned in the rules as a reflection of actual facts and the Sub-Commission's task in future years would be to work towards the elimination of such traces of discrimination as might remain. The duty of public authorities to eliminate discrimination should be stressed from the outset. He agreed, on the whole, with Mr. Saario's proposals for rearrangement of the text.

Mr. HISCOCKS said that he had so far intentionally made only general comments on the basic rules and did not wish to follow them up with detailed

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(Mr. Hiscocks)

proposals. He agreed with the two points made by Mr. Ingles at the previous meeting and felt that it was difficult to generalize on the permanent limitations mentioned in rules 8 and 9. It might indeed be useful to borrow for the basic rules the terms used in article 18 of the draft covenant on civil and political rights. The reference to limitation in rule 2, paragraph 1, should, if possible, be avoided, though he did not feel strongly about it. He agreed with Mr. Santa Cruz that the Sub-Commission's conclusions should be tentative but that the basic rules should describe certain rights at least as absolute. Rule 3, in his opinion, should state that the act of believing or holding a conviction should not be subject to limitations. He hoped that the Special Rapporteur would study Mr. Saario's interesting suggestion for rearrangement of the rules. The main purpose of the rules was to give guidance to Governments.

Mr. KRISHNASWAMI thanked the members of the Sub-Commission for their stimulating ideas and said he hoped the basic rules could be given final form the following year. He agreed with Mr. Fomin that it was perhaps necessary to place greater emphasis on the concept of conviction. It was difficult to draw a line between maintenance and manifestation of religion or belief, although the basis for a distinction could be found in the Declaration. Limitation of the rights should be reduced to an absolute minimum and should be imposed only because of the duties or obligations of the State. He would reflect on the comments which had been made and was pleased to note that the basic rules had not been criticized on grounds of substance. He hoped that they might be discussed by the Third Committee of the General Assembly. He agreed with Mr. Chayet that an attempt should be made to create a favourable psychological atmosphere in the Commission on Human Rights and in the outside world.

Rule 1: Duties of public authorities

The CHAIRMAN, opening discussion on the text of the basic rules, said that, in his view, other grounds than religion or belief could be mentioned in the third line of rule 1, paragraph 1, or, alternatively, reference to the grounds for distinction could be omitted altogether.

Mr. FOMIN said that the idea of isolating in a single rule the obligations of the public authorities deserved attention. He appreciated the difficulties of the Special Rapporteur's task, but rules 2 and 3, by referring to the freedom to maintain and to change and the freedom to manifest religion or belief, gave a somewhat one-sided picture. He hoped that the Special Rapporteur might be able to find a broader wording.

Mr. HISCOCKS said that in rule 1, paragraph 1, which he considered most important, the phrase "making any adverse distinctions" might be replaced by "practising discrimination". The words "the adoption of" in the fifth line of the paragraph, should be replaced by "such means as" in order to cover the two cases of Governments which already had taken action and those which had not yet done it. The phrase "and by the taking of administrative action" was repetitive and therefore unnecessary. He had some doubts concerning the reference to leadership at the end of the paragraph. There was certainly a requirement for leadership by Governments, but Governments were not responsible for creating non-governmental and voluntary leadership. The meaning of rule 1, paragraph 2, was not entirely clear even if the word "totality" was replaced by the word "measure". He hoped that it could be improved by the Special Rapporteur.

Mr. INGLES approved the Special Rapporteur's use of the word "solution" in preference to "choice" in paragraph 234 and in the basic rules. In the circumstances he had mentioned, the Special Rapporteur had favoured the solution which assured the greatest totality of freedom for society as a whole. He too had doubts as to the precise meaning of those words, however. He did not believe that they meant that the solution should necessarily favour only those who were numerically stronger.

The CHAIRMAN observed that the Special Rapporteur had obviously had a special situation clearly in his mind in drafting rule 1, paragraph 2. However, it was not entirely clear to the members of the Sub-Commission.

Mr. CHAYET said that the words "on the ground of their religion or belief", in paragraph 1, should be deleted, as the present text would permit discrimination on other grounds. He supported Mr. Hiscocks' proposal regarding

(Mr. Chayet)

the second sentence. The wording of the last sentence was weak and the meaning of the words "to create proper leadership for this purpose" was not clear. A better formulation might be "The public authorities should educate public opinion". The wording of paragraph 2 was vague, although the intention, as explained in paragraph 234, was perfectly clear. He had no alternative text to propose but suggested that the Special Rapporteur might redraft that paragraph.

Mr. KRISHNASWAMI, Special Rapporteur, said that the first sentence of paragraph 1 was intended to prohibit discrimination on any grounds, not only those of religion or belief. He had chosen the present wording because some distinctions were countenanced in the dogma of certain religious groups - women could not become bishops in some churches, for instance - and he had not felt that the Sub-Commission should challenge the doctrine of any group.

Referring to the point raised by Mr. Fomin regarding conviction, he said the point was covered by the use of the words "religion or belief" in paragraph 1. He sympathized with Mr. Hiscocks' and Mr. Chayet's objections to the wording of paragraph 1 and would attempt to improve it.

He had referred to the need to create proper leadership, in the last sentence of paragraph 1, because he felt a positive recommendation should be made to States to promote tolerance. He realized that there were objections to the wording of paragraph 2, in particular to the words "greatest totality". The present wording had been intended to make clear that a solution which ensured the greatest amount of freedom for society as a whole was not necessarily the solution advocated by the majority. He would attempt to draft a more satisfactory text.

Rule 2: Nature of the freedom to maintain and to change religion or belief

Mr. FOMIN said that the wording of paragraph 1 was too categorical. Furthermore, paragraph 2 conflicted with paragraph 1. The right to maintain one's religion or belief necessarily involved the right to change them. The two rights were inseparable, although neither right might be absolute. That point was recognized in article 18 of the Universal Declaration of Human Rights and also in article 18 of the draft Covenant on Civil and Political Rights, which referred to everyone's freedom to maintain or change his religion or belief. He hoped the

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Special Rapporteur would be able to redraft paragraphs 1 and 2 so that they would not be isolated from each other and so that the right enunciated in paragraph 1 was not made absolute and the right to change religion or belief was enunciated as a necessary concomitant of the first.

Mr. MACHOWSKI agreed that the right to maintain and the right to change religion or belief should be treated on the same footing, as in the title of rule 2 and in paragraph 3 of rule 3. The reasons for the present wording given by the Special Rapporteur in paragraphs 235 and 236 were not convincing; it was to be hoped that he would be able to produce a more satisfactory text.

Mr. SANTA CRUZ supported the last two speakers.

Mr. SAARIO felt that the distinction between the right to maintain and the right to change religion or belief established by the Special Rapporteur was artificial. No such distinction was made in article 18 of the Universal Declaration of Human Rights but the right to change religion was included in the right of freedom of thought, conscience and religion. Furthermore, because of the paramount importance of this rule, he felt that it should be proclaimed in a positive form, such as: "Everyone has the right to maintain his religion or belief subject to no limitations". The words "should be respected", in paragraph 2, were somewhat vague and might lead to difficulties of interpretation.

Mr. SPAULDING agreed that no artificial distinction should be established between the right to maintain and the right to change a religion or belief. He did not feel that such a distinction was intended, as the two ideas were included on the same footing in paragraph 3. He had some doubt about paragraph 4, which seemed incomplete, as it did not cover the case of orphans separated from their parents. He suggested that a new sentence should be added, to read as follows: "In the case of orphans, the presumed will of the parents regarding the religious training of the child should be taken into account."

Mr. SANTA CRUZ supported Mr. Spaulding's suggestion regarding paragraph 4 but felt that not only the presumed will of the parents but also the interest of the child should be mentioned.

Mr. CHAYET felt that wording of paragraph 3 was not positive enough. Although the wars of religion and violent persecution on religious grounds were a thing of the past, the rule should prohibit them categorically, as well as coercion.

Mr. HISCOCKS said that, judging from the discussion at the previous meeting, there seemed to be general agreement regarding the desirability of drafting a separate clause on limitations. He saw no particular objection to the words "does not admit any limitation", in paragraph 1 of rule 2. However, a more positive form of wording such as "is absolute" might be defensible, as it corresponded to considerations in the body of the report, particularly paragraph 250 (d), and also to paragraph 1 of rule 10.

Although he recognized the interest and importance of paragraph 3, he felt that the words "indirect pressures or undue influence" were too vague for inclusion in a text on which Governments were expected to take action. There was too much disagreement regarding what constituted such pressure and influence. He preferred the wording used in article 18, paragraph 2, of the draft Covenant on Civil and Political Rights, namely, "No one shall be subject to coercion". Finally, the meaning of the word "prior" in paragraph 4 was not clear; it might be replaced by some such word as "indefeasible" or "inalienable".

The CHAIRMAN, speaking as a member of the Sub-Commission, said the text of rule 2 as drafted was quite acceptable to him. It was clear that no one should be forced either to maintain or to change his religion or belief. While it was true that the freedom to change one's religion might be abused by persons seeking a divorce, for example, it was better to proclaim a freedom which might be abused in some isolated instances than to impose a limitation which would affect everyone. He did not object to the vagueness of the expression "indirect pressures or undue influence" in paragraph 3, as it would permit flexibility of interpretation. Although paragraph 4 was satisfactory in itself, it did not go far enough. It should specify that parents had the right to decide that their children should be brought up without any religion or belief also.

Mr. INGLES said that the right to maintain and to change religion or belief should be treated in the same way, as in article 18 of the draft Covenant.



(Mr. Ingles)

He felt that the Special Rapporteur had been right to include the words "indirect pressures or undue influence" in paragraph 3, although the parallel text of article 18 of the draft Covenant on Civil and Political Rights referred only to coercion, because the text of the draft Covenant had been drafted several years before, when the information available to the Special Rapporteur had not been at the disposal of the Commission on Human Rights. Those words were meant to cover well-defined situations. Paragraph 4 might be redrafted to cover the point raised by the Chairman. He suggested some such wording as "Children should be brought up in the religion or belief which is in accordance with the expressed or presumed will of the parents".

Mr. KRISHNASWAMI, Special Rapporteur, said that he had given very careful consideration to the drafting of rule 2, which was meant to cover situations which the Commission on Human Rights had had no opportunity to consider when drafting the Covenants. He appreciated Mr. Fomin's constructive criticism of paragraphs 1 and 2 and agreed that the right to maintain and the right to change religion or belief should be on the same footing. However, he had placed them in separate paragraphs because the right to change religion or belief was affected by the rights of others; for instance, in certain cases women had to be afforded special protection, as not to provide such protection would amount to discrimination. The intention of paragraph 2 was not to impose a limitation but to regulate the exercise of a right with a view to protecting the rights of others. He agreed that the present text left something to be desired, but it made a point of substance.

Although some objections had been made to the inclusion of the words "indirect pressures or undue influence" in paragraph 3, he did not feel that their meaning was so vague; they had been used in law for many years and bore a generally accepted meaning. He felt that they should be retained. He fully concurred with the view expressed by Mr. Santa Cruz regarding paragraph 4 but it was difficult to formulate an acceptable text. However, the considerations underlying it were clear from the body of the report. He felt it would be dangerous to define the point too clearly and could not, therefore, accept Mr. Spaulding's proposed additional sentence. He re-emphasized the point that there could be no freedom to

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(Mr. Krishnaswami)

maintain one's religion or belief unless there was also freedom to change it. Neither right could be absolute, as he had stated in paragraph 242 of the report. He was therefore unable to accept Mr. Hiscocks' suggestion regarding that paragraph.

Rule 3: Scope of permissible limitations on the freedom to manifest religion or belief

The CHAIRMAN, speaking as a member of the Sub-Commission, felt that paragraph 3 dealt with a subject other than limitations and should therefore be included in a separate rule.

Mr. HISCOCKS suggested that the Special Rapporteur might consider clarifying the words "any practice or observance" in the same paragraph. He thought that "any religious practice or observance" or "any manifestation of religion or belief" would be more explicit.

Mr. MACHOWSKI felt that the permissible limitations in paragraph 2 should include a limitation designed to protect public order. He therefore suggested the inclusion of the word "order" after "public safety" in the paragraph. He would, however, favour a separate, general rule on limitations, which would presumably contain a reference to public order.

Mr. SAARIO thought that the words "as widely as possible" in paragraph 1 were somewhat ambiguous. He suggested that the final clause in paragraph 1 might be combined with paragraph 2 to read "should be subject only to exceptional limitations prescribed by law which are necessary to prevent disorder...", the rest of paragraph 2 remaining unchanged. However, he was not sure that the expression "to prevent disorder and crime" was a commonly used form of a limitation clause in international instruments. He thought that it would be better to use the words: "to maintain morality, public order, and the general welfare in a democratic society."

Mr. SANTA CRUZ agreed that there should be a general clause on limitations based either on article 29 of the Universal Declaration of Human Rights or article 18 of the draft Covenant on Civil and Political Rights. If

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article 18 was used, the concept of public order, which was broader than public safety, would be included.

Mr. INGLES felt that if the clause on limitations was based on article 18 of the draft Covenant on Civil and Political Rights, the words "to prevent disorder and crime" were unnecessary, since they appeared neither in that article nor in article 29 of the Universal Declaration.

Mr. SANTA CRUZ agreed.

Rule 4: Freedom of worship

Mr. KRISHNASWAMI, Special Rapporteur, said that he had attempted to reword the rule as follows: "Equal freedom of worship should be ensured and protected for all religions or beliefs whether it is exercised by individuals acting alone or in community with others or in public or private."

Mr. FOMIN said that the word "worship" in Russian meant "divine worship". He asked whether "worship" included groups which did not practise divine worship.

Mr. KRISHNASWAMI, Special Rapporteur, said that he had thought of using "freedom of assembly" instead. However, he believed that "worship" covered the group to which Mr. Fomin had referred.

Mr. HISCOCKS said that Mr. Krishnaswami's new formulation was, in general, quite satisfactory. He suggested, however, that "Freedom of worship without discrimination" was better than "Equal freedom of worship". Equal freedom was difficult to ensure. Greater freedom might be available to those who represented the religion practised by the majority. Moreover, one creed might have a larger priesthood than another and greater financial resources.

Mr. SANTA CRUZ had some misgivings with respect to paragraph 2. As now worded, it might be taken to mean that the limitations on public or community worship would not be subject to the provisions of rule 3 or that, if subject to that rule, they would, in the case of public or community worship, be less stringent than the limitations applying to individual or private worship. The Special Rapporteur had not intended to make such a distinction. The paragraph therefore needed clarification. There should be no special privileges attaching to public or community worship.

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Mr. KRISHNASWAMI, Special Rapporteur, pointed out that, in his revised formulation, the reference to limitations would be deleted. With regard to the point made by Mr. Hiscocks, he felt that different religions had different requirements. The word "equal" applied to "freedom", not to "worship". He thought a reference to "discrimination" unnecessary.

Rule 5: Form of celebration of marriage and its dissolution

Mr. INGLES felt that paragraph 1 was unnecessary. If the "valid marriage" referred to was a civil marriage, it would be improper to restrict the right of a State to regulate the form of celebration of marriage, provided that members of religious groups had the right subsequently to have marriage rites performed in accordance with their religion or belief. If "valid marriage" meant a religious ceremony, the point was adequately covered by paragraph 2.

Mr. MACHOWSKI felt that the interpretation of the word "compel" in paragraph 2 might give rise to misunderstanding. In Poland, for instance, only civil marriages had legal effect when religious marriages were admitted but were not legally binding. A new law was now being prepared under which religious marriage rites could be performed only after a civil marriage had been celebrated. In some cases the law prescribed penalties for members of the clergy who violated that provision. On the other hand, some churches and religious bodies did not recognize civil marriages, considering them to be contrary to their convictions. The new Polish law might, like every law, be considered compulsive, at least morally, and paragraph 2 might be construed as precluding its enactment. If such would be its interpretation, he could not accept it. He hoped Mr. Krishnaswami would clarify the meaning of paragraph 2.

Mr. SANTA CRUZ agreed with the point made by Mr. Ingles. On the other hand, Mr. Machowski's argument was not convincing because the element of non-compulsion in paragraph 2 was related to religious ceremonies, not to civil marriages.

He was not sure what Mr. Krishnaswami meant by a "valid marriage". If a marriage was valid only if it was civilly binding, the sentence in paragraph 1 might be interpreted as authorizing opposition to civil marriage in cases where

(Mr. Santa Cruz)

the law recognized that type of marriage as the only legally binding form. He therefore agreed with the suggestion that paragraph 1 should be deleted.

Mr. SAARIO shared the misgivings expressed by Mr. Ingles. The purpose of paragraph 1 was to ensure at least one valid form of marriage, whether civil or religious. Under paragraph 2 if a person wished, in addition, to have marriage rites performed in accordance with his religion or belief, the State could not prevent him from having such a ceremony performed. The last clause of paragraph 2 was superfluous, since it was hardly conceivable that any State would compel anyone to undergo a religious ceremony not in conformity with his convictions if a valid civil marriage had been entered into.

Mr. FOMIN agreed that paragraph 1 was redundant. It should be made clear in paragraph 2 that the State had the right to regulate the form of celebration of marriage under civil law but should not interfere if a person, having complied with the civil law, wished to have religious rites performed. He agreed with Mr. Machowski that a civil ceremony should precede the religious rites if that was prescribed by law. A religious group, whatever its views, must comply with the civil law. He agreed with Mr. Saario that the final clause of paragraph 2 should be deleted.

Mr. SANTA CRUZ felt that the words "celebrated in a form which is not contrary to his religion or belief" in paragraph 1 should be clarified.

The CHAIRMAN, speaking as a member of the Sub-Commission, felt that rule 5 should at least express two fundamental rights: the right of everyone to have marriage rites performed in accordance with his religion or belief, if he so wished, and the right of the State to have every marriage registered and to regulate the form of registration. No religious authority had the right to prohibit any of its members from complying with the law of the State on the civil registration of marriages.

The meeting rose at 5.45 p.m.