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COMMISSION ON HUMAN RIGHTS

SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND PROTECTION OF MINORITIES

Seventh Session

SUMMARY RECORD OF THE HUNDRED AND SIXTEENTH MEETING

Held at Headquarters, New York,
on Tuesday, 18 January 1955, at 10.55 a.m.

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PRESENT:

<u>Chairman:</u>	Mr. SORENSEN	(Denmark)
<u>Rapporteur:</u>	Mr. INGLES	(Philippines)
<u>Members:</u>	Mr. AMMOUN	(Lebanon)
	Mr. AWAD	(Egypt)
	Mr. CHATENET	(France)
	Mr. CASANUEVA	(Chile)
	Mr. FOMIN	(Union of Soviet Socialist Republics)
	Mr. HALPERN	(United States of America)
	Mr. HISCOCKS	(United Kingdom of Great Britain and Northern Ireland)
	Mr. KRISHNASWAMI	(India)
	Mr. KULAGA	(Poland)
	Mr. ROY	(Haiti)
<u>Also present:</u>	Miss BERNARDINO	Commission on the Status of Women

Representatives of specialized agencies:

Mr. DUNAND	International Labour Organisation
Mr. METRAUX	United Nations Educational, Scientific and Cultural Organization

Representatives of non-governmental organizations:

<u>Category A:</u>	Mrs. FOX	World Federation of United Nations Associations
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Category B and Register:

Mrs. GIROUX	Catholic International Union for Social Service
Mr. NOLDE	Commission of the Churches on International Affairs
Mr. MOSKOWITZ	Consultative Council of Jewish Organizations

Category B and Register: (continued)

Mr. BAKER	International League for the Rights of Man
Mr. SIENIEWICZ	Nouvelles Equipes Internationales
Miss MALIN)	Women's International League for
Miss WALSER)	Peace and Freedom
Mr. JACOBY	World Jewish Congress
Mr. FENCE	World's Alliance of Young Men's Christian Associations
Mrs. POLSTEIN	World Union for Progressive Judaism
Miss PEZZULLO	Young Christian Workers
<u>Secretariat:</u> Mr. HUMPHREY	Director, Division of Human Rights
Mr. LAWSON	Secretary of the Sub-Commission

PROCEDURE TO BE FOLLOWED IN CARRYING OUT STUDIES OF DISCRIMINATION IN THE MATTER OF (a) POLITICAL RIGHTS MENTIONED IN THE UNIVERSAL DECLARATION OF HUMAN RIGHTS, (b) RELIGIOUS RIGHTS AND PRACTICES AND (c) EMIGRATION, IMMIGRATION AND TRAVEL
(continued)

Preliminary report of the proposed study of discrimination in the matter of religious rights and practices (E/CN.4/Sub.2/162) (concluded)

Mr. KRISHNASWAMI joined in the tributes paid to Mr. Halpern, who deserved the highest credit for his keen analysis and precise conclusions. It was generally agreed that article 18 of the Universal Declaration of Human Rights was a very wide provision, applicable equally to citizens and aliens. The article should be liberally applied and its restrictions narrowly construed. It should be remembered, however, if public opinion was to be realistically guided, that there existed a wide diversity of States, religious organizations and denominations. It was impossible to formulate a universally applicable law and any attempt to impose a rigid standard would be fatal.

Although all States asserted that they accorded absolute freedom in religious matters, some States were secular, with wholly lay constitutions, while others were theocratic, with established religions. It was frequently said that a secular State accorded absolute equality to every religious denomination. That was true in so far as it meant that every secular State upheld certain basic rules. The various religious communities in those States enjoyed a variety of rights, which included not only the right to profess and practice a religion but also the right to propagate it. Propagation, however, raised the formidable issue of conversion. In that connexion, it was generally agreed that fundamental considerations of public order, national security, morality and health might necessitate certain limitations on the right to convert. Unrestrained militant propagation could lead to disturbances, whereupon the State had to intervene actively in order to safeguard the very foundations of religious freedom. Those factors also imposed responsibilities on the religious organizations themselves.

In India, where almost every religion was represented, the prevailing attitude was one of tolerance. Equal rights were assured for all religious

(Mr. Krishnaswami)

denominations, subject to the paramount considerations to which he had referred.

It seemed illogical to distinguish between religious practices and the social order, as those practices often determined the social order. When, in such circumstances, the State wished to modify the social order, the question arose how far the State should be allowed to intervene in religious practices. The historical developments leading up to such provisions as article 25 (3) of the Indian Constitution afforded some indication of the scope of that problem. Many leaders had advocated the removal of social disabilities by drastic legislation. In every instance, the difficulty had been to determine what limits should be set. It seemed certain, however, that legislation should be designed to assure substantially the rights of individuals, subject only to overriding necessity.

Another controversial question was that of the restrictions to which the denominational institutions might be subjected in the field of property rights. In principle, the right to administer a religious trust should be vested in the trustees and it would seem unjust for the State to impose regulations transferring such control to other hands. The trend of Privy Council decisions from which much guidance could be obtained, seemed to indicate that the rights of denominational institutions were indeed very wide; nevertheless, it would be wrong to assume that they enjoyed absolute protection, even in a theocratic State, as all the attendant circumstances had to be considered in each case.

It seemed to be universally agreed that the State was entitled to intervene even in the field of religious practices when its security was threatened. Religious institutions were required to observe reasonable standards, and acts such as advocating disrespect of national institutions would justify government action. Nevertheless, security was not an absolute criterion in itself and each case had to be judged on its merits. In preparing an analytical study designed to educate public opinion it was always necessary, while giving due consideration to a State's assertion that certain measures were dictated by security needs, to make sure that the scope of those measures did not radically violate the fundamental right.

Mr. Awad had suggested that the importance of racial problems was perhaps overestimated. It was necessary, however, to combat race hatred by explaining how racial considerations had at times been artificially introduced in order to foment strife.

(Mr. Krishnaswami)

In some instances, theocratic States displayed greater tolerance than secular ones. That was due to the fact that some of them sought to prevent outbursts of fanaticism by giving due protection to minorities and their institutions. Such countries recognized that every peace-loving community had its part to play. Generally speaking, however, theocratic States allowed minority religious groups to exist only on sufferance. It was true that the restrictions which a theocratic State might justifiably place on the right to propagate minority religions were different from those whereby a secular State could intervene in the propagation of all religious beliefs, but the minority groups should not be made to feel insecure.

Denominational institutions were closely linked with individual freedom. If such institutions were suppressed, freedom lost most of its meaning. The protection which they enjoyed, however, should not be allowed to impede the welfare of the State as a whole.

The entire subject was so controversial and complex that only an exhaustive examination of historical and other data could lead to a constructive analysis. Each individual must be ensured not only the right to maintain the belief of his choice but also the right to disobey any unreasonable injunctions of an established religious authority. It was to be hoped that the Sub-Commission could meet the challenge.

Mr. INGLES paid a tribute to the important and valuable contribution made by Mr. Halpern to the Sub-Commission's work and supported the procedure he had suggested for making a study on discrimination in the matter of religious rights and practices. He fully agreed that the study was a matter of urgency.

Discrimination in the matter of religious rights and practices did not occur in the Philippines where there was one dominant religion and the Government followed a policy of scrupulous regard for fundamental laws guaranteeing freedom of conscience and religious worship. Indeed, religious tolerance was so great that the law was sometimes disregarded as, for instance, in the case of a minority religious group which practised polygamy. No member of that minority group had ever been prosecuted for having married more than one wife at a religious ceremony, though polygamy was an offence at law.

With regard to the question of the relationship of religious persecution to the study of discrimination in the matter of religious rights and practices, he emphasized that such persecution was often due to religious intolerance though he did not discount racial, political and even economic causes. Minority religious groups had often been persecuted as a result of the aggressiveness or militant nature of the dominant religion in a country or even as a result of their own aggressive attitude.

Referring to the two possible approaches to the problem of how discrimination should be studied, which had been mentioned in Mr. Halpern's report (E/CN.4/Sub.2/162), he felt that the study should be based on article 2 of the Universal Declaration of Human Rights. The Sub-Commission should follow the procedure it had adopted at its sixth session in approving resolution G concerning the utilization of information relating to the protection of minorities in the special studies on the prevention of discrimination. He supported the general view that the study on discrimination in the matter of religious rights and practices should be entrusted to a rapporteur rather than to a sub-committee of the Sub-Commission, which was an alternative proposed by Mr. Halpern.

Referring to the sources of material to be used, he thought the term "Non-Governmental Organization" should be interpreted in its widest sense, and should not be confined to such of those organizations as were in consultative relationship with the Economic and Social Council. It was evident that religious organizations would be an important source of information.

Mr. ROY recalled Mr. Halpern's statement at the 159th meeting in which he had replied to the comments of various members on his report, and wondered why the Sub-Commission wished to adopt a different method in dealing with discrimination in the matter of religious rights and practices from that which it had followed in other studies on discrimination. In order to avoid duplication the Sub-Commission should study the impact of discrimination in a particular field or area of human activity, embracing in the study discrimination on the ground of race, colour, religion, national origin and all other grounds condemned by the Universal Declaration of Human Rights.

Mr. AWAD, referring to the statement of Mr. Ingles, hoped that whoever was entrusted with the proposed study on discrimination in the matter of religious rights and practices would take into account the question of religious minority.

(Mr. Awad)

groups, which were often the victims of hostility. After briefly describing the way in which a religious minority was compelled by circumstances to live, he emphasized that its very way of living aroused the hostility of majority groups. He felt that there would be better understanding of the question of religious minorities everywhere if the fact was widely realized that such groups kept together because of the hostility shown to them.

Minority religious groups had full freedom in Egypt, and he suggested that the proposed study should contain a chapter devoted to the pattern of life of such a group.

Referring to Mr. Halpern's suggestion as to how the proposed study should be made, and to Mr. Roy's comments, he considered that the person entrusted with preparing the study would naturally have to consider many other types of discrimination in addition to discrimination against religious rights and practices.

Mr. NOLDE (Commission of the Churches on International Affairs) said that his organization, which represented the World Council of Churches and the International Missionary Council, was very much interested in the proposed study on discrimination in the matter of religious rights and practices, although it would not offer any formal resolution.

The Commission had much at stake in the proposed study since its member churches and councils functioned in almost every country in the world and encountered all types and manifestations of violation of human rights in the form of discrimination.

The Commission, while it understood the Sub-Commission's position with regard to the relationship between the substance of religious freedom and discrimination, was somewhat disturbed at the thought that the proposed study might be limited to discrimination. The essential manifestation of religious freedom could be denied by other means. The substance of religious freedom should therefore be considered in the study.

The Commission assumed that the easing of tensions and the improvement of adverse situations were the final objectives of the study, which could be best achieved by a quiet method of approach rather than through public pronouncements

and studies. It hoped that in addition to factual data, methods for improving existing conditions could be proposed in the study. The Commission would follow developments closely and would offer such co-operation as lay within its competence.

Mr. ROY wished to make his position clear. He did not ask for a reconsideration of the Sub-Commission's earlier decisions. He himself had voted against the proposed study on discrimination in the matter of religious rights and practices in order to avoid duplication with the studies in other fields in which discrimination on the grounds of religion must necessarily be taken into account.

Mr. HALPERN felt that a satisfactory modus vivendi had been reached by confining the proposed study primarily to discrimination within the area of application of article 18 of the Universal Declaration of Human Rights, in other words to religious rights and to beliefs pertaining to religion, including atheism. The main subject of the study would be interference with the practice of religion and with membership in a faith, but indirect methods of bringing about such interference would be considered as well as direct methods.

Religion was in the peculiar position of being both a ground for discrimination and an activity in which discrimination might manifest itself. Moreover, religion was voluntary, the life of a religious group depending upon voluntary adherence thereto. Hence, interference with such adherence affected the very existence of the group.

In connexion with the point Mr. Nolde had raised, he felt that if discrimination in the field of religion was interpreted narrowly, a country which opposed all religions might fall outside the scope of the study, but on the other hand, he had advocated that article 18 of the Universal Declaration be taken as the basis of the study and that had been accepted by the members of the Sub-Commission who had spoken on the subject. If discrimination in the application of article 18 were the base, then discrimination in favour of atheism against all religions would fall squarely within the scope of the study and Mr. Nolde's point would be met.

(Mr. Halpern)

In connexion with the point which Mr. Nolde had raised, he felt that if religion as a field of study was interpreted in a narrow sense, a country in which no religion existed would be outside the scope of the study. If, on the other hand, article 18 of the Universal Declaration was taken as the basis for the study, Mr. Nolde's point would be met.

Mr. ROY said that he had never opposed a study of discrimination in the matter of religious rights and practices. He had merely advocated an indirect method which would achieve the same purpose.

Mr. Halpern had explained that religion was in the peculiar position of being both a ground for discrimination and an activity in which discrimination might manifest itself. The same view might be taken of political opinion, also specifically mentioned in article 2 of the Universal Declaration.

Mr. AMMOUN observed that the proposed study on discrimination in the matter of religious rights and practices, by its very title, implied a restrictive framework which had not been imposed in the proposed studies on discrimination in other fields.

Mr. AWAD felt that continuation of the debate could not serve any useful purpose until the Sub-Commission decided which of the proposed studies it intended to undertake.

The CHAIRMAN agreed. The debate had served to shed light on the scope of the proposed study on discrimination in the matter of religious rights and practices.

The meeting rose at 12.50 p.m.