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COMMISSION ON HUMAN RIGHTS
SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND PROTECTION OF MINORITIES
Twelfth Session

SUMMARY RECORD OF THE TWO HUNDRED AND NINETY-SECOND MEETING

Held at Headquarters, New York,
on Wednesday, 20 January 1960, at 10.55 a.m.

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15; E/CN.4/Sub.2/L.159-L.176) (continued)

PRESENT:

<u>Chairman:</u>	Mr. INGLES	(Philippines)
<u>Rapporteur:</u>	Mr. SAARIO	(Finland)
<u>Members:</u>	Mr. ABDEL-GHANI	(United Arab Republic)
	Mr. HALPERN	(United States of America)
	Mr. HILCOCKS	(United Kingdom of Great Britain and Northern Ireland)
	Mr. JUVIGNY	(France)
	Mr. KETRZYNSKI	(Poland)
	Mr. KRISHNASWAMI	(India)
	Mr. MATSCH	(Austria)
	Mr. MIRGHANI	(Sudan)
	Mr. RIZK	(Lebanon)
	Mr. SAPOZHNIKOV	(Union of Soviet Socialist Republics)
	Mr. SCHAULSOHN	(Chile)

Also present: Mrs. LEFAUCHEUX Commission on the Status of Women

Observer from a Member State:

Mr. DOUC RASY Cambodia

Representative of a specialized agency:

Mr. AKRAWI United Nations Educational,
Scientific and Cultural Organization

Representatives of non-governmental organizations:

<u>Category B:</u>	Mr. JACOBY	World Jewish Congress
	Mr. BEER	International League for the Rights of Man

<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: REPORT PREPARED BY THE SPECIAL RAPPORTEUR, MR. A. KRISHNASWAMI (E/CN.4/Sub.2/200; E/CN.4/Sub.2/NGO/13 and 15; E/CN.4/Sub.2/L.159-L.176) (continued)

The CHAIRMAN invited the Sub-Commission to continue its consideration of the basic rules (E/CN.4/Sub.2/200, pages 85-91).

Mr. JACOBY (World Jewish Congress) expressed the Congress' profound appreciation of the Special Rapporteur's study of discrimination in the matter of religious rights and practices which, it considered, constituted an exceptionally important contribution to the work of the Sub-Commission. The World Jewish Congress hoped that the Sub-Commission would forward the basic rules embodied in the study, with any amendments it might consider necessary, to the Commission on Human Rights with a recommendation for further action. He drew attention to the written statement submitted by his organization (E/CN.4/Sub.2/NGO/15) and to the comments on some of the basic rules made in that statement.

Mr. BEER (International League for the Rights of Man) echoed the many tributes paid to the Special Rapporteur on the excellence of his study, and associated the International League with the statement submitted by the World Jewish Congress and the observations of that organization's representative. He also strongly supported the suggestion made by the representative of the Commission on the Status of Women and hoped that the Sub-Commission would give its attention to the question of discrimination against women in religious practices.

II. Freedom to manifest religion or belief

Rule 2 (continued)

Mr. KRISHNASWAMI (Special Rapporteur) recalled that at the previous meeting some members of the Sub-Commission had expressed a wish that a reference should be made, early in the rules, to the fact that the freedoms proclaimed were subject to certain limitations. Those limitations would clearly not apply to the freedom to maintain or to change a religion or belief. The necessary proviso should therefore be inserted at the opening of section II, freedom to manifest a religion or belief, and he would suggest that rule 2 should be prefaced with

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(Mr. Krishnaswami, Special Rapporteur)

the words "Within the framework of an organized society". That would imply that the public authorities had the right to impose limitations in the interests of public order. That right itself was then subject to the provisions of rule 16, which indicated that a State should impose only minimal limitations and that it was not being empowered to impose limitations arbitrarily. If that phrase were adopted it would be unnecessary to include provisos later in the rules as, for instance, the phrase "subject to..." in rule 7. It had also been suggested that rule 2 should be regarded as a basic general rule and that rules 3 to 11 should be regarded as sub-rules. That appeared to be a sound suggestion and he would propose that the words "and in particular" should be inserted at the end of rule 2. The rules would then have a logical framework and it would be clear to the reader that it was their purpose to affirm certain freedoms to be exercised within the barest limitations necessary for the safeguarding of the rights of others in an organized society. The State must promote religious rights and freedoms but it should be authorized to restrict the manifestation of a religion or belief if the requirements of public order so dictated.

Mr. HALPERN said that while he could not object to Mr. Krishnaswami's suggestion in itself since it referred to the obvious fact that all human activities at the civilized stage were carried on in organized societies, he felt that it did not meet the concern of those who wished to see in rule 2 some reference to the limitations set forth in rule 16. He would prefer the amendment suggested by Mr. Hiscocks (E/CN.4/Sub.2/L.173) which offered a simple and specific reference to the very precise statement of the limitations appearing later in the rules. The introductory phrase suggested by the Special Rapporteur was, he thought, ambiguous and might be dangerous since it could be taken to confer on the public authorities broad powers to impose any limitation they wished, and so to undermine the very freedom which was being proclaimed. He believed that the word "limitations" would be preferable to the word "restrictions" in Mr. Hiscocks' formula, as having greater legal significance. He agreed with Mr. Hiscocks' further suggestion that rules 3 to 11 should be renumbered rules 2 (a) to 2 (i).

As a compromise formula he would suggest that rule 2 should read: "Everyone shall be free to comply with what is prescribed or authorized by his religion or

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(Mr. Halpern)

belief, and free from performing acts incompatible with the prescriptions of his religion or belief, particularly in the following respects, subject, however, to the limitations specified in Article _____ " (E/CN.4/Sub.2/L.175). The figure inserted would be that of the new article containing the statement of the limitations which, it had been agreed at the previous meeting, would be extracted from the present rule 16.

Mr. SCHAULSOHN agreed with the suggestion that rule 2 should be regarded as a general rule and rules 3 to 11 as sub-rules to that rule. As to the expression of the limitations, he did not think that there need be any great difficulty in agreeing on a formula. The limitations should perhaps be stated before the right. He would, therefore, as a compromise formula, suggest that rule 2 should open: "Within the framework of an organized society, without prejudice to the provisions of article 16, everyone shall be free...". It would then be clear that the limitations were to be applied, not arbitrarily, but in exceptional circumstances only.

Mr. SAARIO thought that the introductory phrase suggested by the Special Rapporteur would be too vague for the purpose. He would prefer to see, at the end of rule 2, a reference to the limitations contained in rule 16. He preferred Mr. Hiscocks' formulation to that of Mr. Halpern because in the form of wording suggested by the latter, the limitations might be taken to apply only to the sub-rules, whereas those rules were in effect merely examples and not an exhaustive list.

Mr. HISCOCKS had no objection to the substitution of the word "limitations" for the word "restrictions". He agreed with Mr. Halpern and Mr. Saario that the introductory phrase suggested by the Special Rapporteur did not go far enough. The phrase itself was acceptable and might well be incorporated in the preamble to rule 16 or in the preamble to the basic rules as a whole. The phrase suggested by Mr. Schaulsohn was also somewhat vague, and he would still prefer the formulation he had suggested, with Mr. Halpern's amendment to it.

As to the numbering of the rules, an alternative to his previous suggestion would be to retain the original numbering of rules 3 to 11 but to include them in a separate part with rule 2, making rules 2 to 11 all subject to the limitations

(Mr. Hiscocks)

in rule 16. Rules 12 to 15 would then become a new part 3 and would not be subject to limitations. He would welcome the advice of the Special Rapporteur and the representative of the Secretary-General on the arrangement which would be the clearest and most convenient.

Mr. ABDEL-GHANI said there appeared to be general agreement that the basic rules should contain a clause setting forth the restrictions or limitations to be placed upon the rights and freedoms proclaimed. However, the exact nature of such a clause would depend upon the final form given to the basic rules. The additional clause suggested by the Special Rapporteur "within the framework of an organized society" was extremely general and might be more appropriately added to the preamble.

Mr. MATSCH thought it would be most undesirable to state in rule 2 that everyone should be free to comply with his religion or belief and then immediately to place limitations or restrictions upon that freedom. Since it was made clear in rule 16 that the limitations in question were of an exceptional nature, rule 2 might perhaps conclude with a phrase such as "subject to the exceptional limitations set forth in rule 16". It might be even better merely to refer to the "provisions" of rule 16.

Mr. RIZK agreed with previous speakers that a clause containing limitations was necessary but preferred that rule 2 should remain as in the Special Rapporteur's text and that the clause in question should be inserted after the particular manifestations of religion or belief had been enumerated. The order would then be similar to that of the Universal Declaration.

Mr. JUVIGNY supported the suggestion made by Mr. Matsch but felt it would be preferable merely to refer to the "provisions" of rule 16. It would perhaps be illogical at the present stage to speak of the "exceptional limitations" of rule 16 as that particular rule had not yet been adopted.

Mr. HALPERN agreed with Mr. Juvigny. "Provisions" was a colourless word which was more liable to command unanimous agreement. He understood the point made by Mr. Rizk but still felt that most members of the Sub-Commission wished to have a cross-reference in rule 2 referring to the limitation clause.

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Mr. KRISHNASWAMI said that, in order to take into account the views expressed by Mr. Halpern and Mr. Hiscocks, he and Mr. Schaulsohn had drafted a further amendment (E/CN.4/Sub.2/L.176) which made no mention of limitations, whether exceptional or otherwise, but merely referred to the duties of public authorities as stated in rule 16.

Mr. SAARIO thought it wrong to relate the limitations solely to the duties of public authorities. The limitations should be grouped in a separate article at the end of part II.

Mr. HISCOCKS felt that the amendment proposed by Mr. Krishnaswami and Mr. Schaulsohn destroyed the balance of rule 2 by emphasizing the needs of society and the duties of public authorities rather than the actual freedom to comply with a religion or belief. He much preferred his own amendment and that of Mr. Halpern which first stressed the need for freedom and then referred unobtrusively to the provisions of rule 16.

Mr. SCHAULSOHN noted that all the members of the Sub-Commission were agreed that some limitations should be placed on the freedom proclaimed in rule 2. The problem was to find a suitable formula for giving expression to that general view. Mr. Krishnaswami and he thought that the rights of society as a whole and the duties of public authorities should be invoked when the right of the individual to comply with his religion or belief was proclaimed. In other words, their joint amendment would ensure that the basic rules preserved that balance between the freedom of the individual and the needs of society which was essential to any declaration of human rights.

Mr. RIZK stressed that he had by no means sought to weaken rule 2 or to lessen the impact of the declaration of freedom which it contained. Nobody would deny that the demands of society required restrictions to be placed on individual freedoms. But it was surely more logical to proclaim those freedoms first and then add a clause containing limitations, as had been done in the Universal Declaration.

Mr. HALPERN felt that Mr. Krishnaswami's and Mr. Schaulsohn's amendment unduly complicated what was essentially a simple issue. All that was necessary was to proclaim the freedom to manifest a religion or belief and then refer to the rule containing the limitations on that freedom. It seemed to have been

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(Mr. Halpern)

generally agreed that rule 16, paragraph 4, should figure as a separate rule in section II, in other words, that the duties of the public authorities should not figure in that rule. Similarly, the limitations on rule 2 should relate strictly to the freedoms involved and not be considered solely in the light of the demands of society or the duties of public authorities. He therefore appealed to Mr. Krishnaswami and Mr. Schaulsohn to withdraw their amendment.

Mr. ABDEL-GHANI said that if the basic rules were to be embodied in a draft covenant then a cross-reference to a limitation clause would be appropriate in rule 2. That was the procedure followed in the draft Covenant on Economic, Social and Cultural Rights. However, if the rules were to be set forth in a document resembling the Universal Declaration, then the limitations should be grouped at the end as in article 29 of that text. Perhaps the Sub-Commission should wait until the final form to be given to the rules was decided upon before choosing between the above alternatives.

Mr. KRISHNASWAMI recalled that at the preceding session it had been generally agreed to group the limitations under rule 16 and relate them to the duties of public authorities. He could not see how the mention of such duties in rule 2 could in any way diminish its impact.

The CHAIRMAN invited the Sub-Commission to proceed to the vote on rule 2.

Mr. SAPOZHNIKOV asked that the vote should be postponed until the next meeting since several of the amendments had not been circulated. With respect to the amendment orally proposed by Mr. Krishnaswami and Mr. Schaulsohn, he thought that a vote should not be taken on a reference in rule 2 to the "duties of public authorities" before agreement had been reached on the issue of limitations in connexion with public authorities.

Mr. KETRZYNSKI supported Mr. Sapozhnikov's proposal for postponement of the vote.

It was decided to adjourn the discussion to the next meeting and to proceed to a vote at that time.

Rule 3

Mr. KETRZYNSKI thought that the meaning of his proposed amendment to rule 3 (E/CN.4/Sub.2/L.163) was evident. Rule 3 in its present form referred to "forms of worship", which meant religious worship. Movements which represented secular beliefs did not have forms of worship but they had rights to manifest their beliefs, which, if rule 3 was to be objective, should be protected by a separate paragraph such as the one he had proposed.

Mr. SAPOZHENIKOV favoured the adoption of Mr. Ketrzynski's amendment. At the beginning of the debate at the present session and in last year's discussions the members had seemed to agree that the rules should deal in equal measure with religious and secular beliefs. That attitude had been reflected in Mr. Krishnaswami's report. No objection had been raised to the principle of Mr. Ketrzynski's proposed amendment to rule 1 stressing the existence of religious and secular beliefs, and in the discussion on rule 1 the Sub-Commission had apparently decided that the rules as a whole should relate to both religious and secular beliefs. Yet the proposed text for rule 3 referred only to protection of worship, and secular beliefs were certainly not forms of worship. Hence he thought that the rule should include the amendment Mr. Ketrzynski had proposed.

Mr. HALPERN said that he had objections to Mr. Ketrzynski's proposed amendment. It had been made very clear in the preceding discussions that rule 2 gave complete protection to all forms of secular belief. In the subsequent more detailed rules reference to secular beliefs had been made where appropriate, but such reference was clearly inappropriate in rule 3 which dealt with freedom to worship. The concept of non-religious worship was a paradox.

Mr. HISCOCKS agreed with Mr. Halpern that Mr. Ketrzynski's wish to protect manifestations of secular belief was entirely satisfied by rule 2. He did not think that the Sub-Commission could find something parallel to worship in secular beliefs. Indeed, if a secular parallel had to be found for every religious manifestation, the Sub-Commission would face a difficult task with regard to many of the subsequent rules.

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Mr. ABDEL-GHANI said that he could appreciate both of the viewpoints that had been expressed. Since the word "belief" in rule 2 covered both religious and secular beliefs, it presumably had the same meaning when used in rule 3. It was possible that some secular beliefs had their own manifestations. Perhaps it would be logical to delete the word "belief" from rule 3, but that would be contrary to the whole concept of section II of the rules.

Mr. SAARIO thought it might be helpful if Mr. Ketrzynski would give examples of the kind of manifestations he had in mind. If he was thinking of the ordinary forms of manifestation, that would require the Sub-Commission to deal with the rights to freedom of opinion and expression and to freedom of peaceful assembly and association mentioned in articles 19 and 20 of the Universal Declaration of Human Rights. Those rights, however, were not to be dealt with in the present study.

Mr. KETRZYNSKI felt that the Sub-Commission had reached a crucial stage in its debates. The report had plainly dealt with the freedom to follow both religious and non-religious beliefs. In the discussion on rule 1 he had suggested that the Sub-Commission define the meaning of the word "belief". He had been told at that time that the meaning was evident. Yet the arguments that had been made against his amendment to rule 3 had implied that only religious beliefs were at issue. Those arguments were not very persuasive. His amendment did not raise the paradox of secular worship; he had used the term "manifestations". In almost all countries there were manifestations of secular beliefs in the form of meetings, instructive courses, publications and the like. In the same way, worship was expressed by religious texts, proselytizing, meetings of religious congregations and so on. The criterion was the same, whether the subject was the manifestations of secular beliefs or worship. Mr. Saario's argument that such manifestations were already protected by the Declaration of Human Rights was not convincing. One might as well say that the entire report did not deserve consideration because all the problems with which it dealt had been treated in the Declaration.

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The addition to rule 3 of a paragraph on manifestations of secular belief would be in keeping with that objective and balanced approach which the Sub-Commission ought to adopt. If the members persisted in denying the need for reference to secular beliefs in the rules, he personally would find some difficulty in accepting the document as a whole.

The meeting rose at 1 p.m.