

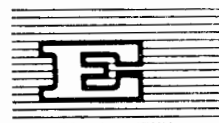
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COMMISSION ON HUMAN RIGHTS

SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND PROTECTION OF MINORITIES

Twelfth Session

SUMMARY RECORD OF THE THREE-HUNDREDTH MEETING

Held at Headquarters, New York,
on Monday, 25 January 1960, at 2.30 p.m.

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PRESENT:

<u>Chairman:</u>	Mr. INGLES	(Philippines)
<u>Rapporteur:</u>	Mr. SAARIO	(Finland)
<u>Members:</u>	Mr. HALPERN	(United States of America)
	Mr. HISCOCKS	(United Kingdom of Great Britain and Northern Ireland)
	Mr. JUVIGNY	(France)
	Mr. KETRZYNSKI	(Poland)
	Mr. KRISHNASWAMI	(India)
	Mr. MAKKAWI	(Lebanon)
	Mr. MATSCH	(Austria)
	Mr. MIRGHANI	(Sudan)
	Mrs. MIRONOVA	(Union of Soviet Socialist Republics)
	Mr. RODRIGUEZ FABREGAT	(Uruguay)
	Mr. SCHAULSOHN	(Chile)
	Mr. SHARAF	(United Arab Republic)
<u>Also present:</u>	Mrs. LEFAUCHEUX	Commission on the Status of Women
<u>Observer from a Member State:</u>		
	Mr. RASY	Cambodia
<u>Observer from a non-Member State:</u>		
	Mr. WIECK	Federal Republic of Germany
<u>Representative of a non-governmental organization:</u>		
<u>Category B:</u>	Mrs. BAKER	Women's International League for Peace and Freedom
<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; E/CN.4/Sub.2/L.159-195) (continued)

Duties of public authorities

Rule 16 (continued)

Mr. SAARIO, speaking on the assumption that there would be a separate limitations clause, favoured Mr. Juvigny's proposal in document E/CN.4/Sub.2/L.192. It was brief, clear and comprehensive. He also approved Mrs. Mironova's proposal to insert the word "health". However, he was not convinced that a general prohibition of infringement of the purposes and principles of the United Nations Charter, as suggested in the concluding clause of 16 (4) (b) of the Special Rapporteur's text or in the second amendment proposed by Mrs. Mironova in document E/CN.4/Sub.2/L.193, was advisable. He would prefer the limited statement in Mr. Juvigny's text.

Mr. KRISHNASWAMI said that the main purport of Mr. Juvigny's and Mr. Halpern's proposals was that the limitations clause should be separate from the provisions regarding the duties of public authorities. In the debates of the preceding year, Mr. Hiscocks had suggested that there should not be a separate article on limitations. Accordingly, in his draft he had put the limitations clause in a general rule referring to the duties of public authorities. The advisability of having a separate limitations clause would depend to a large extent, on the form ultimately given to the rules. But, even if the Sub-Commission adopted a separate article on limitations, it should make it clear that its objective was to place the fewest possible restrictions on the right to freedom of religion or belief.

The argument Mr. Hiscocks had made at the last meeting against the inclusion of sub-paragraph 4 (c) in rule 16 could also be applied to article 29 (2) of the Universal Declaration, where the expression "the general welfare in a democratic society" might be said to mean the welfare of the majority only. The first part of sub-paragraph 4 (c) had been meant to indicate that, in the case of conflict between the requirements of two or more religions, the public authorities had to attempt to find a solution which would reconcile the interests of majorities and minorities and still assure the greatest measure of freedom to society as a whole.

(Mr. Krishnaswami)

He did not think the first part of sub-paragraph 4 (c) was redundant, for it stressed the duty of public authorities to act positively. The second part of sub-paragraph 4 (c) was important where dissemination conflicted with the right to maintain a religion, or where the practices of a religion prevented a person from exercising the right to change his religion.

The amendments proposed by Mrs. Mironova were acceptable to him. His text had been drafted to cover all limitations because, while an isolated limitation might be in conformity with the requirements of morality, public order and the general welfare, it might at the same time be exercised together with other limitations in a manner contrary to the purposes and principles of the United Nations. However, if the Sub-Commission preferred the wording of article 29 (3) of the Universal Declaration, that test would be satisfactory to him.

Mr. KETRZYNSKI recalled that the Sub-Commission had adopted in rule 2 a general statement that freedom of religion or belief was subject to the interests of society as a whole. It should now state what the responsibilities of society as a whole were, in terms of positive duties as well as limitations. He found himself in opposition to the view taken by some members during the discussions, that there was a conflict between society and the individual and that the Sub-Commission's duty was to protect the individual against the public authorities. In his view, society was a harmonious whole, and the rules should refer to the interests of society as a whole. The report had been correct in using the much broader term "public authorities", rather than the word State, and he would like to see the use of that term maintained in the rules.

The paragraphs proposed by Mr. Juvigny were brief and succinct, although the wording might be somewhat improved. On the other hand, he had serious reservations with respect to points 4 and 5 of Mr. Halpern's draft amendments (E/CN.4/Sub.2/L.194). The second sentence in point 4, in particular, would weaken the effect of the rules and would go beyond the limits of the Sub-Commission's task, which was to draft a declaration of general principles.

Mrs. BAKER (Women's International League for Peace and Freedom) said that the organization she represented favoured the positive approach to the duties of public authorities which had been outlined by Mr. Krishnaswami.

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(Mrs. Baker, Women's International
League for Peace and Freedom)

The Women's International League for Peace and Freedom had espoused the cause of freedom of religious belief for conscientious objectors, and it felt that the public authorities should continuously develop an understanding approach to that problem.

Mr. HISCOCKS explained that the preceding year he had taken the view that it would be unfortunate to have scattered references to limitations throughout the rules and that they should be brought together in one limitations clause. For that reason, he was in favour of Mr. Juvigny's and Mr. Halpern's proposals to that effect.

At the last meeting he had suggested the deletion of sub-paragraphs 2 and 4 (c), mainly on the ground that the length of draft rule 16 would reduce its impact. The Sub-Commission had to make absolutely clear what it was asking Governments to do. Yet the first part of sub-paragraph 4 (c) was wholly obscure, and in those circumstances there might be a temptation for Governments to decide that the majority solution was nearest to the ideal solution.

The CHAIRMAN invited the members of the Sub-Commission to express their views on whether or not there should be a separate rule on limitations.

Mr. HALPERN was in favour of a separate rule. Article 29 of the Universal Declaration provided a precedent. Moreover, unlike Mr. Ketrzynski, he regarded the first fifteen rules as setting forth a series of restraints on Governments, in the pattern of the great bills of rights. The limitations which Governments might impose upon the freedoms proclaimed in the first fifteen rules should therefore be placed in a separate section immediately after the fifteen rules, so as to make clear the extent of the permissible limitations on the freedoms.

Mr. JUVIGNY agreed with Mr. Hiscocks that whether or not there was a separate rule on limitations was not very important. The higher bodies which would examine the Sub-Commission's work might have different views on that point. Moreover, there was uncertainty regarding the final form in which the rules would be proclaimed. If the rules were to be issued as a convention, provisions such as paragraph 3, which were exhortations to Governments and not on the same level as mandatory provisions, would have to be excluded.

Mr. RODRIGUEZ FABREGAT maintained that to separate the provisions in draft rule 16 would reflect the divisive influence which had previously resulted in the formulation of two draft Covenants, one on economic, social and cultural rights and the other on civil and political rights. He saw no need for dividing rule 16.

The CHAIRMAN invited the Sub-Commission to proceed to the vote on the proposal that there should be a rule on limitations, separate from draft rule 16.

The proposal was adopted by 7 votes to 4, with 3 abstentions.

The CHAIRMAN suggested that the Sub-Commission should now consider the substance of the proposed new rule on limitations.

Mr. SCHAULSOHN thought that, while Mr. Juvigny's proposal was well phrased, it omitted an essential part of the Special Rapporteur's draft, namely, the clause stating that any limitation "should not be exercised in a manner contrary to the purposes and principles of the United Nations". The only way to impose a supra-national control over law was to make it clear that States as well as individuals were subject to that restriction. He had the same objections to Mrs. Mironova's proposals as those expressed by Mr. Halpern at the last meeting. States were more powerful than individuals, and it was more difficult to limit the exercise of authority by States than to restrain the exercise of rights by individuals. In a spirit of compromise the Sub-Commission might adopt the text proposed by Mrs. Mironova with the addition of words indicating that legal limitations also should not be exercised contrary to the purposes and principles of the Charter.

Mr. KETRZYNSKI was in some doubt as to the application of the rule now being discussed and wondered which of the rules already adopted should be excluded from the limitations referred to in it. In particular, he doubted whether paragraph 2 of rule 1 should be exempted from limitations.

Mr. JUVIGNY recalled that some doubts had already been expressed about the exemption of all parts of rule 1 from the application of the limitations clause. Mr. Halpern had suggested that the third paragraph presented a problem. He personally was convinced that that provision could not be subject to

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limitations; if it were, the public authorities could enact regulations jeopardizing the very freedom which had been proclaimed. That, he was sure, had been the view of the Human Rights Commission in relation to Article 18 of the draft Covenant on Civil and Political Rights. With regard to rule 1, paragraph 2, there were two different possibilities. The first sentence, referring to the right of the parent to decide upon the religion in which the child should be brought up, which was a subjective matter, could clearly not be subject to limitations. The second sentence, however, caused some difficulty. Although in principle the rule should be absolute, in practice it might be difficult to enforce where physically the parents were not in a position to decide the matter and in such a case there might be justification for imposing limitations. With regard to rule 15, it had been suggested that there might be some conflict between its provisions and the penal legislation of certain countries. He personally believed that the secrecy of information imparted in confidence to a priest or minister should be safeguarded. It had been suggested that the rule might be abused; in that case there could be room in practice for restrictions. He was ready to adopt the majority view on the matter. With regard to rule 12, there appeared to be no problem; all were agreed that it should be without limitation. So far, it had not been suggested that any other rules should be exempted from the application of the limitations clause. It might well be, however, that there were others which should be so exempted.

With regard to the question of a reference to the purposes and principles of the United Nations, Mr. Schaulsohn's point had been a sound one. In using the phrase in his original draft the Special Rapporteur had been speaking of the limitations, and those were clearly the limitations imposed by States. The new rule as at present conceived however would not necessarily apply exclusively to States. The question therefore rightly arose whether restraints should not also be placed on individuals and groups. The right to freedom of thought, conscience and religion was but one among many rights and in the spirit of the Universal Declaration it should be exercised conditionally by individuals and groups. Examples could be thought of where the exercise of the right could be contrary to the purposes and principles of the United Nations. There was some justification, therefore, for the dual proviso.

Mr. HALPERN, referring to his own amendments to rule 16 as drafted in the Special Rapporteur's report (E/CN.4/Sub.2/L.194), stated that he had already withdrawn paragraphs 1, 2 and 5 of his proposal. He would now withdraw paragraph 3 and the second sentence of paragraph 4. He agreed with Mr. Schaulsohn that some reference should be made to the purposes and principles of the United Nations: he therefore proposed the addition, at the end of paragraph 2 as drafted by Mr. Juvigny (E/CN.4/Sub.2/L.192), of the sentence: "Any limitations which may be imposed shall not be inconsistent with the purposes and principles of the United Nations". He did not think that Mrs. Mironova's second proposal was appropriate in that context. He would suggest that the sentence remaining in his original paragraph 4 should now be placed at the end of paragraph 2, and he would redraft it to read: "Any such limitations shall be narrowly construed to the end that the widest possible scope shall be given to the rights and freedoms contained in the preceding articles".

He endorsed Mr. Juvigny's proposal for a paragraph 1 of the new rule. He did not believe that paragraph 2 of rule 1 should be subject to limitations, and he now withdrew his objections regarding paragraph 3 of that rule. He would therefore understand the reference to rule 1 in Mr. Juvigny's first paragraph to apply to all four parts at present loosely grouped under rule 1. He felt that those who still had doubts about the second paragraph of that rule could be assured that the term "the best interests of the child" sufficiently safeguarded the public interest.

Mr. HISCOCKS agreed with Mr. Halpern that it was not necessary to apply the limitations clause to rule 1, paragraph 2. He could agree to the inclusion of the word "health" before the words "public order" as suggested by Mrs. Mironova. He supported the proposal to include a sentence referring to the purposes and principles of the United Nations. He could agree to the addition of a further sentence to paragraph 2 of Mr. Juvigny's text but would suggest that the simpler language of the Special Rapporteur's draft should be used, and that the sentence in question should read: "Any such limitations shall be confined within the narrowest possible bounds".

Mr. HALPERN accepted that suggestion.

Mr. SCHAULSOHN did not think that rule 1, paragraph 2 should be excluded from the exceptions to the application of the limitations clause. The provision was absolute, except as concerned "the best interests of the child" and that was a matter of judgement and could not be subject to legal limitations. He supported Mr. Halpern's proposal for a sentence referring to the purposes and principles of the United Nations, but felt that the other sentence he had suggested was unnecessary. Mr. Juvigny's text referred to the "limitations prescribed by law" and, like all exceptions those were to be interpreted narrowly. He would therefore propose that that sentence should be deleted. He agreed with Mr. Hiscocks that the rules should be as short and concise as possible. He would find the text of the proposed limitations rule satisfactory if it were to consist of Mr. Juvigny's second paragraph, on the limitations, with the first additional sentence proposed by Mr. Halpern, followed by Mr. Juvigny's paragraph 1, on the exceptions to the limitations.

Mr. SHARAF found Mr. Juvigny's text generally satisfactory but would propose that the last two lines of his paragraph 2 should read "...and of meeting the requirements of public order (ordre public) in a democratic society". He could agree to the addition of Mr. Halpern's first sentence but would suggest that it would be better if stated affirmatively - "Any limitations which may be imposed shall be consistent with the purposes and principles of the United Nations".

Mr. RODRIGUEZ FABREGAT entirely agreed that a sentence should be included subjecting the exercise of limitations to the purposes and principles of the United Nations.

Mr. KETRZYNSKI observed that the Sub-Commission was now discussing the limitations to be placed on limitations, and that, in his view, had no meaning. He did not think that the Sub-Commission could submit a document containing such provisions to a higher body in which Governments were represented.

Mr. KRISHNASWAMI pointed out that sub-paragraph 4 (c) of his original rule 16 should not be included in the limitation rule but should remain in the rule relating to the duties of public authorities. In Palestine, for example, where holy places were shared by several religions, the public authorities had to regulate the situation in order to avoid clashes. He would be quite willing

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(Mr. Krishnaswami)

to clarify the phrase "the greatest measure of freedom to society as a whole" in order to meet the objections raised by Mr. Hiscocks.

The second of Mrs. Mironova's amendments (E/CN.4/Sub.2/L.193) should also be inserted in the rule relating to the duties of public authorities because it was in fact the State's responsibility to see that the rights and freedoms in question should not be exercised in a manner contrary to the purposes and principles of the United Nations. He had no objection to the first sentence of Mr. Halpern's amendment but felt the second was out of place. He accepted Mrs. Mironova's proposal to insert the word "health" in sub-paragraph 4 (b) of rule 16 but requested Mr. Sharaf not to press his amendment concerning the words "public order" as it might give rise to an interminable discussion.

He had no objection if the Committee felt that the freedoms proclaimed in the three paragraphs of rule 1 as well as in the additional rule to be included in section 1 were not to be subject to any restrictions. He also agreed with Mr. Schaulsohn that Mr. Juvigny's amendment could be rearranged later so that the limitations came first and the articles not subject to limitations were referred to at the end.

Mr. SHARAF recalled that in a similar discussion in the Third Committee it had been decided that the term "public order" with the French term in brackets covered all questions of morality, safety, health etc.

Mrs. MIRONOVA felt that the wording of paragraph 2 of the new rule, as proposed by Mr. Juvigny, was quite adequate and agreed with Mr. Ketrzynski that the additions to it which had subsequently been proposed were out of place. Although her own amendment concerning the purposes and principles of the United Nations was fully justified because it was taken from the penultimate article of the Universal Declaration, she would not press it if the other amendments proposing additions to paragraph 2 were withdrawn.

Mr. JUVIGNY said that as certain members of the Sub-Commission had expressed the view that paragraph 1 of the new rule should not apply to all the paragraphs to be included in section 1 the matter should be decided by a separate vote in the case of each paragraph. The debate as to whether paragraph 2 of

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(Mr. Juvigny)

rule 1 should be entirely free of restrictions was futile, since that particular paragraph contained its own limitations.

He agreed that the French term ordre public included the concept of health but he had no objection to Mrs. Mironova's first amendment if it received general support. However, as the exact meaning of the English term "public order" might give rise to lengthy discussion, it would perhaps be better to retain the wording of the Universal Declaration which spoke of "general welfare" as well as "public order".

He agreed with Mr. Ketrzynski that the two additional sentences proposed by Mr. Halpern contained conflicting ideas. He had no objection to the first but the second should be included in the rule dealing with the duties of public authorities. The same could be said of Mrs. Mironova's second amendment. Some thought might be given to the inclusion of a rule setting forth the duties not only of States but also of individuals and groups, as had been done in article 30 of the Universal Declaration. If that were done, then the reference to the observance of the purposes and principles of the United Nations could be made in such a rule. The point made by Mr. Ketrzynski concerning the undue number of limitations in the text under discussion would thus be met.

The CHAIRMAN said that, for the purposes of the voting, the two paragraphs quoted in Mr. Juvigny's text (E/CN.4/Sub.2/L.192) would be taken as the basis for the new rule on limitations and the amendments originally submitted to rule 16 would be considered as amendments to that text. The first question which the Sub-Commission had to decide was whether paragraph 1 of the new rule as proposed by Mr. Juvigny, which read as follows "The freedoms set out in articles 1, 12 and 15 shall not be subject to any restrictions", applied to all the four paragraphs of section 1.

Consequently, he put to the vote the proposal that paragraph 1 of Mr. Juvigny's amendment should cover paragraph 1 of rule 1.

The above proposal was adopted unanimously.

The proposal that paragraph 1 of Mr. Juvigny's amendment should cover paragraph 2 of rule 1 was adopted by 10 votes to none, with 3 abstentions.

The proposal that paragraph 1 of Mr. Juvigny's amendment should cover paragraph 3 of rule 1 was adopted unanimously.

The proposal that paragraph 1 of Mr. Juvigny's amendment should cover the additional paragraph to be included in section 1 ("Anyone professing any religious or non-religious belief shall be free to do so openly without suffering any discrimination on account of his religion or belief.") was adopted unanimously.

Paragraph 1 of the new rule as proposed by Mr. Juvigny was adopted unanimously.

The CHAIRMAN said that the Sub-Commission would now take up paragraph 2 as proposed by Mr. Juvigny and would first vote on the amendment proposed by Mr. Sharaf to substitute the words "in conformity with public order (ordre public)" for the words "of meeting the just requirements of morality, public order and the general welfare."

Mr. Sharaf's amendment was rejected by 5 votes to 4, with 2 abstentions.

Mrs. Mironova's amendment to insert the word "health" after the word "morality" was unanimously adopted.

Mr. KETRZYNSKI requested a separate vote on each of the two additional sentences proposed by Mr. Halpern.

After a brief exchange of views, the CHAIRMAN ruled that Mr. Halpern's amendments should be voted upon before Mrs. Mironova's second amendment (E/CN.4/Sub.2/L.193). However, Mr. Sharaf had moved that in the first of the additional sentences proposed by Mr. Halpern the words "be consistent" should be substituted for the words "not be inconsistent". That sub-amendment would be voted upon first.

Mr. Sharaf's sub-amendment was adopted by 8 votes to none, with 4 abstentions.

Mr. Halpern's first amendment, as amended, was adopted by 6 votes to 5, with 1 abstention.

The CHAIRMAN then put to the vote the second additional sentence proposed by Mr. Halpern, which read as follows:

"Any such limitations shall be confined within the narrowest possible bounds."

The above text was rejected by 7 votes to 3, with 3 abstentions.

The amendment proposed by Mr. Halpern, as a whole, as amended, was adopted by 10 votes to none, with 3 abstentions.

The CHAIRMAN said that the Sub-Commission would now vote on the second of Mrs. Mironova's amendments. It would form an additional paragraph in the new rule and would read as follows:

"These freedoms may in no case be exercised contrary to the purposes and principles of the United Nations."

Mr. HALPERN suggested that the amendment would be more in harmony with the relevant provision of the Universal Declaration if the words "and rights" were inserted after the word "freedoms".

Mrs. MIRONOVA accepted the above suggestion.

Mrs. Mironova's amendment was adopted by 5 votes to 2, with 6 abstentions.

The CHAIRMAN said that the new rule on limitations, as amended, would read as follows:

"1. The freedoms set out in articles 1 (paragraphs 1, 2, 3 and 4), 12 and 15 shall not be subject to any restrictions.

"2. (a) The freedoms and rights set out in the other articles shall be subject only to the limitations prescribed by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, health, public order and the general welfare in a democratic society. Any limitations which may be imposed shall be consistent with the purposes and principles of the United Nations.

"(b) These freedoms and rights may in no case be exercised in a manner contrary to the purposes and principles of the United Nations."

The new rule, as a whole, as amended, was adopted unanimously.

The meeting rose at 6.30 p.m.