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COMMISSION ON HUMAN RIGHTS

SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND PROTECTION OF MINORITIES

Sixteenth Session

SUMMARY RECORD OF THE FOUR HUNDRED AND NINETEENTH MEETING

Held at Headquarters, New York,  
on Wednesday, 22 January 1964, at 10.45 a.m.

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Draft declaration and draft convention on the elimination of all forms of religious intolerance (E/CN.4/Sub.2/235 and Add.1; E/CN.4/Sub.2/L.312, L.315, L.316; E/CN.4/Sub.2/NGO/32, 34, 35)

PRESENT:

<u>Chairman:</u>	Mr. SANTA CRUZ	(Chile)
<u>Rapporteur:</u>	Mr. CAPOTORTI	(Italy)
<u>Members:</u>	Mr. ABRAM	(United States of America)
	Mr. AWAD	(United Arab Republic)
	Mr. BOUQUIN	(France)
	Mr. CALVOCORESSI	(United Kingdom of Great Britain and Northern Ireland)
	Mr. CUEVAS CANCINO	(Mexico)
	Mr. INGLES	(Philippines)
	Mr. KETRZYNSKI	(Poland)
	Mr. KRISHNASWAMI	(India)
	Mr. MATSCH	(Austria)
	Mr. MUDAWI	(Sudan)
	Mr. SAARIO	(Finland)
	Mr. TITOV	(Union of Soviet Socialist Republics)

<u>Also present:</u>	Mrs. LEFAUCHEUX	Commission on the Status of Women
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Observers from Member States:

Miss KRACHT	Chile
Mr. SAJJAD	India
Mr. BARROMI	Israel
Mr. SCHAAPVELD	Netherlands
Mr. QUIAMBAO	Philippines
Mrs. NASON	United States of America
Mr. MELOVSKI	Yugoslavia

Representative of a specialized agency:

Miss BARRETT	United Nations Educational, Scientific and Cultural Organization
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PRESENT (continued):

Representatives of non-governmental organizations:

Category B:

Mr. LEWIN

Agudas Israel World  
Organization

Mr. PERLZWEIG

World Jewish Congress

Secretariat:

Mr. HUMPHREY

Director, Division of  
Human Rights

Mr. LAWSON

Secretary of the  
Sub-Commission

DRAFT DECLARATION AND DRAFT CONVENTION ON THE ELIMINATION OF ALL FORMS OF RELIGIOUS INTOLERANCE (E/CN.4/Sub.2/235 and Add.1; E/CN.4/Sub.2/L.312, L.315, L.316; E/CN.4/Sub.2/NGO/32, 34, 35)

Mr. KRISHNASWAMI, introducing his draft declaration (E/CN.4/Sub.2/L.315), recalled that the subject of freedom of religion or belief had occupied the Sub-Commission's attention for many years. In 1955 Mr. Halpern had suggested that the Sub-Commission should not restrict its work to freedom of religious practices but should deal with discrimination on the ground of religion as it affected all aspects of life. The Sub-Commission had decided to confine its consideration of the topic to the rights set out in article 18 of the Universal Declaration of Human Rights, and on that basis had drawn up the draft principles on freedom and non-discrimination in the matter of religious rights and practices (E/CN.4/Sub.2/200/Rev.1, annex I). The Commission on Human Rights, however, had indicated at its nineteenth session, that the Sub-Commission, in drafting a declaration on religious intolerance, should take a more comprehensive view of the subject. He referred, in particular, to the statement by Mr. Cassin at the 768th meeting, which had met with no dissent from the other members of the Commission. The draft declaration, therefore, should deal with two aspects of religious intolerance: first, encroachments on the freedom of individuals or groups to manifest their religion; and, secondly, acts depriving individuals or groups of other rights because of their religious belief.

In preparing the draft declaration the Sub-Commission could use the Declaration on the Elimination of All Forms of Racial Discrimination as a guide, for racial discrimination and religious intolerance were very similar phenomena. However, all the principles of the Declaration might not be strictly applicable to religious intolerance, and on those points of difference the Sub-Commission could refer to its draft principles on religious freedom. The draft declaration should represent a fusion of the two documents.

The Sub-Commission should not draft highly specific provisions with a view to meeting particular cases or for purposes of polemics. As the late Secretary-General had said at the opening of the twelfth session of the Commission on Human Rights, it was in the general interest to avoid a sterile registration of charges

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(Mr. Krishnaswami)

against Member Governments. The Sub-Commission should carry out its work in a constructive and useful spirit.

The purpose of extending protection to the rights of a single individual was to protect the rights of all individuals. Thus, the protection of the rights of deists was vital to the protection of the rights of atheists; and a State's refusal to accept an obligation to protect its minorities was an ominous portent for the majority of its population.

It was inconceivable that anybody who was opposed to racial discrimination should accept religious intolerance. Article 1 (3) of the United Nations Charter prohibited distinction as to race and religion on the same footing, and the General Assembly could do no less.

He had, patterned his draft declaration upon the Declaration on the Elimination of All Forms of Racial Discrimination, introducing only such changes as were required by the difference of subject. In his draft declaration, "religion" had been mentioned alone only when the juxtaposition of the word "belief" would be cumbersome or out of place. The word "belief" was used to include atheistic and agnostic beliefs.

He suggested that paragraph 1 of Mr. Calvocoressi's draft articles (E/CN.4/Sub.2/L.316) should be amended to read: "Considering that religion or belief, being concerned with man's place in the universe and the nature and purpose of his being, are fundamental manifestations of the human spirit, and all attempts to prevent their expression are condemned as vitiating that purpose and as defiling that spirit", and that the amended paragraph should become the first preambular paragraph of his own draft declaration (E/CN.4/Sub.2/L.315).

Article I of his draft declaration was a strong condemnation of discrimination on the grounds of race, colour, ethnic origin, religion or belief. Article II enjoined the State and all its inhabitants not to discriminate on the grounds of religion or belief. Article III was patterned after article 3 of the Declaration on the Elimination of All Forms of Racial Discrimination, and the list contained in it was illustrative rather than exhaustive. The expression "access to citizenship" included not only the initial acquisition of citizenship but also the right to enjoy citizenship, with all that it implied, on the same footing as other

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(Mr. Krishnaswami)

citizens. The subsequent articles were based on the draft principles on religious rights and practices. Article VI put flesh on the dry bones of principle; without it, the two preceding articles would exist only on paper. He had no objection to incorporating in his own draft the article IX suggested by Mr. Abram (E/CN.4/Sub.2/L.312), which included non-governmental organizations in campaign against religious intolerance.

In view of the very different demands which various religions and beliefs made upon their adherents, it would be discriminatory to lay down uniform rules for them on the ground that they should be treated alike.

Some rights in the matter of religion and belief were absolute; others were subject to restrictions, as defined in article XIII of his draft declaration. In article XIV, which was patterned upon article 9 of the Declaration on the Elimination of All Forms of Racial Discrimination, he had included "incitement to hatred" to cover the deliberate fostering of a mental attitude with a view to incitement to prohibited acts.

He urged the Sub-Commission to set aside more time for the consideration of the draft declaration, so that it could prepare a sound text for the Commission on Human Rights.

Mr. AWAD said that, according to his personal observations, the world was becoming more tolerant in the matter of religion. In some instances greater tolerance arose from a decline in the strength with which religious beliefs were held. However, there was also a wider realization that a person's religion, subject to certain limitations, was his own concern. That essential idea should be stated in the preamble of the draft declaration.

It was also important to distinguish between religion and mere custom. Headhunting, for example, could not be considered a religious belief. That difficult distinction would have to be drawn in the draft declaration, which should also make it clear that no one should obtain a privilege simply because he adhered to a given religion. One of the first articles in the draft declaration should state that every person was entitled to practise his religion, including his belief, his manner of worship, and his way of life, since a particular way of life was often part of religion.

(Mr. Awad)

Of course, the right to practise a religion was subject to the qualification that its exercise must be consistent with public peace and order.

Mr. ABRAM, observing that there were no great differences of opinion between himself and Mr. Krishnaswami, submitted his suggestions for a draft declaration (E/CN.4/Sub.2/L.312).

With reference to article I, he felt sure that all members would agree that no man should suffer any disability, liability or restriction simply because of his religion or belief. Article II was self-explanatory; article III was an extension of the principle enunciated in article II. With regard to article IV, he observed that it would obviously be difficult even for a totalitarian State to take any action on account of an individual's private beliefs so long as he did not practise them. Freedom to manifest a religion was as important as freedom to hold a religion. Article V needed no comment. Article VI, in his opinion was fundamental. Until a person reached maturity, it was impossible to say that he should be free to hold any religious belief and until such time the matter must be left to his parents or guardians.

Article VII dealt with the practice of religion and gave all persons equal rights in that respect. Its sub-paragraphs specified matters he believed to be encompassed in that right. As he had pointed out at an earlier meeting, ethnic groups must be able to maintain their cultural institutions and deal with others of similar ethnic background both abroad and in their own country. That was particularly true of religions, which were perhaps even more supranational than ethnic ties. A State which controlled the means of production must accommodate itself to the right of individuals to use their incomes for such purposes as they might wish, including the right to build churches, buy books and have materials made available for the practice of their religion. Otherwise there could be no religious freedom.

In the past States had raised the impediments to religious worship, teaching, practice or observance referred to in article VIII. On further reflection, he considered that article VIII did not go far enough and that it should also provide that existing prohibitions and denials should be rescinded.

Article IX dealt with a subject which would form an important part of any declaration that might be drawn up, since much could be done through education and moral training. He agreed with Mr. Awad that there was a decrease in religious

(Mr. Abram)

prejudice at present. There had undoubtedly been a lessening of such prejudice in the United States, a multiracial and multireligious society with great varieties of national background, and tolerance had developed without legislation to enforce it. The churches themselves and other private organizations had led public opinion towards the achievement of the ideals espoused by the Sub-Commission and that had been done, as it should be, without threats or punishment.

Strongly as he favoured the adoption of a declaration or even a convention on religious tolerance, he urged the members of the Sub-Commission not to ignore the proposition that persuasion, education and moral training could change men fundamentally in a way that force and penal sanctions could never do. He was utterly opposed to any control of the expression of ideas.

Mr. CALVOCORESSI submitted his suggested articles for a draft declaration (E/CN.4/Sub.2/L.316).

The Sub-Commission's task was to take the next step in a process begun by Mr. Krishnaswami's study (E/CN.4/Sub.2/200/Rev.1). With the publication of that study the Sub-Commission's views were already known to the Commission on Human Rights. He recalled that at its previous session the Sub-Commission had not had time for a thorough discussion of the subject and had merely adopted a short general resolution. At the present session the Sub-Commission might reaffirm the principles laid down by Mr. Krishnaswami, either in the form of the draft articles submitted by him or in some such form as that proposed by Mr. Abram. If it were felt that an amalgamation of the drafts would be useful he would be glad to co-operate, but he had serious doubts about the practicability of such a method, since it might not be possible, owing to lack of time, to go through them paragraph by paragraph. In that event his own much shorter draft might, subject to amendment, serve the Sub-Commission's present purpose.

Paragraph 1 of his draft sought to relate the topic to the whole question of human rights. He had tried to express the idea that the possession of a religion or belief implied something that was fundamental to an individual's being. In his view it would be wrong to say that such beliefs were universal because that was not true, or at least could not be verified, and he considered that it was possible to lead a good and full life without them, but for those who held religious beliefs, such beliefs were fundamental ones.



(Mr. Calvocoressi)

Paragraph 2 established a relationship between religious tolerance and the aims of the United Nations and asserted the necessity for groups of believers to respect each other's rights. That was an essential preliminary to the next point, which was the assertion of the rights of the individual.

The key word in paragraph 4 was "prejudice". Prejudice was undoubtedly a basic cause of all the upheavals and violence in the world. He felt that any declaration, however short, should include a reference to that fact and a statement that prejudice could be eradicated primarily through education and instruction. The next paragraph dealt with the question of remedy and of the role of the State in ensuring that individuals and groups should have freedom to exercise their beliefs. Paragraph 6 referred to cultural and social contacts between members of the same religion living in different parts of the world. That point had given rise to controversy in the past and he considered it necessary to draw attention to it. He drew particular attention to the visit of individuals and groups of a particular faith to establish and maintain contacts beyond the functions of the States in which they lived - for social and cultural purposes.

Since there was a certain affinity between Mr. Krishnaswami's and Mr. Abram's approach to the problem, the Sub-Commission might perhaps try to amalgamate those two drafts. If it proved impossible to do so his own proposals might commend themselves as an alternative solution.

Mr. KETRZYNSKI observed that if the debate on the subject of freedom of religion were to be reopened a great deal of time would be required. On the other hand, without reopening the debate it would be difficult to study the texts submitted by Mr. Krishnaswami and Mr. Abram. The Sub-Commission should therefore decide exactly what it was called upon to do. During the discussion of Mr. Krishnaswami's study he had stressed the need to take account of the guarantees required by persons who had no religious beliefs. Such guarantees should be included in the draft declaration because that was an area of conflict which gave rise to the possibility of discrimination.

It would be futile, and indeed impossible in the time available for the Sub-Commission to reopen debate on formulae that had already been adopted. The Sub-Commission should draw up a short, concise text dealing with essential principles concerning ways of combatting religious intolerance.

He hoped that the text would include guarantees against the intolerance of religious groups for non-religious groups. With reference to Mr. Abram's remarks,

(Mr. Ketrzynski)

he felt strongly that the declaration should not include the concept of the supra-nationality of certain religions. Even the leaders of the great religions themselves would not be in favour of its inclusion.

Reference had been made to the role of the State in matters of religious discrimination. The fact was that a State might discriminate against a religious group owing to pressure exercised by other religious groups; on the other hand, a State might favour one religious group and discriminate against another in order to obtain the former's support. The declaration should not, therefore, address itself to States on the subject, but to the groups concerned, because they were the instigators of religious intolerance. The State's action was only secondary. In that connexion he agreed with Mr. Awad that it should be stressed that religious beliefs and actions were purely personal matters and that no one should obtain any special rights or privileges because he belonged to a certain religion. It was the duty of a State to be impartial in religious questions.

Commenting on the three texts before the Sub-Commission, he said that Mr. Krishnaswami's draft (E/CN.4/Sub.2/L.315) was a recapitulation of the draft principles on freedom and non-discrimination in the matter of religious rights and practices, but with omissions. It was thus open to some criticism. First, it was unfortunate that the draft principle providing that no one should be subjected to material or moral coercion likely to impair his freedom to maintain or change his religion or belief was not included. Secondly, there was no reason for changing the words "everyone shall be free to adhere ...", in the original text of the draft principles, to "everyone has the right to adhere ...", in article IV of the new text. Thirdly, article VI, paragraph 6, of that text might give rise to considerable difficulties in practice, for two reasons: it was not the general practice of States to recognize all "holy days and days of rest," and a State in which many different religions and beliefs were followed could not comply with that paragraph without seriously curtailing the number of working days. The text of the corresponding draft principle, which read "Due account shall be taken of the prescriptions of each religion or belief relating to holidays or days of rest", was preferable. In any event, the text of Mr. Krishnaswami's article VI was bound to give rise to difficulties because it was too detailed.

(Mr. Ketrzynski)

Mr. Abram's text (E/CN.4/Sub.2/L.312) was to some extent complementary to Mr. Krishnaswami's, for there were omissions in both. For instance, the limitations mentioned in article 29 of the Universal Declaration of Human Rights were reflected in article XIII of Mr. Krishnaswami's text, but not in Mr. Abram's suggestions. There was general agreement that some restrictions were allowable, in the interests of health and public order, for instance. Secondly, the words "religious intolerance" appeared only in two places in Mr. Abram's text, in the title and in the last line of the last article, reflecting a swing away from the elimination of religious intolerance towards the exercise of rights. That was a wrong approach.

Mr. Calvocoressi's text (E/CN.4/Sub.2/L.316) was more acceptable than the other two, for it was succinct and clear and it would enable the Sub-Commission to carry out its mandate in the time at its disposal. The Sub-Commission should not repeat the draft principles, which it had already submitted to the Commission on Human Rights, but should emphasize the need to eliminate religious intolerance. Thus, the words "on the ground of religion or belief", paragraph 3 of Mr. Calvocoressi's text might be replaced by the words "for reasons of religious intolerance". Secondly, paragraph 1 contained controversial assertions to which many followers of a religion or belief could not subscribe, and it did not apply to those who held no belief. Mr. Krishnaswami's suggested redraft of that paragraph improved it somewhat, but the stress was once again on the right to express religious opinions rather than on the elimination of religious intolerance. While the first sentence of paragraph 6 was entirely acceptable, the second sentence attempted to condense in a few lines measures for implementing article 18 of the Universal Declaration. It would be better to delete it and to replace it by some such wording as: "The State, representing the higher interests common to all citizens regardless of their religion or belief, has the obligation, in accordance with the Universal Declaration of Human Rights, to ensure everyone's protection against all forms of discrimination based on religious intolerance." Religious intolerance could be combated by such means as education and legal measures protecting the rights of others, but the State had a more general and all-embracing responsibility, which he had attempted to express in the wording he had suggested. Lastly, he could not entirely agree

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(Mr. Ketrzynski)

with Mr. Awad's view that there had been a decline in religious intolerance in modern times; if that had been so, the Sub-Commission would not have been asked to undertake its present task. It was true that the social role and the prestige of religious groups had declined, but religious intolerance had merely become less overt. In the modern world the gulf separating persons belonging to different religions and beliefs, although hidden, presented that co-operation between human beings which the draft declaration was designed to promote.

Before calling on representatives of non-governmental organizations, the CHAIRMAN recalled the remarks he had made at the 417th meeting regarding statements by such representatives; he urged them to be brief and to the point.

Mr. ABRAM said that non-governmental organizations, which had been called the "eyes, ears and conscience of mankind", had made a very valuable contribution to the Sub-Commission's work; he trusted that the Chairman did not intend to restrict their right to participate.

The CHAIRMAN replied that he had no such intention. His only concern was to see that the Sub-Commission completed its work within the period allotted to it.

Mr. LEWIN (Agudas Israel World Organization) welcomed the efforts being made to produce a declaration on the elimination of all forms of religious intolerance, for the Jewish people had suffered greatly from such intolerance throughout their history. For centuries they had been denied the most elementary human rights simply because they adhered to their own religion. The first step in the direction of religious freedom had been the Declaration of the Rights of Man and of the Citizen of 1789, and in 1791, the French National Assembly had passed an act annulling all restrictions applicable to Jews. In the United States, the General Assembly of Virginia had gone much further in 1785, when it had passed the Act for Establishing Religious Freedom. He suggested that the Virginia Act and the Declaration of the Rights of Man and of the Citizen should be mentioned in a new preambular paragraph to be inserted after the first paragraph referring to the United Nations Charter.

The texts submitted by Mr. Krishnaswami, Mr. Abram and Mr. Calvocoressi had many excellent features. He suggested that they might be combined in a

(Mr. Lewin, Agudas Israel World  
Organization)

Declaration composed of sixteen articles, the first of which would condemn the idea of religious discrimination; most of the following articles would deal with the position of the State and the individual rights which were the components of religious freedom, and the last two would prohibit incitement to religious hatred and violence and recognize the right of everyone to religious tolerance. He then read out the text of such a declaration suggested by his organization.

Mr. PERLZWEIG (World Jewish Congress) deplored the fact that the Sub-Commission had been given so little time to deal with the question of the elimination of religious intolerance, and applauded its decision to interrupt its consideration of the draft international convention on the elimination of all forms of racial discrimination in order to take up the item.

It was undoubtedly true that there had been a decline in religious intolerance in some States and that one of the factors in that decline had been the growth of indifference to religious matters. However, Mr. Ketrzynski had been right to emphasize the existence of very deep religious divisions, which were wide-spread and had led in many instances to the use of violence and to acts of discrimination against the members of many different religious communities. He endorsed Mr. Ketrzynski's view that persons who held no belief were as much entitled to protection as believers. But religious tolerance must extend not only to individuals but to religions, for the individual could live his life fully only as the member of a community.

The declaration must not be an empty gesture. He would like to see Mr. Krishnaswami's text (E/CN.4/Sub.2/L.315) adopted, with some additions from Mr. Abram's draft (E/CN.4/Sub.2/L.312), but as the Sub-Commission had no time for a detailed discussion, it might have to fall back on Mr. Calvocoressi's text (E/CN.4/Sub.2/L.316), which was excellent as far as it went.

It was not enough for the declaration to provide that the State must not obstruct the lawful activities of groups holding religious beliefs. It should specify that the State must protect and safeguard the practice of religions. In the United Kingdom for instance, where religious tolerance was very great, not only had his own minority group been allowed to practise its religion, but a special Act of Parliament had been passed to allow marriages according to Jewish rites.

(Mr. Perlzweig, World Jewish Congress)

In conclusion, he appealed to the Sub-Commission to adopt a declaration on the elimination of religious intolerance, on the substance of which it was already agreed, in order to help to put an end to a monstrous evil.

The meeting rose at 1.10 p.m.