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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 FIFTY-NINTH MEETING

Held at Headquarters, New York,
on Thursday, 8 January 1959, at 10.45 a.m.

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and practices (E/CN.4/Sub.2/L.123/Add.1) (continued)

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. PAYRO	International Labour Organisation
Mr. SALSAMENDI	United Nations Educational, Scientific and Cultural Organization

Representative of a non-governmental organization:

Category B:

Mr. MacEOIN	International Catholic Press Union
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Secretariat:

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)

Mr. MacEOIN (International Catholic Press Union) said that his organization recognized the Special Rapporteur's concern for objectivity and the attention he had paid to doctrinal statements of eminent Catholic authorities in the supplement (E/CN.4/Sub.2/L.123/Add.1). However, owing to the very nature of religion, the International Catholic Press Union had reservations concerning his competence to express views which, however objective, inevitably involved an evaluation of religious doctrines. On the other hand, it welcomed the position taken by the Special Rapporteur in favour of practical attitudes which would create a more favourable atmosphere for religious freedom and would be particularly effective in combating discrimination resulting from officially encouraged anti-religious propaganda.

Nevertheless, his organization was alarmed by the method used in preparing the country studies. As a Press association, it was involved in the continuing struggle to challenge the right of States and Governments to impose the version of the facts which they deemed suitable. Official information, even when the officials who supplied it were honest and honourable men, was almost inevitably one-sided, and the country studies had been prepared by people who could not be considered to be experts in an extremely specialized field. That defect in the method of preparation was only slightly attenuated by the Special Rapporteur's obvious endeavour to take full account of the evaluations and submissions of non-governmental organizations, because those organizations had no opportunity to refute misstatements by Governments or, in many cases, to investigate the situation on the spot. Studies which appeared to be official handouts rather than the result of unhampered on-the-spot investigation by independent observers had no value as historical records, particularly where there was a clash between legal theory and official practices. The Sub-Commission should give serious consideration to the question of the methods used in preparing the country studies.

Replying to a question by Mr. ROY, Mr. KRISHNASWAMI, Special Rapporteur, said that fifty-eight tentative country studies had been completed and sixteen others were being prepared.

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The CHAIRMAN invited the Sub-Commission to consider the supplement (E/CN.4/Sub.2/L.123/Add.1) section by section.

Introduction (paragraphs 1 to 20)

The CHAIRMAN, speaking as a member of the Sub-Commission, drew attention to paragraph 4 and pointed out that the Commission on Human Rights had not properly understood the meaning of the Sub-Commission's request that it should be permitted to exercise a reasonable amount of flexibility in deciding the form which the various studies on discrimination should take. Consequently, it had not conveyed the Sub-Commission's views to the Economic and Social Council.

Mr. HISCOCKS thought that an attempt should be made to clarify any points in that connexion which the Commission on Human Rights might find obscure. The Council, in its resolution 664 (XXIV), Annex, paragraph 7(b), by accepting the recommendation that the country reports utilized in the preparation of the studies on discrimination should not normally be issued as documents, had implied that all the reports of Special Rapporteurs should be accompanied by country studies. He had felt that the ban on their issuance as documents was not justified but that the assumption by the Council that the pattern of studies should always be the same was equally unjustified. The arrangement that conference room papers should be issued was a satisfactory solution in the case of discrimination in religious rights and practices. But the plea for flexibility included in the Sub-Commission's resolution D agreed on at its tenth session implied that the Sub-Commission and its Special Rapporteur should in future have some freedom in deciding what form any particular study should best take.

Mr. SPAULDING, noting that his suggestion was subject to the approval of the Special Rapporteur, who had primary responsibility for the study on discrimination in the matter of religious rights and practices, said that the study could be strengthened by the mention of particular situations and even of specific countries, provided the situations were characteristic, and references were made to all countries and not just to a few. The problem was to find the most effective form in which to present enough additional information to support the Special Rapporteur's conclusions. The information contained in the various country studies would be so scattered that few persons would take the time to sort it out and co-ordinate it. Footnote references were a possibility but these might result in

(Mr. Spaulding)

early obsolescence of the Study, since such annotations could not take account of changes and progress to be expected. Furthermore, footnotes, if adequate, would add substantially to the bulk of the report. Consequently, Mr. Spaulding proposed a separate annex to the report on discrimination in the matter of religious rights and practices to be composed of illustrative material from country studies. The material should be organized under topics rather than countries and should be presented in summary form. It might describe characteristic problems and how they had been met, emphasizing legal and practical safeguards against discrimination in the various aspects of religion. For such a purpose the annex might contain some historical material along with an analysis of current situations. The annex should not be a mere catalogue of errors, although, of course, very serious problems common to some areas of the world should be mentioned, such as the persecution of persons on religious grounds. Governments should find such a summary helpful in analysing their own situations and improving their law and practice. It should give Governments the basis for a better understanding of freedom from discrimination and the tools for combating discriminatory practices.

Mr. SANTA CRUZ recalled that in resolution D adopted at its tenth session, the Sub-Commission had been categorical in affirming the principle that the country studies should be published because they were inseparable from the substance of the reports on discrimination. When the Economic and Social Council had banned publication of the studies as documents, it had been the clear purpose of the Sub-Commission to request a reconsideration of that decision. It had however agreed to the compromise solution of asking for flexibility so that the Sub-Commission might decide in what form the studies would be published. The Commission on Human Rights had obviously not understood its request for a reasonable amount of flexibility in deciding on the form which the studies on discrimination and the ancillary material should take.

His first reaction to Mr. Spaulding's suggestion for an illustrative annex of material from the country studies was apprehension that the method might limit the freedom of the Special Rapporteur to use his own discretion in deciding whether or not to include specific references to situations or countries in his report. The question of the form in which illustrative material should be presented to the public was vital in connexion with all the studies on discrimination. It should therefore be taken up separately, after the Sub-Commission had completed its consideration of all the substantive items on its agenda.

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Mr. SPAULDING agreed to have his proposal considered separately at a later stage.

Mr. FOMIN regretted that the Sub-Commission should have taken up a discussion of procedure and method, which appeared to have political implications, at the very start of its substantive study of the subject. He felt that it should proceed, in an objective manner, to carry out its assigned task of drafting general recommendations for the elimination of discrimination. The form of the Sub-Commission's report had already been decided by higher bodies and the procedure followed by the Special Rapporteur had been the correct one, as it had been generally recognized that the report should not contain specific references or allusions. He had no objection to taking into account information furnished by the non-governmental organizations, but it should always be borne in mind that the primary interest of such organizations was that of the groups which they represented. He was aware of instances where the information or assertions of such organizations had been shown to have no foundation in fact. Caution should be exercised in modifying the Sub-Commission's procedure, since that would involve a revision of methods decided upon by higher bodies. Indeed, if a change in method were to be discussed, it would be necessary to place an additional item on the agenda. He had always objected to the system of appointing Special Rapporteurs, particularly in view of the current budgetary limitations, but the procedure had been approved and would have to be followed. It would be unwise to take a hasty decision which might affect the entire future work of the Sub-Commission as well as its authority and prestige. The Sub-Commission should proceed with its substantive discussion of the draft report.

Mr. SANTA CRUZ thought Mr. Fomin had misunderstood the intent of Mr. Spaulding's proposal. No change of procedure was envisaged, but it was necessary to consider how the information, which had been collected and collated in accordance with the directives of higher bodies, should be presented to the public, since the end objective was to educate public opinion. The report of the Special Rapporteur and the material on which it was based formed a whole, and the public should have access to both. Mr. Spaulding's proposal did not raise any political issues, it was not new, nor was it outside the Sub-Commission's competence. It should, however, be considered at a later stage.

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The CHAIRMAN stated that in his view the proposal would affect all the studies undertaken by the Sub-Commission.

Mr. HISCOCKS said that he had understood the request of the Sub-Commission that it should be allowed a reasonable amount of flexibility in deciding on the form of its studies was intended to refer to its future work. The Sub-Commission had accepted a certain procedure and should now follow it. The country studies were concise and followed a set pattern and the Special Rapporteur should be left free to exercise his judgement regarding the use he made of the material and the reliability of the sources. The method adopted in the Study of Discrimination in Education of mentioning instances of discrimination which were typical of general tendencies and of mentioning also positive examples of successful efforts to eliminate discrimination might usefully be adopted in the present case.

Mr. FOMIN felt that the Sub-Commission should not attempt to dictate the procedure to be followed by the Special Rapporteur. That had never been done in the case of previous studies. The Special Rapporteur should be free to decide on the best form for the report, as the only alternative was a report prepared by a mechanical process of collection, collation and comparison of data. The question of allowing the Sub-Commission some flexibility in regard to the form of its studies had arisen only as a result of the budgetary limitations on translation and reproduction of country studies to which the Secretariat had drawn attention. The compromise solution of conference room papers had been arrived at the year before, after prolonged discussion. Any modification of the decision regarding the form in which the material was to be published would have budgetary implications and would therefore require that a separate agenda, item be proposed.

Mr. KRISHNASWAMI, Special Rapporteur, admitted that the procedure of the conference room papers was not entirely satisfactory, but it had been laid down and would have to be followed. He fully recognized the rights of the Press, but emphasized that the directive under which the Sub-Commission was carrying out the study did not call for the verification of all the information submitted by the non-governmental organizations. The point could

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(Mr. Krishnaswami, Special Rapporteur)

best be illustrated by the case where a non-governmental organization, in supplying information, referred to legislation which was subsequently repealed. Reference to such legislation was then no longer relevant and could be omitted. On the other hand, if a non-governmental organization's evaluation was simply questioned by a Government, then both the evaluation and the Government's view were included.

Replying to questions by Mr. ROY and Mr. HISCOCKS regarding the manner in which it was proposed to amalgamate the draft report and its supplement, Mr. KRISHNASWAMI said that no decision about the final form of the draft could be taken until the Sub-Commission had expressed its views on it.

General issues: Relationship between the State and religion (paragraphs 224 to 231)

Mr. SAARIO said that the subject was an interesting and a very delicate one. In all countries the relationship between the State and religion was the result of a long historical development - a process which was still continuing. The general trend throughout the world, which he believed was a favourable one, was towards separation of church and State. However, in the case of a country with a homogeneous population which had an established church, that trend was perhaps not always welcomed, as religion tended to bind the people together in times of crisis. Considering the problem from an international point of view, however, the tendency towards separation might prove to be a happy one as it might help to remove sources of international friction. Nevertheless, the report should not advocate separation, but should simply draw attention to its positive and negative aspects. The object was to educate the public in order to foster tolerance.

Mr. FOMIN said that, although the Special Rapporteur had stated the issue correctly, he had not opted for either of the two solutions, an established church or separation between church and State. He appeared to feel that discrimination was possible in both cases, although there was obviously more danger of it in the former than in the latter case; if there was an established church, it had certain privileges, which meant that other religious groups were in an inferior position. In order to enable the Sub-Commission to reach general conclusions, the report should state that, in principle, the second

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(Mr. Fomin)

alternative gave less opportunity for discrimination in the field of religion and belief.

Mr. CHAYET remarked that, without going quite so far as Mr. Fomin, he felt that the report did not state the position quite satisfactorily. The last part of paragraph 226, in which the case for an established church was stated, and the first two sentences of paragraph 228, dealing with separation of church and State gave the erroneous impression that both systems ensured equal freedom of faith and belief and were therefore equally desirable. His own feeling was that there was more discrimination under the system of an established church than when church and State were separated, as in France.

Mr. KRISHNASWAMI, Special Rapporteur, said that he had deliberately avoided expressing a preference for either system, as he had wished to make an objective statement of a juridical relationship. It would be dangerous to state that there was less discrimination when there was separation of church and State. For instance, in a State where there was no established church and there were religious ceremonies on national holidays, the Head of the State attended service first in the church which had the support of the majority of the population. Such action might be interpreted as discrimination against the minority which did not support that church.

Mr. HISCOCKS disagreed with Mr. Fomin that there was more discrimination in countries which had an established church. Mr. Fomin could not deny that countries which had an established belief, such as a Marxist philosophy, certainly were far from tolerant to other beliefs. The Sub-Commission would remember that Mr. Fomin had been at great pains at the previous session to place belief and faith on the same footing; his argument therefore applied to Marxism as much as to any established church.

Mr. FOMIN pointed out that there was no juridical relationship between a Marxist system of philosophy and the State. Countries in which a majority of the population adhered to a Marxist philosophy were in fact examples of the separation of church and State, so that Mr. Hiscock's argument did not apply.

While he sympathized with the Special Rapporteur's striving after objectivity, he felt that the Special Rapporteur should express a preference

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for one or other of the two systems in order to enable the Sub-Commission to make appropriate recommendations for the prevention of discrimination. Although considerable tolerance might be practised in a country which had an established church, the very fact that there was a dominant religion meant that other faiths suffered from discrimination. Secondly, a State could not support an established church and at the same time grant the same rights to non-religious groups, so that there was discrimination against the latter. Lastly, the existence of an established church implied moral discrimination against all other forms of belief. The Sub-Commission must take a stand and indicate the system which would give the greatest opportunities for the practice of all faiths and beliefs; that could only be achieved when there was separation between church and State.

Mr. HISCOCKS said that the issue was not only juridical but one of practice also. It was obvious to any student of recent history that as much or greater attention should be paid to the actions and pronouncements of statesmen than to somewhat antiquated laws which had largely fallen into desuetude.

Mr. KRISHNASWAMI, Special Rapporteur, agreed with Mr. Fomin that the purpose of the report was to enable the Sub-Commission to frame recommendations; however, the Sub-Commission might concur in his own view that no recommendation on the present issue was necessary. The point he had wished to make was that both discrimination and tolerance were possible under either system. No basic rule could be laid down.

The CHAIRMAN, speaking as a member of the Sub-Commission, said that the fact a country had an established church did not necessarily mean that it was less tolerant than a country where church and State were separated. On the contrary, in countries which had a long tradition of tolerance under an established church, there was often in fact less discrimination than in other countries, as the State itself could set an example of tolerance by allowing all groups equal freedom of religion or belief.

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(The Chairman)

However, there were cases in which tolerance was not entirely desirable. In a dependent territory, inhabited by a primitive people with a coherent social organization bound together by a generally accepted faith, it might be a great mistake for the administering Power to allow missionaries of all faiths freedom to preach. The resulting competition between the missions resulted in a disintegration of the people's beliefs and produced social disorganization. In such cases, the practice of non-discrimination by the administering Power was actually an abuse.

Duties of public authorities to eliminate discrimination (paragraphs 232 to 234)

Mr. HISCOCKS paid a tribute to the uncompromising idealism of the Special Rapporteur, as shown in paragraphs 233 and 234, but found their tone somewhat over-optimistic. For instance, paragraph 233 stated that public authorities should not follow blindly the views prevailing in the society, but must assume leadership in order to achieve the goal of non-discrimination. He did not feel that the public authorities could be expected to impose goals which were not those of the predominant group in the society. In India, two great leaders had taken a strong stand, but such cases were rare. Furthermore, it would be unrealistic to think that such a directive could easily be put into practice. The need for aiming at more gradual progress to be achieved through the education authorities, non-governmental organizations and voluntary obligations must therefore not be neglected.

There were some imperfections of style in paragraph 234. The expression "greatest totality of freedom" in the penultimate sentence was meaningless as it stood and should be replaced by some such expression as "greatest measure of freedom". Secondly, the meaning of the expression "social progress" in the last sentence was not clear. Some criteria should be advanced by which social progress could be assessed, as it would obviously be evaluated differently in different societies, in a Christian and a Marxist society, for instance.

Mr. FOMIN said that the Special Rapporteur had wished to make it clear that Governments and not religious groups must assume responsibility for social progress. Only a Government could decide what constituted social progress, in the light of the country's history and economic and other possibilities. It could not be merely a philosophical question. In reply to Mr. Hiscocks, he

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(Mr. Fomin)

pointed out that in countries where a majority of the population adhered to a Marxist philosophy, considerably greater social progress had been achieved in a short period of not more than forty-one years than in many other countries over a period of many decades or even of centuries.

Mr. SANTA CRUZ strongly endorsed the view expressed in the first sentence of paragraph 232 which was entirely in harmony with the Universal Declaration of Human Rights. He agreed with Mr. Hiscocks that the efforts to eradicate discrimination through education should not be disregarded, but they could not be successful without the support of the public authorities. The case of India showed that strong action and example on the part of the authorities could bring about a climate of tolerance in a country where religious feelings were strong.

He agreed that some definition of the term "social progress" in paragraph 234 was required. The promotion of social progress by a strong authority might well conflict with the principle of the greatest freedom for society as a whole, laid down in the preceding sentence. There were cases where human rights had been trampled under foot in order to achieve social progress.

Mr. HISCOCKS said that the criteria for judging social progress were subjective, in that they depended on the views of the Government of the country concerned; they therefore varied in Christian and Marxist countries. A more objective criterion might be achieved by linking social progress with the idea of the largest measure of freedom for society as a whole.

Mr. KRISHNASWAMI, Special Rapporteur, said that he had definite reasons for including in paragraph 233 the statement that public authorities should not follow blindly the views prevailing in the society. It was not only in India but in other countries of South East Asia, such as Pakistan and Indonesia that the authorities had made a definite stand against discrimination. Such action was of the highest importance, as progress could not be achieved without leadership in any democracy.

There could be both subjective and objective criteria for judging social progress. The degree to which women were kept in subjection, for instance, was

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a well-recognized criterion. It was with a view to achieving social progress that the elimination of polygamy and of other social evils, such as untouchability, had been written into the Indian Constitution. The mere introduction of legislation to eradicate discrimination was an achievement in itself; that was the conception of social progress he had had in mind when specifying that the public authorities should adopt a solution ensuring the greatest totality of freedom for society as a whole.

Mr. SANTA CRUZ remarked that although the meaning which the Special Rapporteur attached to the words "social progress" was perfectly clear, he still feared that there might be some conflict with the preceding sentence. The point might be met by adding the words "as well" after the words "social progress".

The meeting rose at 1 p.m.