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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 SIXTY-FIFTH MEETING

Held at Headquarters, New York,  
on Tuesday, 13 January 1959, at 10.45 a.m.

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Study of discrimination in the matter of religious rights 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)

<u>Also present:</u>	Miss MAÑAS	Representative of the Commission on the Status of Women
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Representative of a specialized agency:

Mr. METALL	International Labour Organisation
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<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  
(E/CN.4/Sub.2/L.123/Add.1) (continued)

XI. Proposals for action (continued)

Rule 5: Form of celebration of marriage and its dissolution (continued)

Mr. SANTA CRUZ recalled that Mr. Awad, whose opinion as Chairman must necessarily have great weight in the Sub-Commission, had said at the previous meeting that rule 5 ought to lay down, on the one hand, the right of everyone to have marriage rites performed in accordance with his religion or belief and, on the other, the right of the State to have every marriage registered and to regulate the form of registration. In many countries the law gave the State a much more extensive role because it was rightly considered that marriage constituted a solemn contract, which had important social and economic consequences for the family and for society. It could not therefore be argued that the State violated the rights of individuals in regulating marriage.

The text of rule 5, paragraph 2, took both aspects into account: the State had the right to regulate the form of celebration of marriage, since marriage had civil consequences, but everyone was entitled to have marriage rites performed in accordance with his religion or beliefs. In some countries the religious ceremony had civil consequences; in others, a marriage was not valid from the legal point of view unless it was duly registered.

The CHAIRMAN, speaking as a member of the Sub-Commission, observed that in some countries registration was the principal element in the celebration of a marriage and was equivalent to a ceremony. It had not been his intention to belittle the value of that ceremony or to criticize the State's right to adopt such measures.

Mr. HISCOCKS considered that the problem raised by rule 5 was very complex. There seemed to be a danger that paragraph 1 might be construed to mean that everyone had the right to enter into a marriage even if he did not satisfy the conditions prescribed by law. He would prefer to see the paragraph amended to read: "Everyone entitled to marry should have the right to have the marriage celebrated either in a form which accords with his religion or belief, or in a civil form, or both."

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Mr. CHAYET, referring to the comments of certain members of the Sub-Commission, said that paragraphs 1 and 2 of rule 5 dealt with the same question from two different points of view. Paragraph 1 gave everyone the right to enter into a valid marriage celebrated in a form which was not contrary to his religion or belief and paragraph 2 prohibited the State from compelling anyone to undergo a religious ceremony not in conformity with his convictions. The two ideas were different but complementary, which explained why some members of the Sub-Commission had felt that paragraph 1 was unnecessary.

Mr. INGLES observed that the title of rule 5 was correct; the Sub-Commission was considering the "form of celebration of marriage and its dissolution" both as a manifestation of a religion or belief and as a rite or practice of that religion or belief.

All religions recognized the institution of marriage but they differed with regard to the form of celebration marriage. The Sub-Commission was entitled to state the principle that everyone had the right to have marriage rights performed in accordance with his religion or belief but it was not competent to study the right to marriage, which was embodied in the Universal Declaration of Human Rights and referred to in the draft Covenant on Civil and Political Rights.

With regard to Mr. Hiscocks' suggestion for the amendment of paragraph 1, he pointed out that under article 22 (2) of the draft Covenant and article 16 (1) of the Universal Declaration everyone "of full age" had the right to marry.

The second part of paragraph 1 of rule 5 ("... celebrated in a form which is not contrary to his religion or belief") introduced an element which was extraneous to the right to enter into marriage as envisaged in article 22 of the draft Covenant. If the object was to establish a relationship between the right to enter into a valid marriage and the right to practice or adhere to a religion, it would be necessary to introduce the provisos embodied in article 16 of the Universal Declaration of Human Rights.

The Sub-Commission could only state the principle that everyone of full age must have the right to enter into a valid marriage without any restriction as to religion. It could not consider the various aspects of the State's power to stipulate what constituted a valid marriage. It could deal only with the form of celebration of marriage.

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If, moreover, the Sub-Commission envisaged conditions attaching to the right to enter into marriage other than those mentioned in the Universal Declaration and the draft Covenant, it might be formulating a rule with regard to practices which it had not studied and on which the necessary documentation had not been available to the Special Rapporteur.

In his view the Sub-Commission would be well-advised to consider deleting rule 5, paragraph 1.

Mr. SAARIO said that he was in agreement with the views expressed by Mr. Hiscocks and Mr. Ingles. The right to enter into a marriage depended on the personal status of the individual and in some countries the parties to a marriage had to meet certain requirements regarding age, domicile or health before they could enter into a valid marriage. Such restrictions were primarily intended to safeguard and protect society and could not be regarded as discriminatory measures.

Miss MAÑAS (Commission on the Status of Women) thanked the Special Rapporteur for the statement he had made at the previous meeting, and wished to offer some comments in the light of the studies made by the Commission on the Status of Women.

The Commission believed that two requirements must be satisfied if a marriage was to be valid: the prior consent of the intending spouses and the registration of the marriage. It must be possible for both parties freely to express their consent. Certain recognized religions, however, prescribed rules permitting marriage without the consent of the wife. Further, although in most countries marriages were registered, that was not the case in all countries.

She felt, therefore, that paragraph 1 of rule 5 should incorporate the fundamental idea of prior consent to the marriage and should be amended to read:

"Everyone should have the right to enter into a valid marriage, to which both contracting parties give their consent, celebrated in a form which is not contrary to his religion or belief".

In paragraph 2, a distinction should be made between the celebration of the marriage and the registration of the marriage. Celebration did not automatically make a marriage legally valid unless the marriage was registered.

(Miss Mañas, Commission on the Status of Women)

She noted that in the final phrase of paragraph 3 the Special Rapporteur had used the verb "profess", which meant "take an active part" in a religion, in other words, apply all the rules of that religion. However, adherence to a religion did not necessarily involve observance of all its rules: it would, therefore, be preferable to use the verb "adhere to" and to amend the last part of the sentence to read: "solely on the ground that he adheres to a particular religion or belief".

The CHAIRMAN, speaking as a member of the Sub-Commission, agreed with the views expressed by Mr. Ingles and supported his suggestion regarding paragraphs 1 and 2 of rule 5, which should not deal with the right to enter into a marriage, but with the right to marry in accordance with the rites and practices of one's religion or belief.

He would prefer to delete the latter part of paragraph 3 ("solely on the ground that he professes a particular religion or belief"). No one should be prevented from obtaining a divorce if it was permitted by his religion; if a person's religion permitted divorce and the State forbade divorce, the person's freedom to practise his religion might be impaired. In any case, the Sub-Commission was concerned only with the religious celebration of marriage and not with marriage as a civil act.

Mr. CHAYET shared that view. The Sub-Commission should confine itself to the form of marriage. Article 16 of the Universal Declaration of Human Rights and article 22 of the draft Covenant did not cover all the requirements a State might deem necessary for the valid celebration of a marriage to be valid. They did not, for instance, deal with the possibility of kinship between the intending spouses. The wording of rule 5 should be consistent with the Sub-Commission's limited terms of reference.

Mr. KRISHNASWAMI, Special Rapporteur, observed that the Sub-Commission was not competent to study the substantive aspects of the right to marry. In rule 5 he had strictly confined himself to the formal aspects of marriage. He had tried to take account of the fact that many religions regarded marriage as a sacrament, and also the case of free-thinkers living in countries where religious marriage alone was recognized and marriages were not required to be officially registered. He was grateful to the members of the Sub-Commission and the representative of the Commission on the Status of Women for referring to the various aspects of the problem.

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(Mr. Krishnaswami)

He believed he could meet Mr. Hiscocks' objection to paragraph 1 by adopting the change suggested by Mr. Ingles and inserting the words "of full age" after the word "everyone" in order to conform with article 16, paragraph 1 of the Declaration of Human Rights. With regard to paragraph 2, in connexion with which Mr. Machowski had referred at the previous meeting, to the changes in Polish legislation, he believed that the practice of requiring that the civil ceremony should precede the religious ceremony was wholly acceptable if the State refrained from any form of discrimination in the matter of religions or beliefs, and permitted the celebration of a religious ceremony. He would like to have time to study in detail the various arguments that had been advanced in regard to paragraph 3.

Miss MAÑAS (Commission on the Status of Women) said that the Commission she represented attached particular importance to the question of the age at which marriage was permitted. In its opinion, the age qualification was essential as well as the requirement of the prior consent of both parties.

Rule 6: Arrangements for disposal of the dead

Mr. INGLES, supported by Mr. Hiscocks, proposed the deletion of the words "as far as practicable". In view of the general limitations set out in rule 3, the words were not only superfluous but weakened the rule embodied in rule 6 by introducing a two-fold limitation.

Mr. MACHOWSKI said that he would be grateful if the Special Rapporteur could expand the rule to cover situations of the kind referred to in paragraph 283 of his report.

The CHAIRMAN, speaking as a member of the Sub-Commission, suggested that the phrase "the taking out of funeral processions" might be improved.

Mr. KRISHNASWAMI (Special Rapporteur) emphasized that he had not intended to impose a two-fold limitation, but had sought to establish a rule that would assist minorities that were too small to impose their requirements on the authorities, with whom methods of persuasion would have to be used. He would try to take the comments of the members of the Sub-Commission into account, but could only accept them provisionally.

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Mr. INGLES observed that the point raised by Mr. Krishnaswami was covered by rule 1, paragraph 2.

Rule 7: Dietary practices

Mr. FOMIN suggested that in the interest of uniformity the rule should be reworded to begin with the word "everyone" rather than the words "no one". He would not press the suggestion, but hoped that rule 7 would not be drafted in unduly categorical terms.

Mr. CHAYET pointed out that it was evident that if no one should be "prevented" from observing dietary practices, no one should be forced to observe them.

Mr. KRISHNASWAMI, Special Rapporteur, said, in reply to Mr. Fomin, that he had deliberately adopted the formula used in rule 7 because, as he had said at a previous meeting, the authorities had a negative and not a positive duty in the matter. Rule 7 was thus expressed in general terms; it could therefore be applied in all cases and would cover Shehitah as well as the practices embodied in Indian civil law.

Rule 8: Pilgrimages

Mr. KRISHNASWAMI, Special Rapporteur, said that he would delete the second part of paragraph 2 from his text.

Mr. HISCOCKS proposed, in the interest of clarity that the words "by war, epidemic or shortage of foreign currency" should be inserted after the words "such limitations as may be imposed".

Mr. FOMIN opposed the proposal, which would make it necessary to include an exhaustive list of the cases in which restrictions might be temporarily imposed.

Rule 9: Training of religious leaders

Mr. KRISHNASWAMI, Special Rapporteur, said that the last sentence in paragraph 2 was to be deleted.

The CHAIRMAN, speaking as a member of the Sub-Commission, asked the Special Rapporteur to include imams in the list of religious leaders.

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Mr. FOMIN felt it was important that rule 9 should not be given a unilateral character. He did not think it was possible to draw up an exhaustive list but he felt that the rule should cover not only religious leaders but also leaders who, as in the Soviet Union, had nothing to do with religion but whose activities belonged to the realm of belief. He hoped that the Special Rapporteur would make an addition to the rule along those lines.

Mr. HISCOCKS said he thought the Special Rapporteur's method of giving selected examples of different types of religious leaders was a good one: it was a compromise between drawing up an exhaustive list and giving no examples at all.

The CHAIRMAN, speaking as a member of the Sub-Commission, suggested that, as the word "leader" was ambiguous, the examples mentioned in paragraph 1 should be retained and that something should be added to the rule to cover Mr. Fomin's point with respect to non-religious leaders.

Mr. SANTA CRUZ agreed with the concept expressed in paragraph 2 of rule 9. Moreover, that particular right was set out in the Universal Declaration of Human Rights.

Rule 10: Dissemination of religion or belief

Mr. INGLES said that he did not quite understand why the Special Rapporteur had considered it necessary to refer to limitations in both paragraphs of rule 10, since the limitations which would presumably apply to the basic rules as a whole had already been specified in rule 3.

Mr. SAARIO agreed with Mr. Ingles and thought that paragraph 2 might simply be deleted. He felt, however, that the right to disseminate a religion or belief was a secondary right which could only be recognized in so far as it did not prejudice any of the other rights set forth in the basic rules and in the Universal Declaration of Human Rights.

The CHAIRMAN, speaking as a member of the Sub-Commission, supported the text drafted by the Special Rapporteur. In some countries religious proselytism had often given rise to abuses and had served as a cloak for activities that were in no way related to religion. Moreover, if the dissemination of religious concepts was allowed too much latitude it was liable to sow discord in a national

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(The Chairman)

community which was in the process of formation or consolidation. It would therefore seem wise not to recognize as absolute the right to disseminate a religion or belief.

Rule 11: Objections on conscientious grounds

Mr. BEYHOM felt that individuals should not be compelled to suppress their scruples. The fact that some States recognized objections on conscientious grounds while others did not result in discrimination at the international level. The Sub-Commission should therefore recommend that States which did not recognize objections on conscientious grounds should revise their position.

Rule 12: Financial measures for the support of a religion or belief

Mr. INGLES pointed out that the present text of paragraph 1 seemed to concern only countries which had a State religion. For countries in which the Church was separate from the State it would seem logical to delete the words "which is not in conformity with his convictions". Moreover, the present wording of paragraph 1 seemed to imply that the supporters of a particular religion could be compelled to contribute to its support. It would be better for the rule not to be of a peremptory character and for the financial contributions in question to be voluntary. He therefore thought that the Special Rapporteur might revise the text in such a way as to distinguish between the case of a State religion and that of separation of Church and State.

Mr. FOMIN agreed with Mr. Ingles that a rigid interpretation of paragraph 1 would make it possible to impose upon some citizens a financial obligation which would be inconsistent with the principle of freedom of religion. The Sub-Commission should draft a rule which was perfectly clear and did not recommend that States should compel their nationals to give financial support to a religion whether or not it was in conformity with their convictions. He objected, however, to any distinction being made between a State religion and the separation of Church and State, for such a distinction would be discriminatory and would, in fact, justify various discriminatory measures and privileges serving the interests of the State religion. The Sub-Commission should provide general rules which did not allow of any privileges or exceptions.

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Mr. SANTA CRUZ agreed with Mr. Fomin that paragraph 1 should be more clearly worded so that no one would be compelled to contribute to the support of a particular religion. Paragraph 3, however, was perfectly clear and had the merit of clarifying the meaning of paragraph 1 in some specific cases.

Mr. INGLES felt that if the Special Rapporteur agreed to his suggestion that the words "which is not in conformity with his convictions" should be deleted, paragraph 1 would be acceptable as a general rule, the permissible exceptions being mentioned in paragraph 3.

Mr. SPAULDING supported that suggestion.

Mr. HISCOCKS drew the Special Rapporteur's attention to the system which he believed was still in force in Germany, where a citizen, by the very fact of declaring his adherence to a specific belief, committed himself to the payment of a special tax. The deletion which Mr. Ingles proposed would by implication, condemn that system, which produced good results and did not threaten the freedom of the individual.

In reply to a remark by the CHAIRMAN, Mr. KRISHNASWAMI, Special Rapporteur, said that in some countries the Government levied a special tax designed to support State religion. In drafting paragraph 7 he had wanted to stipulate that in such cases the Government should not levy that tax on citizens of a different faith. Moreover, even where Church and State were separate there were cases in which certain religions or sects exacted a financial contribution and the judicial apparatus of the State intervened to enforce payment. Any member who refused to pay had, of course, the option of giving up his religion or belief. In other cases, the Government could grant religions or religious institutions subsidies out of the State's general budget. Such subsidies were sometimes necessary for traditional or artistic reasons. For instance, the Governments of the Soviet Union and of France had assumed responsibility for the maintenance of historical places of worship. An unduly rigid conception of the separation of Church and State might result in precious relics of the past being abandoned and left to fall into disrepair.

Mr. SANTA CRUZ hoped that the Special Rapporteur would draft a revised text which would meet some of Mr. Fomin's objections. If Mr. Ingles' suggestion were accepted and the last clause of paragraph 1 were deleted, that paragraph

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(Mr. Santa Cruz)

would allow of a broader interpretation. The word "compelled", however, was unduly restrictive. The main idea should be that financial obligations based on religion should not be imposed from outside. On the other hand, it was quite legitimate for the member of a group to assume financial commitments deriving from his free adherence to the group.

Mr. INGLES felt that a clear distinction should be made between a State which levied a tax for the purpose of subsidizing the expenses of a religion or a religious institution and a State which enforced certain commitments deriving from adherence to a religious group. The latter was only a specific instance of the observance of contractual obligations.

The meeting rose at 1.5 p.m.