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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-FOURTH MEETING

Held at Headquarters, New York
on Tuesday, 19 January 1959, at 3.15 p.m.

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

Representatives of non-governmental organizations:

<u>Category A:</u>	Mr. THORMANN	International Federation of Christian Trade Unions
<u>Category B and Register:</u>	Mr. MICHELI	Commission of the Churches on International Affairs
<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, E/CN.4/Sub.2/L.150) (continued)

Enunciation of Basic Rules (continued)

The CHAIRMAN, speaking as a member of the Sub-Commission, suggested that the Special Rapporteur's set of basic rules to assist Governments to eradicate discriminatory practices in the field of religious rights and practices should include a rule providing for the protection of places of worship. While there was a reference to places of worship as monuments of historic or artistic value, it was the responsibility of civilized countries to provide special protection against mob attacks and other forms of desecration. Political disturbances or war might cause the owners of a place of worship to forsake it temporarily. If so, it should receive the protection of the State. A specific rule providing for such protection was therefore warranted.

Mr. MACHOWSKI felt that the Chairman's suggestion raised practical and legal problems and required further clarification. He wished to know, for instance, whether the protection envisaged was similar to that given to the premises of diplomatic missions under laws and customs concerning diplomatic privileges and immunities, or any other solutions.

The CHAIRMAN thought that the Special Rapporteur should be given every latitude in drafting the proposed rule. The Sub-Commission would discuss it in greater detail after it had been submitted.

Mr. INGLES observed that legislation in some countries penalized the desecration of holy places, including places of worship. However, the concept of protection included that of the preservation of holy places as historical monuments. They should be protected not only against vandalism but also preserved against the ravages of time and the elements. The Special Rapporteur might, in addition, consider the desirability of providing for free access to holy places, which was equally important, from the point of view of prevention of discrimination.

Mr. HISCOCK'S, while appreciating the desirability of the measure suggested by the Chairman, was not convinced that it should be the subject of a basic rule. The basic rules drafted by the Special Rapporteur dealt specifically with discrimination.

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Mr. SAARIO thought that an additional paragraph providing for the protection envisaged by the Chairman might be included in rule 4.

Mr. KRISHNASWAMI said that he would consider the Chairman's suggestion and draft an appropriate rule.

Mr. FOMIN, commenting on the basic rules as a whole, felt that the Special Rapporteur had in some cases lost sight of the fact that his report dealt with freedom of religion and belief and was not confined to religious rites and practices. It was essential that the content of the report should correspond to its subject. Freedom of belief was as important as freedom of religion and should receive equal treatment. That principle should be respected throughout the report.

Mr. MICHELI (Commission of the Churches on International Affairs) said that his organization, which represented the World Council of Churches and the International Missionary Council, had followed with considerable interest the progress achieved by the Sub-Commission in discussing the Special Rapporteur's report. He expressed warm appreciation to the Special Rapporteur for his efforts to make explicit in the basic rules important aspects of religious rights implicitly contained in article 18 of the Universal Declaration of Human Rights. Since the debate in the Sub-Commission had shown that the present formulation of the rules was still provisional, he expressed the hope that non-governmental organizations would have further opportunities to comment on them. He assumed that the basic rules, when finally drafted and adopted, would be circulated not as part of the report itself but as a separate document. If so, one should guard against any possibility of misinterpreting their purpose. The authorities which would use the rules as a guide in their efforts to combat discrimination should not construe them as an exhaustive interpretation of article 18 of the Universal Declaration and of the corresponding article in the draft Covenant on Civil and Political Rights, but should also give attention to those elements in those articles not explicitly dealt with in the rules. It might therefore be appropriate to draft a preamble to the basic rules in which the Sub-Commission's intentions were clearly expressed, including its desire that no restrictive interpretation be given to article 18.

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Sections B and C: Procedure for bringing the Basic Rules before Governments and Future Work on Eradication of Discrimination

Mr. SANTA CRUZ felt that the only paragraph of Section B which could be discussed at the present stage was paragraph 342. The others depended upon submission of the Special Rapporteur's final report. With regard to paragraph 342, it would be useful for the Third Committee of the General Assembly to have the basic rules before it when it discussed article 18 of the draft Covenant on Civil and Political Rights, which it might well do at its next session. The Sub-Commission could, through its Special Rapporteur, make a valuable contribution to that discussion.

Section C contained useful suggestions regarding the future work on eradication of discrimination, which had been incorporated in the draft resolution before the Sub-Commission.

Mr. FOMIN said he agreed in principle with the Special Rapporteur that the ultimate objective was to work out recommendations to be addressed to Governments through the higher bodies of the United Nations. For that purpose, however, the Sub-Commission must first complete a final report for submission to those bodies. When finally drafted and approved by the Sub-Commission, the basic rules could go forward in the latter's name as a separate document. The draft report itself was as yet only an individual effort on the part of the Special Rapporteur. The status of the basic rules was in no way comparable to that of the articles of the draft Covenant on Civil and Political Rights and it was therefore presumptuous to suggest in paragraph 342 of the draft report that article 18 of the draft Covenant might be amended in order to incorporate in it points raised in the basic rules.

He accepted the Special Rapporteur's basic idea that the Sub-Commission had a continuing responsibility to follow up its study with further efforts to eradicate discrimination, but he disagreed with the emphasis placed on the suitability of the triennial reporting procedure, mentioned in paragraph 350, as a means of keeping the subject under review. That procedure was as yet only tentative and there were perhaps alternative methods. A decision on the future work to be undertaken could be reached only when the Sub-Commission completed its report which was as yet only in its preliminary stage and could be modified substantially. The decision should be taken at the next session when the position of the Commission on Human Rights regarding the triennial reporting system would be known.

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Mr. SPAULDING agreed with the comments made by Mr. Santa Cruz on sections B and C of Chapter XI. Neither the basic rules nor the comments made on them had raised any point that was in conflict with the draft articles to be considered by the Third Committee of the General Assembly or that was useless for the Committee's study. The joint draft resolution before the Sub-Commission therefore rightly suggested that the rules should be taken into account by the higher bodies of the United Nations.

Mr. SANTA CRUZ said that the action proposed would indeed be presumptuous if the draft Covenant, like the Declaration, were a text formally approved by the General Assembly. However, the draft Covenant was still only in the drafting stage and it was therefore in no way improper for a specialized body to make suggestions concerning it to the Third Committee. He agreed fully with the point made in paragraph 346, which had been reflected in the joint draft resolution. It was generally recognized that the triennial reporting procedure was experimental only, but he agreed with the Special Rapporteur that the Sub-Commission could not approach Governments directly for information. As stated in paragraph 349, therefore, consideration should be given to the use of material contained in reports received from Governments.

Mr. KRISHNASWAMI, Special Rapporteur, said that the question was one which the Sub-Commission itself would have to decide. Regarding the propriety of making any suggestion concerning the draft Covenant, he pointed out that there were precedents for such action. The Sub-Commission had not been precluded from discussing and commenting on the draft ILO Convention concerning discrimination in respect of employment and occupation. While the basic rules were of a provisional character only, the basic ideas they contained appeared to have met with general approval. He fully agreed with Mr. Santa Cruz' comments on the possible usefulness of the triennial reporting system.

Mr. CHAYET said that although it would be logical, as proposed by Mr. Fomin, to await the production of a final report before putting forward suggestions, emergency procedures were perhaps necessary, as the Third Committee would not delay its consideration of article 18 of the draft Covenant pending completion of the Sub-Commission's final report. In logic, a decision on the

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(Mr. Chayet)

Sub-Commission's future work could not be taken until the final report was examined, but there again the situation was an emergency one, as indicated in paragraph 350. Sections B and C pointed to appropriate solutions for those emergencies.

Presenting the draft resolution (E/CN.4/Sub.2/L.150) which he was submitting jointly with Mr. Hiscocks, Mr. Ingles and Mr. Santa Cruz, he explained that the inability of the Special Rapporteur to produce a final report was due to the absence of information or comments from a number of Governments. The reference in the preamble to the term of office of members of the Sub-Commission had been included in order to call to the attention of higher bodies the problem created by the requirement for further work on the study of discrimination in the matter of religious rights and practices. He saw nothing improper in the "hope" and the "opinion" expressed by the Sub-Commission in operative paragraphs 3 and 4 respectively. Although incomplete, the work done by the Sub-Commission would prove useful to the higher bodies which had appointed it.

Mr. FOMIN stated that the members of the Sub-Commission had scarcely had time to study the draft resolution. He did not object to its being discussed, but hoped that more time would be allowed to examine such documents in the future. He did not object to operative paragraphs 1 and 2 of the draft resolution but objected strongly to operative paragraphs 3 and 4, in view of the incompleteness of the Sub-Commission's work. The final form of the basic rules and the draft report could only be assumed and it was procedurally incorrect to submit such material to higher bodies, and particularly to the General Assembly, even if those bodies were dealing with the same subject. The case of the Sub-Commission's action on the ILO Convention did not create a precedent, since in that case a clear and complete text had been available. It would be no very serious matter if the Sub-Commission's preliminary views on the question of discrimination in the matter of religious rights and practices were not conveyed to the Third Committee of the General Assembly at its fourteenth session, as that Committee was still only on its first reading of the draft covenant on human rights. The General Assembly itself could not be expected to consider the draft covenants for some considerable time. The Sub-Commission could report only to the Commission on Human Rights and the material it transmitted should be in finished form, and its recommendations

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(Mr. Fomin)

should represent the views of the Sub-Commission as a whole. The Sub-Commission would impair its prestige if it acted otherwise.

Finally, operative paragraph 4 expressed an opinion on the value of the triennial reporting procedure, which the Commission on Human Rights had not yet studied and might not adopt. None of the triennial reports was yet available and it was impossible at the present stage to express any opinion on them. Furthermore, in expressing such an opinion, in the way that was done in the draft resolution, the Sub-Commission was exceeding its power and, in effect, giving the Commission on Human Rights, its parent body, directives on how to proceed, which was the prerogative of the Economic and Social Council. It was conceivable that the triennial reporting procedure might produce the information the Sub-Commission rightly wished to obtain. However, instead of adopting a resolution prematurely, the Sub-Commission should include a paragraph in its report stating that some members agreed with the Special Rapporteur's suggestion regarding that procedure. If it adopted the draft resolution, it would be taking up one of the Special Rapporteur's proposals before it had considered his final report, which would be illogical. Such a recommendation could be made only at the next session, when the final report was considered. For the reasons he had given, which were reasons of substance and not of form, he would be obliged to vote against operative paragraphs 3 and 4, and he asked for a separate vote on them. He would be unable to support the draft resolution as a whole if they were adopted.

Mr. HISCOCKS agreed with Mr. Fomin that the Sub-Commission was not yet in a position to make recommendations regarding the basic rules proposed by the Special Rapporteur, which were still in draft form; but the draft resolution did not make any such recommendations. In operative paragraphs 3 and 4, it was merely expressing a hope and an opinion; it was not making recommendations to the Commission on Human Rights. The Third Committee might consider article 18 of the draft Covenant on Civil and Political Rights at the fourteenth session and if the constructive work done by the Special Rapporteur was not to be wasted, the Sub-Commission should now draw the attention of the higher bodies of the United Nations to it. Paragraph 3 did so in a tentative and acceptable fashion and mentioned the relevant documents. Operative paragraph 4 was also appropriately

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worded. It merely expressed the opinion that the triennial reporting procedure, which was to be considered by the Commission on Human Rights at its next session, would provide a suitable framework within which Governments could report progress in combating discrimination in religious rights and practices.

Although he sympathized with Mr. Fomin's remarks about the submission of draft resolutions, he felt that it would not be practical to insist on the distribution of texts twenty-four hours before they were to be considered, as the Sub-Commission's session was extremely short. The Sub-Commission would have to decide on a practical solution of the problem.

Mr. SANTA CRUZ said that the purpose of operative paragraph 2 of the draft resolution (E/CN.4/Sub.2/L.150) was to ensure that the Special Rapporteur would be present at the twelfth session when his final report was presented.

He could not accept Mr. Fomin's objections to operative paragraphs 3 and 4. Operative paragraph 3 did not give directives to the Commission on Human Rights but merely expressed the hope that the basic rules would be taken into consideration when article 18 of the draft Covenant on Civil and Political Rights was taken up. It was intended to ensure the transmittal of the basic rules to the body considering the draft Covenant and thus to make certain that the work done by the Special Rapporteur should not be wasted. Contrary to what Mr. Fomin had maintained, the basic rules were not only the expression of one individual's views. The Sub-Commission had discussed them and the Special Rapporteur had taken its views into account, so that he was speaking for all members.

There was no real problem. If the Third Committee adopted a text which was unacceptable to some delegations, it could be amended at a plenary meeting of the General Assembly. His experience was however that such amendments were very rarely made. Therefore the decision of the Third Committee was important and there could be no doubt that it should have at its disposal the basic rules and the comments of the Sub-Commission thereon. In any case, in expressing a hope, the Sub-Commission could not be interpreted in any way as attempting to give instructions to the Commission on Human Rights. However, in order to meet Mr. Fomin's objection to paragraph 3, the words "the ideas contained in" should be inserted after the words "take into account", in operative paragraph 3.

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(Mr. Santa Cruz)

Mr. Fomin's objections to operative paragraph 4 seemed equally difficult to understand. The Sub-Commission, anxious to obtain as much information as possible, expressed the opinion that such information might be obtained through the triennial reporting procedure. That did not involve any evaluation of the procedure itself, which was a question for the Commission on Human Rights. However, Mr. Fomin's objection might be met by changing the word "will" to "may" in operative paragraph 4.

Mr. FOMIN pointed out that if the draft resolution was adopted, it would be only an internal resolution of the Sub-Commission, which the Commission on Human Rights was not bound to consider. If the Commission chose to disregard it, no action could be taken to ensure that the basic rules would be transmitted to the appropriate body for consideration in connexion with article 18 of the draft Covenant. That was why any request made by the Sub-Commission should be directed specifically to the Commission. In the draft resolution under consideration, the Sub-Commission would be expressing a hope, in operative paragraph 3, without stating to whom it was addressing itself. That was not only inappropriate, it was ineffective. The words "Expresses the opinion" in operative paragraph 4 were equally unsatisfactory. In any case, the Sub-Commission could not state that it approved of the triennial reporting procedure, which it had not considered. If the Sub-Commission wished to obtain information in that way, it should present a specific request to the Commission on Human Rights, which it was not in a position to do at present.

Mr. MACHOWSKI proposed that, in order to give delegations time to reflect on the serious issues which had been raised, the vote on the draft resolution should be postponed to the next meeting.

Mr. SANTA CRUZ supported that proposal. As the text would record the Sub-Commission's view on the valuable work done by the Special Rapporteur, it should be adopted unanimously. To achieve that purpose, it might be necessary to make some changes in the present text.

Although the draft resolution was intended to be an internal resolution of the Sub-Commission, it was unlikely that the Commission on Human Rights, which would consider the Sub-Commission's report, would disregard it. Mr. Fomin's

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(Mr. Santa Cruz)

fears were largely illusory; there would be at least one delegation interested enough in the Sub-Commission's work to draw attention to it. If that was not so, the work itself was valueless.

Mr. INGLES welcomed the changes to operative paragraphs 3 and 4 announced by Mr. Santa Cruz.

It was true, as Mr. Fomin had maintained, that the Commission on Human Rights was not bound to take up an internal resolution of its Sub-Commission, but it could also, if it wished, disregard a resolution that was directed specifically to itself. The Commission would pay some attention to the Sub-Commission's report, which would contain the resolution, the form of which was therefore immaterial. In order to achieve unanimity, it might be advisable for the sponsors to redraft at least part of it.

Mr. SAARIO said that he had some misgivings about operative paragraphs 3 and 4. However, some action must be taken to ensure that the basic rules should be considered in connexion with article 18 of the draft Covenant, which would probably be considered at the fourteenth session of the General Assembly. In connexion with operative paragraph 4, he wondered how the Sub-Commission would obtain the relevant information if the triennial reporting procedure was not adopted by the Commission on Human Rights.

Mr. FOMIN stressed that the Sub-Commission would be placing itself in a delicate position if it attempted to recommend consideration of the basic rules on the same footing as article 18 of the draft Covenant. As he had already pointed out, the basic rules were in fact contrary to the spirit of article 18 of the Universal Declaration of Human Rights and article 18 of the draft Covenant which had been drafted by the Commission on Human Rights. The Sub-Commission should not put itself in the position of attempting to impose a text which did not have the approval of the Commission. It should not seek to refer the text to a higher body by circumventing the Commission on Human Rights.

Mr. HISCOCKE said that it would be helpful if the representative of the Secretary-General could give the Sub-Commission some information on the present position regarding the triennial reporting procedure, so that it could consider

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(Mr. Hiscocks)

the desirability of making such a suggestion as was proposed in paragraph 350 of the report (E/CN.4/Sub.2/L.123/Add.1).

He welcomed Mr. Saario's comments and was somewhat surprised at Mr. Fomin's objection to a very mild internal resolution. He would be glad of any suggestions for improving the present text.

Mr. SANTA CRUZ said that Mr. Fomin was mistaken in supposing that the sponsors were attempting to impose the basic rules as an alternative to article 18 of the draft Covenant. Whenever the rules had been found to conflict with article 18, during the discussion in the Sub-Commission, changes in the rules, not in article 18, had been suggested. However, the ideas contained in the basic rules might be of help to the Third Committee in its consideration of article 18. He would welcome any suggestions from Mr. Fomin regarding amendments to the present text.

The meeting rose at 5.35 p.m.