



UNITED NATIONS
ECONOMIC
AND
SOCIAL COUNCIL



Distr.
GENERAL

E/CN.4/Sub.2/SR.263

11 May 1959

ENGLISH

ORIGINAL: FRENCH

COMMISSION ON HUMAN RIGHTS

SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND PROTECTION OF MINORITIES

Eleventh Session

SUMMARY RECORD OF THE TWO HUNDRED AND SIXTY-THIRD MEETING

Held at Headquarters, New York,
on Monday, 12 January 1959, at 10.45 a.m.

CONTENTS

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. BEYEUM	(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. GAGLIOTTI	United Nations Educational, Scientific and Cultural Organization

Representatives of non-governmental organizations:

Category B and Register:

	Mr. LEWIN	Agudas Israel World Organization
	Mr. MOSKOWITZ	Consultative Council of Jewish Organizations
	Mr. JACOBY	World Jewish Congress
<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 (paragraphs 329 to 351) (continued)
Enunciation of basic rules (continued)

The CHAIRMAN called on the Sub-Commission to continue its general discussion of the basic rules drafted by Mr. Krishnaswami, the Special Rapporteur, and in particular of the questions raised by the permissible limitations that could be imposed by the public authorities; subsequently the Sub-Commission would proceed to a detailed examination of each of the rules.

Mr. HISCOCKS was glad to note that the Special Rapporteur was prepared to take his proposals into consideration. They had been inspired by a sincere desire to simplify and unify the drafting of the rules and to avoid any repetition which might be misinterpreted so as to stress unduly the possibility of imposing limitations on freedom of religion. In order to facilitate a compromise between the various views expressed, he modified his original proposal, submitted at the preceding meeting (E/CN.4/Sub.2/SR.262), as follows: instead of introducing a new basic rule, which would be rule 13, on the question of limitations, some additions could be made to rule 3 and references to limitations in the other rules deleted wherever possible. In rule 3, paragraph 1, after the words, "in private" the following phrase could be inserted: "in the various ways referred to in rules 4 to 10". In paragraph 2 the following words might be added at the end of the first sentence: "and should be confined within the narrowest possible bounds", and the following sentence might be added at the end of the paragraph: "The mere act of believing should never be a ground for applying any limitation". The last addition was in his view of less moment than the other two.

He had taken the liberty of drafting specific proposals because, although the usual practice was that the report should be drawn up in the Special Rapporteur's own name, the whole purpose of the basic rules was that they should acquire a significance of much wider scope. The Sub-Commission should therefore pay particular attention to them.

The CHAIRMAN asked whether Mr. Hiscocks would agree to the addition to the last sentence he had proposed in paragraph 2, of the words "upon this freedom, as provided in rules 4 to 10", so as to ensure that those provisions should apply to all the rules without exception.

Mr. HISCOCKS said he would prefer to leave that question to the Sub-Commission. He pointed out, however, that the Chairman's concern should be met by the very title of rule 3.

Mr. KRISHNASWAMI, Special Rapporteur, stated that he was ready to consider any proposal on the subject of the basic rules. He reviewed some of the rules and pointed out that the drafting of rule 2, paragraph 1 had appeared to him preferable for legal reasons, particularly since the word "absolute" did not appear in the draft Covenant on Civil and Political Rights. In paragraph 2 of the same rule he had used the word "respected" deliberately, since care must be taken that the public authorities, when applying regulations covering change of religion, in no way limited the freedom to do so. With regard to rule 3, he shared the Sub-Commission's anxiety that the rights of the individual should be safeguarded as far as possible, subject to the provisions of article 29 of the Universal Declaration of Human Rights, but it was above all essential that limitations should be the exception. He had drafted rule 7, concerning dietary practices, in a negative form but had made no direct reference to Shehitah or other similar practices. The question dealt with in rule 10 - the dissemination of religion - was a very complicated one and the rule should perhaps be made more specific where Governments were concerned. Lastly, in rule 12, concerning financial measures for the support of religion, he had tried to take account indirectly of the subject of the separation between church and State, raised by Mr. Fomin, whose views he did not entirely share.

He was afraid that the final product of his endeavours was not perhaps as clear as he would have wished. While appreciating Mr. Hiscocks' criticisms, he considered that the form mattered far less than the substance. If he were to reconsider the drafting of the basic rules he would stress not the limitations but the duty of the public authorities both towards the individual and towards society, which consisted of ensuring the greatest possible religious freedom.

/...

(Mr. Krishnaswami, Special Rapporteur)

He invited the members of the Sub-Commission to submit constructive proposals on the subject of the basic rules. If necessary, the examination of the question could be postponed to a later meeting so as to give members time to formulate their views.

The CHAIRMAN wondered whether it would not be more logical to draw up a rule providing for limitations applicable in all cases.

Mr. MOSKOWITZ (Consultative Council of Jewish Organizations) associated himself with the congratulations addressed to Mr. Krishnaswami on his report, which was of a general nature and laid particular stress on the central problems relating to the most complicated fields of human relations. He attached great importance to the basic rules proposed by the Special Rapporteur. They deserved serious consideration by all the United Nations bodies concerned. They would undoubtedly become a declaration of rights and would certainly have an important bearing on the interpretation of the Universal Declaration of Human Rights and the International Covenants on Human Rights.

He drew attention to a serious gap in the rules - the lack of any reference to the duty of public authorities to refrain from any discriminatory measures based on religion, and not merely from discriminatory measures in the matter of religion. History showed that discrimination in the matter of religious rights and practices, as the term was used by the Special Rapporteur, was almost always linked with discrimination based on religion. A Government which deliberately exercised discrimination against individuals because they belonged to a certain religion would not hesitate to exercise discrimination against them in the matter of religious rights and practices. He therefore asked whether the Special Rapporteur would not amend rule 1 so as to take account of the direct consequences on the exercise of religious freedom of discrimination based on religion.

Mr. JACOBY (World Jewish Congress) wished to thank the Special Rapporteur for having taken into account some observations which his organization had made at the preceding session. He wished to make three suggestions.

In rule 2, paragraph 4, he suggested the addition of the following words: "and an unfettered opportunity of securing religious instruction for their children through the religious community of their own choice".

/...

(Mr. Jacoby, World Jewish Congress)

In rule 3, paragraph 1, the words "as widely as possible" might be replaced by the words "on the basis of equal treatment for all religions".

Lastly, he would be in favour of making the right of all religions to organize on an equal basis, to which Mr. Krishnaswami had referred in paragraph 229, the subject of a further basic rule.

Mr. LEWIN (Agudas Israel World Organization) thanked the Special Rapporteur for having accepted certain suggestions made by his organization at the tenth session, especially with respect to rule 7. As a member of a religion whose sacred texts, especially the Bible and the Talmud, laid down strict obligations in respect not only of diet but also of the slaughtering of animals, he would be grateful if the Special Rapporteur agreed to rephrase the text of rule 7 with a view to taking account of the ritual slaughter, called Shehitah in the Jewish religion, which was the subject of paragraph 291 of the draft report. In his opinion, the proposal - referred to in the final sentence of the paragraph - to authorize the importation of ritually-prepared meat instead of protecting the rite was unacceptable. Nothing could remove, or even mitigate, the hardship caused by the prohibition of ritual slaughter.

Rule 8 should be supplemented by a phrase recognizing the right of pilgrims to pray at places of pilgrimage in accordance with their traditions.

Mr. FOMIN reserved the right to comment on some of the basic rules at a later time. He would merely make some general remarks, which should in no case be interpreted as criticism of any particular religion.

He feared that the Special Rapporteur and some members of the Sub-Commission had made an artificial distinction between the freedom to maintain or change religion or belief and the freedom to manifest religion or belief. In practice, the two ideas were to a large extent intermingled and for some religions, which lacked any theological or philosophical foundation, the fact of maintaining, i.e. professing, the religion consisted merely of certain manifestations consecrated by tradition. The Special Rapporteur appeared to have considered the former freedom an absolute right (rule 2) and the latter a right which could be limited (rule 3).

/...

(Mr. Fomin)

He also raised the question whether Mr. Krishnaswami had correctly interpreted the Universal Declaration of Human Rights and the draft Covenant on Civil and Political Rights, bearing in mind the fact that the latter text was not yet in its final form. Neither article 29 nor article 18 of the Declaration guaranteed absolute freedom of religious rights and practices. Article 29 clearly specified in what circumstances limitations could be imposed on the exercise of the rights laid down in the Declaration, including the right of everyone to maintain or change his religion or belief. Article of the draft Covenant in its present form denied any group or person the right to engage in any activity or to perform any act aimed at the destruction of recognized rights or freedoms. Some religions, for example, denied to women the equality of rights with men set forth in article 2 of the Universal Declaration and in article 3 of the draft Covenant. Similarly, many religions did not accept marriage by free and full consent of the intending spouses (article 22 of the draft Covenant). Furthermore, the members of certain sects who denied essential medical care to their children were violating the right to life which was enunciated in article 6 of the draft Covenant. The number of examples could be multiplied and might include in particular the refusal to take an oath and conscientious objection. In every instance it would be found that it was extremely difficult, if not impossible to make a distinction between the content of a religion or belief and its outward manifestations, and that no right could be considered absolute. It was the duty of the Sub-Commission not to lose contact with with life. The Sub-Commission would therefore be most unwise to endorse the principle that there was no limitation on the right of every person to maintain his religion or belief. Moreover, Mr. Krishnaswami had himself admitted that certain religions prohibited conversions, whereas under rule 2, paragraphs 2 and 3 the right to change religion was to be respected. He therefore hoped that the Special Rapporteur would give consideration to his remarks with a view to working out clearer formulations and to following more closely the text of the articles 18 and 29 of the Universal Declaration of Human Rights.

Although he considered it too early to discuss Mr. Hiscocks' proposal that the provisions relating to limitations should be grouped in a single rule; he was not opposed to the idea, provided that the text did not imply that there was a clear distinction between freedom to maintain religion and freedom to manifest it.

/...

(Mr. Fomin)

Moreover, it would be awkward to speak of "believing" alone, since the Special Rapporteur had always referred to religion and belief together and since those two terms corresponded to the traditional idea of freedom of conscience. The rules should not be drafted in such a manner that they could be used against a particular aspect of that freedom.

Mr. SANTA CRUZ said he, too, would limit himself to a few general remarks. Since the basic rules submitted by the Special Rapporteur were still provisional, he considered it premature to discuss the text in detail. It would, however, be useful for Mr. Krishnaswami to hear the views of the members of the Sub-Commission, it remaining entirely at his discretion whether or not to take account of them. The basic rules were a very important contribution to the Sub-Commission's work. Even at the present stage, they drew the attention of world public opinion to the thorny problems which they would later help to solve.

Mr. Fomin's observations should be studied carefully, as it was certainly difficult to differentiate between the content of a religion or belief and its manifestations. However, Mr. Fomin had been dealing with extreme cases. His remark concerning religions which could be reduced to purely external manifestations obviously referred to certain primitive religions, as none of the major existing religions lacked a philosophical basis. For his own part, he held that freedom of conscience was an absolute right, both in the religious sphere and in other spheres, including that of political ideas, and he believed further that the right to change religion or belief was similarly absolute. Mr. Fomin's interpretation of article 29 of the Universal Declaration was not accurate, since the right to profess a religion or belief did not violate the rights and freedoms of others or the requirements of morality, public order and the general welfare in a democratic society.

As regards the manner in which the limitations should be formulated, he saw no reason for making a choice at the present time between Mr. Krishnaswami's text and the amendments proposed by Mr. Hiscocks.

Mr. MACHOWSKI said that he supported the proposal made by Mr. Hiscocks at the preceding meeting that everything relating to permissible limitations in the matter of religious rights should be included in a single additional basic rule.

/...

(Mr. Machowski)

There were no grounds for making an exception to the general rules laid down in article 29, paragraph (2) of the Universal Declaration of Human Rights, which made the individual's exercise of his rights and freedoms subject only to "such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society". That was why the wording of a basic rule of that kind ought to be based on that article of the Declaration.

Mr. FOMIN, replying to Mr. Santa Cruz, denied having attempted to prescribe a drafting formula for the Special Rapporteur. The Sub-Commission was not entitled to reach a general conclusion without taking into account existing or possible future exceptions or to agree to rules which might discriminate against certain religions such as, for instance, primitive religions. It was not possible to agree to absolute rights because such rights were themselves incomplete. The Sub-Commission should be guided by the provisions of the Universal Declaration of Human Rights. It had not considered what was absolute and what was not from the point of view of the various religions. The existence of a State religion might lead to discrimination against other beliefs or religions represented in a State some of which were not even allowed; a clash of interests might occur from the standpoint of the nature of the religion or the individual's belief because in some cases it was more advantageous to the individual to adhere to the State religion. In that case, the State religion defended its interests and sought to establish a monopoly. It claimed the exclusive possession of absolute truth. The Special Rapporteur ought therefore to try to find a wording which would not permit of erroneous interpretations of the right to freedom of religion.

Mr. SANTA CRUZ said that he had not wanted to make an exception in respect of any religion, even a primitive one. If the essence of a religion were confused with its practice, limitations would be imposed on that religion, since the practice of a religion or a belief was subject to the limitations laid down in article 29, paragraph 2 of the Universal Declaration of Human Rights.

/...

(Mr. Santa Cruz)

The examples which Mr. Fomin had given were not relevant; the question at issue was not discrimination against a religion but the general principle which Mr. Krishnaswami had enunciated in rule 2. The question of freedom of belief and conscience was not as abstract as Mr. Fomin seemed to imagine and history provided many examples of persecutions and of individuals being forced to recant not because there was any danger of their beliefs leading to a breach of the peace but solely because they differed from the prevalent way of thinking.

Mr. SAARIO observed that when the report appeared in its final form the basic rules would reproduce in summary form the main points in the study. He congratulated the Special Rapporteur on the conciseness of the rules, but thought it was still too early to go into details of the wording, which was really a matter of personal preference.

As regards the order in which the rules should be placed, he thought it would be more logical if rule 2 were to come first, since it dealt with the various rights in the matter of religious freedom and was therefore the most important. Rules 4 to 11 would come next and would be followed by rule 3, in respect of which he agreed with Mr. Hiscocks, and then would come rule 1; rule 12 would remain the last.

Mr. INGLES thought that the main point was to decide which aspects of the rights relating to religious freedom could legitimately be limited and which could not. The Special Rapporteur had undoubtedly used as a model article 18 of the draft Covenant on Civil and Political Rights. Religious rights, as defined in that article, included not only the right to maintain and change one's religion or belief but also the right to practise it; the limitations laid down in article 18, paragraph 3 of the draft Covenant applied only to manifestations of religion and it therefore followed that the right to maintain or change religion was an absolute right.

The interpretation of article 18 of the draft Covenant did not justify the existence of limitations on the right to change religion or belief, as seemed to be implied by the Special Rapporteur in rule 2, paragraph 2. The difficulty arose because article 18, paragraph 1 mentioned only the right to maintain, change or manifest religion or belief; but it was obvious that before an individual could change his religion he had to profess one. Mr. Krishnaswami could doubtless find

/...

(Mr. Ingles)

a better way of expressing the idea, since it was in respect of the act of believing or not believing that no limitation was permissible.

The suggestions made by Mr. Hiscocks did not involve any basic changes in the rules, but they did not relate to limitations of a permanent nature, as did rules 8 and 9, which should be retained even if the Sub-Commission decided to draft a general basic rule on limitations. He did not think it proper to alter rule 3, paragraph 1, as Mr. Hiscocks had suggested, by specifically referring to rules 4 to 10. In some cases, which were not the subject of a special rule, the general rule applied; it would be unwise to state that the provisions of rule 3 would apply only to the specific cases mentioned in rules 4 to 10 since other cases might conceivably arise. Hence it would be advisable to adopt a general wording based on article 18 of the draft Covenant on Civil and Political Rights and on article 18 of the Universal Declaration of Human Rights, which qualifies the freedom to manifest religion by the phrase "in teaching, practice, worship and observance", and to amend rule 3 accordingly.

Lastly, he was glad that the Special Rapporteur had made use of article 18 of the draft Covenant in drafting rule 3, paragraph 2, in preference to article 29, paragraph 2 of the Universal Declaration of Human Rights, the scope of which was narrower, and that he had tried to improve upon it in order to take into account cases which were not dealt with in the draft Covenant.

The CHAIRMAN, speaking as a member of the Sub-Commission, said that it would have to take a decision concerning the basic rules and their position in the report. The rules formed an essential part of the study which the Special Rapporteur had made and he thought they could well appear at the end of it, both to serve as guiding principles for the use of Governments in respect of discrimination in the matter of religious rights and to protect the rights of the community.

With regard to the order of the rules, he doubted whether rule 3 was correctly placed and suggested placing it last; in that way all the rules concerning rights and safeguards in the matter of religious freedom would come first, followed by a single rule concerning limitations to those rights and safeguards.

/...

(The Chairman)

Furthermore, certain rules were subject to limitations which fell into different categories: religious pilgrimages, for instance, were the subject of a special limitation in rule 8 and of a general limitation in rule 3. The question was a very important and complex one, since pilgrimages, to make use of the same example again, frequently involved the interests of a foreign State. Therefore, when the rules were put into their final form, the Special Rapporteur might have to add special references to the general references regarding the limitation of certain rights.

The Special Rapporteur had tried to avoid referring to any particular religion or religious situation, and in so doing had had to be satisfied with general references which, while they might seem clear to him, might not be so to everyone. It was therefore essential that the provisions of the basic rules should be clearly worded.

The meeting rose at 1 p.m.