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COMMISSION ON HUMAN RIGHTS

SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND PROTECTION OF MINORITIES

Twelfth Session

SUMMARY RECORD OF THE TWO HUNDRED AND NINETY-FIRST MEETING

Held at Headquarters, New York,  
on Tuesday, 19 January 1960, at 3.30 p.m.

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Study of discrimination in the matter of religious rights and practices: report prepared by the Special Rapporteur, Mr. A. Krishnaswami (E/CN.4/Sub.2/200; E/CN.4/Sub.2/NGO/13 and 15; E/CN.4/Sub.2/L.159 to L.172) (continued)

PRESIDENT:

<u>Chairman:</u>	Mr. INGLES	(Philippines)	
<u>Rapporteur:</u>	Mr. SAARIO	(Finland)	
<u>Members:</u>	Mr. ABDEL-GHANI	(United Arab Republic)	
	Mr. HALPERN	(United States of America)	
	Mr. HISCOCKS	(United Kingdom of Great Britain and Northern Ireland)	
	Mr. JIVIGNY	(France)	
	Mr. KEERZYNSKI	(Poland)	
	Mr. KRISHNASWAMI	(India)	
	Mr. MATSCH	(Austria)	
	Mr. MIRGHANI	(Sudan)	
	Mr. RIZK	(Lebanon)	
	Mr. RODRIGUEZ FABREGAT	(Uruguay)	
	Mr. SAPOZHNIKOV	(Union of Soviet Socialist Republics)	
	Mrs. MIRONOVA )		
	Mr. SCHAULSONN	(Chile)	
	<u>Also present:</u>	Mrs. LEFAUCHEUX	Commission on the Status of Women
	<u>Observer from a Member State:</u>		
	Mr. RASY	Cambodia	
<u>Representative of a specialized agency:</u>			
	Mr. AKRAWI	United Nations Educational, Scientific and Cultural Organization	
<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:  
REPORT PREPARED BY THE SPECIAL RAPPORTEUR, MR. A. KRISHNASWAMI (E/CN.4/Sub.2/200;  
E/CN.4/Sub.2/NGO/13 and 15; E/CN.4/Sub.2/L.159 to L.172) (continued)

Chapter VI. A programme for action (paragraphs 207 to 231) (continued)

I. Freedom to maintain or to change religion or belief

The CHAIRMAN put to the vote Mr. Rizk's amendment (E/CN.4/Sub.2/L.170) to replace the title of section I by the words "Freedom to adhere to or change religion or belief".

Mr. Rizk's amendment was adopted by 8 votes to 1, with 3 abstentions.

Rule 1

Paragraph 1

The CHAIRMAN invited the Sub-Commission to vote on Mr. Ketrzynski's amendment to paragraph 1 (E/CN.4/Sub.2/L.163), which was to add the words "religious or secular" before the word "belief".

Mr. ABDEL-GHANI asked Mr. Ketrzynski not to press his amendment. He felt that all members of the Sub-Commission were agreed on the meaning to be given to the word "belief". That word, which was unqualified in article 18 of the Universal Declaration of Human Rights and other international instruments, was understood in its widest sense. It might suffice for the report to contain a statement of Mr. Ketrzynski's views and a sentence indicating that they were shared by the members of the Sub-Commission.

Mr. KETRZYNSKI said he was sorry that his idea had not found sufficient support in the Sub-Commission and that he was ready to withdraw his amendment, provided that the members of the Sub-Commission really interpreted the word "belief" in its widest sense and that that fact was recorded in the report.

Mr. RODRIGUEZ FABREGAT recalled the comments he had made at the previous meeting and said that the Sub-Commission should not use terms without indicating their exact meaning. The Sub-Commission should make it clear that it did in fact interpret the word in the sense indicated by Mr. Abdel-Ghani.

Mr. SCHAUISOHN said that if the amendment was put to the vote, he would vote for it, but he thought the discussion should not be reopened.

Mr. KETRZYNSKI withdrew his amendment to paragraph 1 on the understanding that his view, namely, that the word "belief" covered both religious and secular beliefs, which was shared by the other members of the Sub-Commission, would be stated in the report of the twelfth session.

The CHAIRMAN put rule 1, paragraph 1, to the vote.

Rule 1, paragraph 1, was adopted unanimously.

#### Paragraph 2

Mr. HALPERN withdrew his second amendment to paragraph 2 (E/CN.4/Sub.2/L.172), proposing a new text for the second sentence, as the amendment proposed by Mr. Ingles (E/CN.4/Sub.2/L.168) covered precisely the same ground as his own amendment.

Mr. SCHAUISOHN pointed out that the first sentence of Mr. Ingles' amendment reproduced the text proposed by the Special Rapporteur. He was not satisfied with the word "prior", on which he asked for a separate vote.

The CHAIRMAN put to the vote Mr. Halpern's amendment to paragraph 2 (E/CN.4/Sub.2/L.171), to insert after the word "Parents" the words "or, when applicable, legal guardians,".

That amendment was adopted by 8 votes to 1, with 4 abstentions.

The CHAIRMAN invited the Sub-Commission to vote on the retention of the word "prior".

It was decided to retain the word "prior" by 11 votes to 2.

Mr. SCHAUISOHN withdrew his amendment (E/CN.4/Sub.2/L.164), as Mr. Halpern's amendment, which had now been adopted, covered the points which had prompted him to make his proposal.

The CHAIRMAN put to the vote Mr. Ingles' amendment (E/CN.4/Sub.2/L.168), as amended by Mr. Halpern's amendment, just adopted.

Mr. RIZK proposed that the word "his" should be replaced by the word "its" in the English text.

It was so decided.

Mr. Ingles' amendment, as amended, was adopted unanimously.

### Paragraph 3

The CHAIRMAN put to the vote Mr. Jivigny's amendment to paragraph 3 (E/CN.4/Sub.2/L.161), as modified by the sub-amendment of Mr. Schaulsohn (E/CN.4/Sub.2/L.166).

Paragraph 3, thus amended, was adopted unanimously.

The CHAIRMAN put to the vote rule 1 as a whole, as amended.

Rule 1 as a whole, as amended, was adopted unanimously.

Mr. SCHAULSOHN said that he had at first been opposed to Mr. Ingles' amendment to paragraph 2, because the child's best interests, a new factor, appeared to be given the same weight as the wishes of the parents, but Mr. Halpern's amendment had enabled him to see Mr. Ingles' amendment in its right perspective. As he was satisfied that Mr. Ingles' amendment neither added to nor detracted from the right of parents to decide the religion of their children, he had voted for it.

Mr. RODRIGUEZ FABREGAT said that he had voted for rule 1, although the doubts he had expressed at the previous meeting had not been dissipated. He would have liked the meaning of the word "belief" to be made quite clear. He had voted for the English text of the first part of paragraph 2, but the Spanish translation was not entirely satisfactory. Regarding the second part of the same paragraph, he had had serious doubts, which he had felt were justified in view of the fact that, during the pogroms and Nazi persecutions, some Christian families had saved Jewish children by adopting them and bringing them up in the Christian religion. However, after the Chairman's explanations, he had been able to vote for his amendment.

Mr. HISCOCKS said that he had voted against changing the title of section I because he had not had time to give serious consideration to Mr. Rizk's amendment, which had only been distributed at that meeting. He had preferred to abide by the Special Rapporteur's choice, which was the result of four years' work.

Mrs. MIRONOVA said that she had voted in favour of paragraph 1 although she fully shared Mr. Ketrzynski's reservations. She hoped that the report would mention that the members of the Sub-Commission had been at one in recognizing that the word "belief" was to be interpreted in its broadest sense and that it meant secular as well as religious beliefs. She had voted in favour of the two other paragraphs and of rule 1 as a whole, noting with satisfaction that due consideration had been given to the parents' prior right to decide upon the religion or belief in which their child should be brought up and to the best interests of the child in the case of a child who had been deprived of his parents.

Mr. KETRZYNSKI said that he had voted in favour of paragraph 1 on the understanding that the members of the Sub-Commission had not objected to his interpretation of the word "belief".

Mr. KRISHNASWAMI, Special Rapporteur, assured Mrs. Mironova and Mr. Ketrzynski that the concept of secularity would receive all the necessary attention in his study.

## II. Freedom to manifest religion or belief

### Rule 2

Mr. HISCOCKS said that he had been convinced by the arguments advanced by the representative of the Commission on the Status of Women at an earlier meeting (E/CN.4/Sub.2/SR.289). He therefore proposed that the words "or authorized" should be deleted and that the wording of rule 2 should be simplified to read: "Everyone shall be free to comply with the prescriptions of his religion or belief and free from performing acts incompatible with them."

Mr. SAARIO expressed the view that it was necessary to make some distinction between what was prescribed and what was authorized by a religion or belief. He realized that in many countries marriage, divorce and so forth were

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subject to the rules of the Church but there was a growing tendency for the authority of the Church to decline in favour of that of the civil authority. So, for example, if the religion authorized polygamy or child marriage, but the civil law forbade those marriage forms, the civil law had to be respected. That could, however, be considered as being contrary to rule 2 if the words "or authorized" were to be retained. With those considerations in mind, he supported Mr. Hiscock's amendment.

Mr. KETRZYNSKI said that he considered rule 2 the basic provision governing all the other rules up to and including rule 15. It set forth the general principle which was applied to particular cases in the following rules. Hence it must not be at variance with them. In the case of rule 6, for instance, it was obvious that the right to comply with religious prescriptions concerning burial could only be recognized subject to certain administrative regulations such as those affecting public health. Rule 7 made an express reservation that the interest of society as a whole should be the overriding consideration with respect to holidays and days of rest. It was for that reason that he had proposed (E/CN.4/Sub.2/L.163) that the same reservation should be included in rule 2 in order to indicate from the outset, in connexion with the general rule, that the right to comply with the prescriptions of a religion was not absolute and that the exercise of that right must not be allowed to prejudice the interest of society as a whole. That was the best way of ensuring that that rule did not remain a dead letter.

He approved of the deletion of the words "or authorized" although it did not solve the problem, since only the individual was capable, in his heart of hearts, of distinguishing between what his religion prescribed and what it authorized. The concept of the interest of society had the advantage of being more objective.

Mr. KRISHNASWAMI, Special Rapporteur, said that he realized that the transformation of the rules he had proposed into recommendations would necessitate considerable drafting changes. He pointed out forthwith that the word "should" would have to be replaced by the word "shall" wherever it appeared. He also recognized that rules 3 to 15 simply applied rule 2 to various specific cases. He did not think, however, that the wording proposed by Mr. Ketrzynski was entirely satisfactory: the limitations could be based not only on the interest of society

(Mr. Krishnaswami)

but also on other considerations, which were set forth in rule 16, paragraph 4 (b); moreover, he still felt that it was best to put all the limitations together in rule 16.

With regard to Mr. Hiscock's proposal, he pointed out that in his text he had simply wanted to make it clear that the prescriptions of religions were sometimes compulsory and sometimes optional; the rules concerning polygamy, for instance, were in the latter category. It was obviously open to the Sub-Commission, if it so desired, to provide only for the protection of the freedom to comply with the former category.

Mr. HALPERN said that he could not support the amendment proposed by Mr. Hiscocks. The words "or authorized" had a very definite purpose: namely, to protect the freedom of an individual who was anxious to comply of his own free will with the optional recommendations of his religion. He visualized the case of a religion which made it compulsory for its adult adherents to pray three times a day, while minors might simply do so if they wished. It was hard to see why the freedom of the first category should be guaranteed while that of the second should not.

In reply to Mr. Saario and Mr. Ketrzynski, he said that in his view the deletion of the words "or authorized" did not solve the problem, which was to decide where and in what form the limitations ought to be set forth. Although the wording chosen by the Special Rapporteur was an improvement on that proposed at the last session, it was not entirely satisfactory, for the limitations should not be hidden away in a rule dealing with the duties of public authorities. He thought that the first three paragraphs of rule 16 should be included in section II; there could then be a new special article, with some such wording as: "All the foregoing is subject to the following limitations: ...". That was what had been done in the Universal Declaration of Human Rights (article 29).

Taking up Mr. Ketrzynski's and Mr. Krishnaswami's idea about the link connecting rule 2 with the following rules, he further suggested that rule 2 should take the form of a general introduction which would be linked to the following rules by some such phrase as: "... particularly in the following respects".

Mr. SCHAULSOHN noted that the discussion had shown general agreement on one point: namely, that rule 2 was not absolute but was subject to limitations and exceptions for which provision was made in rule 16, paragraph 4 (b). It was

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therefore necessary to decide how to indicate once and for all, briefly and appropriately, the relative nature of rule 2 and the following rules which were applications of it. The question arose actually in connexion with rules 2, 3 and 6 only; the others hardly raised problems of limitations, with the exception of rule 7, but in that case the reservation concerned the interest of society as a whole. For that reason, he did not think it would be appropriate to include the same wording in rule 2, as Mr. Ketrzynski had proposed. He therefore proposed that the words "in general" should be inserted each time after the word "free" in rule 2, thus indicating that the freedom to comply with religious prescriptions was not absolute but subject to exceptions.

Mr. RODRIGUEZ FABREGAT objected to the tendency of members of the Sub-Commission to try to limit the freedom to manifest a religion or belief. In his opinion, not only did that run counter to rule 1, which unreservedly proclaimed freedom of conscience, but it was inconsistent, for it was no use proclaiming freedom to profess a religion if its manifestation was made subject to the common good. He did not think that rule 1 could be limited by rule 2. If a belief involved a social danger it was possible to guard against that danger in each particular case, as was done in rule 7. Otherwise it would be necessary to go the whole way and include a limitation in rule 1 itself. He could not therefore accept even Mr. Schaulsohn's proposal. Similarly, he was opposed to the deletion of the words "or authorized", for he failed to see why respect should be given only to what was prescribed by a religion and not to what was authorized by it.

Mr. JUVIGNY agreed with Mrs. Lefauchaux and Mr. Hiscocks, and for the reasons they had given, that it would be better to delete the word "authorized" in rule 2.

As Mr. Krishnaswami had said, rule 2 should be examined in the light of rule 16 and, whatever the fate of rule 2, the Sub-Commission should adopt the same standpoint as the Special Rapporteur, although it could re-examine the text of that rule when it came to discuss rule 16. The amendment proposed by Mr. Ketrzynski did not settle the problem with which they were faced; it was not

(Mr. Juvigny)

enough to refer to the interest of society as a whole, for rule 16 provided for limitations which went beyond, or were different in nature from, the interest of society as a whole - for example, the limitations imposed with a view to ensuring respect for the rights and freedoms of others.

He was under the impression that the limitations laid down in rule 16, paragraph 4 (b), were limitations which the State had the right to impose on manifestations of a religion or a belief. He would like to know whether the Special Rapporteur meant those limitations to include limitations on abstentions, namely, on acts which did not take a concrete and positive form. As an example, he cited a French religious sect which refused to accept medical attention. In such cases, it was exceedingly difficult to draw a dividing line between respect for the wishes of the individual and the duty of the State in respect of health, particularly when the sick persons were children. Similarly, it might so happen that the prescriptions of the religion or belief of an official made it impossible for him to carry out orders he had received from higher authority in application of the civil law. In both those instances there was a danger that freedom to abstain would be regarded as an escape clause. He asked the Special Rapporteur to state his views on that point.

Mr. KETRZYNSKI said that Mr. Juvigny's statement had convinced him: rule 16 did not embrace all the problems that arose and there was no direct connexion between that rule and rule 2.

The main difficulty which members of the Sub-Commission encountered in the examination of rule 2 arose from the difference between the title of section II of the basic rules - "Freedom to manifest religion or belief" - and the actual wording of rule 2. Did the fact of complying or not complying with the prescriptions of a religion constitute a manifestation? As he saw it, the term "manifestation" described a public and external act which had nothing to do with the inner feelings of a person. Moreover, rule 16 referred to the duties of public authorities and therefore to their policy with respect to the problems created by the religious outlook of members of society. He therefore felt that it was necessary to lay down in rule 2 the fundamental principle of the interest of society as a whole, which included respect for the rights and freedoms of others.

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(Mr. Ketrzynski)

The following rules would then be examined in the light of that principle, of which rule 16 would be an application. He could not therefore support Mr. Schaulsohn's suggestion, which he found too vague and negative in character.

He was also unable to share Mr. Rodriguez Fabregat's views on the conflict there might be between rules 1 and 2. Rule 1 laid down the absolute principle of freedom of conscience, whereas rule 2 formulated the principle of the right to comply with the prescriptions and practices of a moral system, subject to legitimate limitations.

Mr. SCHAULSOHN agreed with Mr. Ketrzynski on the point raised by Mr. Rodriguez Fabregat. Rule 2 was concerned with the exercise of a right established by rule 1. It was quite evident that the exercise of that right must be made subject to reservations and limitations, for the absence of limitations could lead to abuses of the kinds to which Mr. Juvigny had referred. The exercise of freedom by some was likely to mean the denial of freedom to others. The problem was to find a formula which would prevent the abuse of the right to manifest a religion whilst ensuring that such limitations did not constitute a denial of that right. If the Sub-Commission adopted Mr. Ketrzynski's amendment and added to rule 2 a reference to the interest of society as a whole, it would be necessary to define the circumstances in which that interest should prevail, and hence to include rule 16 in rule 2. There were various dangers inherent in such a course of action and he would prefer the Sub-Commission to adopt his own formula. The inclusion of the phrase "in general" did not distort the meaning of rule 2 but showed clearly that the right to manifest a religion could if necessary be subject to limitations, without referring in detail to such limitations, which were given in rule 16.

Mr. RIZK agreed with Mr. Krishnaswami and Mr. Halpern that it was essential to retain the word "authorized", particularly in consideration of the application of rule 2 in political systems which were governed by a religion. He also favoured the idea of making rule 2 a general rule which would cover rules 3 to 15 inclusive.

Unlike Mr. Rodriguez Fabregat, he thought there was a perfectly logical connexion between rule 1 and rule 2. Rule 1 laid down the absolute principle of

(Mr. Rizk)

freedom of adherence to a religion, without any reference to society, whereas rule 2 was concerned with the external concrete manifestations of that freedom.

Mr. HISCOCKS said that he would maintain his amendment in spite of Mr. Halpern's statement, for the arguments advanced against that amendment were contradictory, owing to the fact that the members of the Sub-Commission did not agree on the meaning of the word "authorized".

He went on to examine the argument that rule 16 was not directly connected with rule 2 and pointed out that that view was at variance with the amendments submitted by Mr. Ketrzynski himself, since the formula which the latter wished to include in rule 2 was a summary of the contents of rule 16. Moreover, it made for much more clarity if all the limitations were placed in a single rule, as had been done by the Special Rapporteur. In order to introduce into rule 2 the essential idea of limitations, he suggested that the words: "subject to the limitations in rule 16" should be added. Rules 3 to 11 would become sub-divisions of rule 2, and rules 12 to 15, which were more absolute in character, would be placed in a different category.

Mr. ABDEL-GHANI recalled that the Special Rapporteur had suggested that the Sub-Commission should prepare a draft preamble for the Basic Rules; he would like to know when the Sub-Commission intended to do so.

The CHAIRMAN invited members of the Sub-Commission to submit drafts for the preamble in writing. In order not to hold up the work of the Sub-Commission, the drafts would not be studied until after the examination of the Basic Rules.

The meeting rose at 5.55 p.m.