



UNITED NATIONS
ECONOMIC
AND
SOCIAL COUNCIL



Distr.
GENERAL

E/CN.4/Sub.2/SR.284
12 February 1960
ENGLISH
ORIGINAL: FRENCH

COMMISSION ON HUMAN RIGHTS

SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND PROTECTION OF MINORITIES

Twelfth Session

SUMMARY RECORD OF THE TWO HUNDRED AND EIGHTY-FOURTH MEETING

Held at Headquarters, New York,
on Thursday, 14 January 1960, at 11.5 a.m.

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PRESENT:

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|-------------------------------------------------|------------------------|------------------------------------------------------------------------|
| <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. JUVIGNY | (France) |
| | Mr. KETRZYNSKI | (Poland) |
| | Mr. KRISHNASWAMI | (India) |
| | Mr. MATSCH | (Austria) |
| | Mrs. MIRONOVA | (Union of Soviet Socialist Republics) |
| | Mr. RIZK | (Lebanon) |
| | Mr. RODRIGUEZ FABREGAT | (Uruguay) |
| | Mr. SCHAULSOHN | (Chile) |
| <u>Observers from Member States:</u> | | |
| | Mr. RASY | Cambodia |
| | Mr. TEKOA | Israel |
| <u>Observer from a non-Member State:</u> | | |
| | Mr. WIECK | Federal Republic of Germany |
| <u>Representatives of specialized agencies:</u> | | |
| | Mr. ZMIROU | International Labour Organisation |
| | Mr. AKRANI | United Nations Educational, Scientific and Cultural Organization |
| <u>Secretariat:</u> | Mr. HUMPHREY | Director, Division of Human Rights |
| | Mr. LAWSON | Secretary of the Sub-Commission |

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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) (continued)

General debate (continued)

Mr. KRISHNASWAMI, Special Rapporteur, thanked the members of the Sub-Commission and the non-governmental organizations for their constructive criticisms and suggestions, and regretted that they had not been put forward at the previous session, as his term of office was about to expire and he was afraid that he would be unable to do them justice in his final report. He had much appreciated the statement made by Mr. Rodriguez Fabregat, who, in a remarkable philosophic review of the question, had brought out certain aspects on which relatively little emphasis had been laid in the report. He had rightly stressed the "purity of heart", so important in that connexion, and had referred to education as a means of reforming the mores of society with the participation both of the public authorities and of parents, educators and the Press.

He denied that he had neglected the question of free thinkers and non-believers, as Mr. Ketrzynski and Mrs. Mironova had charged. That question arose in connexion with freedom to maintain or change religion or belief, not in connexion with dissemination of religion or freedom to manifest it: he had tried to deal with it in the chapter on the former subject as fully as permitted by his concern for impartiality and by the information drawn from documents submitted by Member States and non-governmental organizations, as prescribed in his terms of reference. That argument also applied to the criticism which had been voiced with regard to the question of the discrimination often suffered by the children of non-believers. Their case was implicitly covered in the rule concerning the duties of public authorities. He would deal with the other points made by Mr. Ketrzynski when the Sub-Commission came to examine the basic rules.

He hoped that during the examination of chapter VI, Mr. Schaulsohn would elaborate on the idea that it was necessary to establish an atmosphere favourable to the extension of freedom of religion if the rules were to be applied satisfactorily.

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(Mr. Krishnaswami, Special Rapporteur)

In reply to the various arguments put forward by Mr. Halpern, he said he regretted that he had been unable to devote all the attention he would have liked to the presentation of his study, and he thought it would be necessary to rearrange and co-ordinate the headings used in the report and in the country monographs. He had transferred the chapter on the status of religions in relation to the State to the end of the report, because it had seemed to him easier and more logical to deduce the duties of the State from the rest of the study. With regard to discrimination exercised on religious grounds, but in other fields, he had tried to avoid any overlapping with the studies on discrimination in employment and occupation, and in education; he had sought to maintain a balance and to show how far that form of discrimination affected freedom to maintain or to change religion or belief. Although discrimination in education had been the subject of a special study, he had devoted a special rule to the training of religious personnel. He was aware of many deficiencies in his report, which inter alia omitted any mention of pagan manifestations, as Mr. Abu Rannat had pointed out.

Passing on to the question of the wave of anti-Semitism, he said he thought that while it might have direct bearing on the question of freedom of religion, it had nothing to do with the study of discrimination, which had been prepared before the incidents had occurred. The time to study measures to be taken in that connexion would be when Mr. Halpern submitted a draft resolution to the Sub-Commission.

He had decided not to follow the method, used by Max Lerner in his sociological studies, of mentioning the various countries by name, even when they had taken beneficial measures, for several reasons: in order to avoid the danger of controversy in the Sub-Commission, out of personal preference, and in order to comply with the Fifth Committee's decision on the control of documentation. He did not believe he had not left too much to the reader; only specialists on the question would in fact consult the country monographs. In reply to a criticism made by Mr. Halpern, he said that, in refraining from taking up any definite stand, he had adopted the attitude which seemed to him best in the circumstances under which his study had been prepared.

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(Mr. Krishnaswami, Special Rapporteur)

Replying to Mr. Juvigny and Mr. Ingles, who had said that the question of limitations had not been sufficiently clarified, he recalled that at the eleventh session he had suggested that a general rule should be devoted to the question of limitations. On reflection, and in view of the situation prevailing in various countries, particularly in India where the public authorities had abolished "untouchability" on social grounds, he had dealt with the question of limitations in the rule concerning the duties of public authorities, as there was a direct connexion between limitations and the interests of society. The same conclusion had been reached by writers of international repute such as Jenks ("The Common Law of Mankind"), Brierly and Duguit. Finally, in connexion with rule 2, the Sub-Commission could amend it if it was thought to be too ambiguous.

While the final report as a whole was his personal work as Special Rapporteur, the basic rules would have to be approved by the Sub-Commission. He asked the members of the Sub-Commission to decide on the procedure to be followed with regard to the rules before they took up chapter VI. The Sub-Commission would have to decide whether it wished to make a recommendation to its superior organs, have the rules embodied in a convention or some other international instrument, or have them incorporated in the draft Covenant on Civil and Political Rights as paragraphs of article 18.

The CHAIRMAN declared the general debate on the Special Rapporteur's report closed and invited the members of the Sub-Commission to submit their comments on the various chapters.

Foreword and Introduction

Mr. HALPERN, recalling that at a previous meeting, the representative of the Agudas Israel World Organization had quoted passages from the Bible, suggested the addition of a new paragraph 3 (a) to the report giving the passage relating to the treatment of strangers (Leviticus 19: 33 and 34).

He felt that the last sentence of paragraph 13, which stated that the concept of the right of freedom of thought, conscience and religion was given legal recognition in the USSR, was incorrect. That statement not only did not necessarily follow from what had gone before - it would have been enough to say that the régime in force in Czarist Russia had been abolished - but it was

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(Mr. Halpern)

questionable even from the purely formal legal standpoint. For instance, freedom of anti-religious propaganda was recognized in article 124 of the USSR Constitution, but not freedom of religious propaganda (Conference Room Paper No.35, paragraph 9). Furthermore, article 122 of the Penal Code of the Russian Soviet Federative Socialist Republic made the teaching of any religion to minors in any school either public or private an offence (ibid., paragraph 37). He was all the more shocked by the sentence he had mentioned because it was in connexion with such a debatable point that the Special Rapporteur had seen fit to depart from his usual rule of not referring to any country by name. He would say nothing for the time being of the de facto situation which he believed would disclose serious discrimination against religious groups if it were gone into fully and accurately; he regretted that the country study did not adequately cover the situation; but even from a strictly de jure standpoint, the sentence which he had mentioned in the main text was erroneous. As pointed out in paragraph 204 of the main report, in recent times there had been an effort to carry on the anti-religious propaganda in a less offensive manner but the basic policy discriminating against all religions in favour of non-believers remained unchanged. He realized that in recent years there had been an effort to win favourable world opinion as a country in which religious freedom was observed, but favourable opinion could not be won by mere assertion; there would have to be a change in the laws and practice of the country.

The picture of developments in the United States given in paragraphs 15 and 16 was correct. However, he thought it would be desirable to include references to the Constitutions of the States, so that the reader did not get the impression that nothing had been done to ensure religious freedom before the adoption of the Federal Bill of Rights in 1791, and that no guarantee of religious freedom had been applicable to the action of the States prior to the adoption of the Fourteenth Amendment in 1868. He pointed out that religious freedom was guaranteed by article XXVIII of the Constitution of the State of New York of 1777, which was repeated with very few changes in section IV, paragraph 11, of the present Constitution. Reference might also be made to section 16 of the Virginia Bill of Rights, which was the oldest document on the subject.

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Mr. SCHAULSOHN said that the report expressed the conclusions reached by the Special Rapporteur, who was therefore entirely free to decide the form it should take. He assumed, therefore, that the members of the Sub-Commission could express their views on the different chapters but would not vote on them; the Sub-Commission would vote only on the recommendations it intended to submit. He would like to know whether his understanding of the position was correct.

Secondly, he wondered if the Rapporteur was still in a position to make changes in his report or whether, as the report was already before the Sub-Commission, it could no longer be amended, in which case the comments of the members would be recorded as expressions of their personal opinions.

The CHAIRMAN said that the Special Rapporteur alone could make changes in his report. The members of the Sub-Commission would express their opinions and make suggestions, which the Special Rapporteur was free to accept or not to accept; but only the basic rules would be put to the vote.

Mr. RODRIGUEZ FABREGAT said that the points raised by Mr. Schaulsohn involved others; was the report the Special Rapporteur's or the Sub-Commission's? Should it be taken to consist of two parts, a study and conclusions, the latter possibly being endorsed by the Sub-Commission?

The CHAIRMAN explained that the report had two purposes: first, to enlighten public opinion - that purpose was served by the body of the report, which was entirely in the hands of the Special Rapporteur; secondly, to provide the Sub-Commission with a basis for the recommendations it was to make regarding a programme of action.

Mr. ABDEL-GHANI asked what attitude the Special Rapporteur would take with regard to the comments which had been or would be made. Although Mr. Krishnaswami had indicated his willingness to make changes in his report, he had not said whether he would expand paragraph 195, for instance, as he himself had proposed at a previous meeting. The Special Rapporteur was of course master of his report but if he agreed to make changes in it, it would become the joint report of the Sub-Commission and the Special Rapporteur.

The CHAIRMAN said that the Special Rapporteur was free to modify his report and to decide, entirely on his own responsibility, whether or not to take the comments made into account.

Mr. ABDEL-GHANI felt that the same rule applied to the country monographs.

Mr. KRISHNASWAMI said that, in principle, as it was a final report, the most that could be done was to transmit the comments of the members of the Sub-Commission to the Commission on Human Rights. He felt entirely free to decide whether or not to incorporate such comments in his report. He could do nothing about the country monographs, as they had become public property.

Mr. RIZK asked whether the report would be submitted as the report of the Sub-Commission or the Special Rapporteur.

The CHAIRMAN said that it would be attached to the Sub-Commission's own report to the Commission on Human Rights. He re-emphasized that the Sub-Commission would vote only on the recommendations, for which it would have sole responsibility.

Mr. SCHAULSOHN said that that position was acceptable to him but he did not think it was possible to state immediately that the report was solely the Special Rapporteur's report, for the Sub-Commission might state in its resolution that it approved the report, took it into account, etc. The most that could be said was that there would be no vote on the different chapters. The final vote would be on the conclusions to be adopted by the Sub-Commission, which might wish to endorse the report.

Mr. HALPERN concurred in the views expressed by the Chairman, but wondered what purpose was served by members making comments - and he stressed particularly the need for making a change in the last sentence of paragraph 13 - if the Special Rapporteur was not to take them into account.

Mr. KRISHNASWAMI explained that he would be unable to make such fundamental changes as had been possible before the submission of his final report.

Mr. ABDEL-GHANI pointed out that the comments made by the members of the Sub-Commission were intended only for the summary record and not as amendments to the Special Rapporteur's report.

Mr. RODRIGUEZ FABREGAT agreed with Mr. Abdel-Ghani that the comments made by the members of the Sub-Commission could not be incorporated in Mr. Krishnaswami's report, which was in its final form, but should merely be included in the summary records, which would be transmitted to the competent bodies.

He might revert at a later stage to the foreword of Mr. Krishnaswami's report, particularly to the historical part of it.

The CHAIRMAN expressed the hope that Mr. Krishnaswami would reconsider his decision not to include some of the suggestions made by the other members of the Sub-Commission in his report.

In reply to questions from Mr. SCHAULSOHN and others, the CHAIRMAN suggested that the summary records of the debates on Mr. Krishnaswami's report should be transmitted to the competent bodies together with the report itself.

It was so decided.

Mr. HISCOCKS thought that no important changes should be made in the main body of Mr. Krishnaswami's report at the present stage. The Chairman and one or two others had suggested that the country studies should, after all, be published with the report. Another member had proposed that, failing that, extracts from the studies should be incorporated in the main body of the report. He himself did not think that such a suggestion was practicable at the present stage. If extracts from the studies were to accompany the final report, they should be included in an appendix.

He felt that the optimism expressed by the Special Rapporteur, in the foreword and chapter V, for instance, regarding the trend of societies towards greater respect for freedom of religion was stated too strongly. Discrimination still existed only too often in practice even when it was condemned by law. In that connexion, he mentioned as an example two Cardinals of the Catholic Church who had recently been persecuted and Protestant clergy who lived in countries where freedom of religion was guaranteed by law but who nevertheless encountered

(Mr. Hiscocks)

all sorts of difficulties in exercising that right. He therefore would like the first part of the fourth sentence of the foreword to be drafted as follows:

"Although the number of such instances occurring in the second half of our century is on the decline ...".

Mr. KETRZYNSKI (Poland) felt that the examples given by Mr. Hiscocks were out of place in the present debate. Furthermore, it was impossible to isolate a special case from its historical context without speaking in abstract terms. It would be equally mistaken to call the deportation of a celebrated archbishop from a Mediterranean country a case of religious discrimination, when it was in fact a political measure.

Mrs. MIRONOVA said that, although she had not intended to speak in the debate, she felt obliged to reply to Mr. Halpern's statement. It would be inadmissible to bring pressure to bear on the Special Rapporteur, who was free to include in the final version of his study whatever his conscience dictated.

Mr. Halpern had not quoted the whole of article 124 of the Constitution of the USSR, which covered freedom **in** religious matters. He had stressed only freedom of anti-religious propaganda, but that article also recognized freedom of religious worship for all citizens.

In the USSR, the right to freedom of thought, conscience and religion was ensured not only by law but in practice. There were religious schools and seminaries for the training of future priests. It was quite normal for religious instruction not to be given in the State schools, as the Church was separated from the State.

Mr. HALPERN reaffirmed his position and quoted, inter alia, article 122 of the Penal Code of the Russian Soviet Federative Socialist Republic, which made it a penal offence punishable by corrective labour for a term up to one year to teach any religious belief to minors in any school even though it was privately maintained. He also pointed out that even as stated by Mrs. Mironova, religious believers were assured the right under article 124 of the USSR Constitution only to worship, not to engage in pro-religious propaganda, i.e. to

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propagate their religion, whereas non-believers were assured the right to engage in anti-religious propaganda.

Mrs. MIRONOVA reiterated that in the USSR, both believers and non-believers were treated in exactly the same way.

The meeting rose at 1 p.m.