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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 EIGHTY-SIXTH MEETING

Held at Headquarters, New York,
on Friday, 15 January 1960, at 10.55 a.m.

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Study of discrimination in the matter of religious rights and
practices (E/CN.4/Sub.2/200; E/CN.4/Sub.2/NGO/13) (continued)

PRESENT:

<u>Chairman:</u>	Mr. INGLES	(Philippines)
<u>Rapporteur:</u>	Mr. SAARIO	(Finland)
<u>Members:</u>	Mr. ABDEL-GHANI	(United Arab Republic)
	Mr. ABU RANNAT	(Sudan)
	Mr. HALPERN	(United States of America)
	Mr. HISCOCKS	(United Kingdom of Great Britain and Northern Ireland)
	Mr. JUVIGNY	(France)
	Mr. KEMRZYNSKI	(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>Also present:</u>	Mrs. LEFAUCHEUX	Commission on the Status of Women
<u>Observers from Member States:</u>		
	Mr. DOUC RASY	Cambodia
	Mr. INBAL	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. 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

Mrs. LEFAUCHEUX (Commission on the Status of Women) thanked the Sub-Commission for giving her an opportunity to take part in its work. There were so many discriminatory measures of pressing concern to women that the Commission on the Status of Women could not fail to attach very great importance to the Sub-Commission's work.

STUDY OF DISCRIMINATION IN THE MATTER OF RELIGIOUS RIGHTS AND PRACTICES
(E/CN.4/Sub.2/200; E/CN.4/Sub.2/NGO/13) (continued)

Chapter IV. The status of religions in relation to the State (paragraphs 152 to 189) (continued)

Mr. KRISHNASWAMI, Special Rapporteur, said that he was particularly grateful to Mr. Rodriguez Fabregat and Mr. Halpern for their constructive criticism of his report on discrimination in the matter of religious rights and practices. In reply to Mr. Rodriguez Fabregat's comment that the historical part of the report was incomplete, he explained that his intention had been to mention a few striking examples which would make an impression on the readers. He realized that it was impossible to provide an absolutely complete historical account of the question and had tried to give an outline of the long history of the struggle to establish freedom of religion.

The report took into account as fully as possible the comments offered by Mr. Halpern and Mr. Spaulding at earlier sessions, the substance of which had been largely the same as that of Mr. Halpern's observations at the present session, in particular with regard to the classification of States. He had been unable to give education an important place in his report since he had received no further information on the subject from Governments and non-governmental organizations, except in regard to the training of personnel, which was dealt with in paragraphs 133, 134 and 135. The other omissions to which Mr. Halpern had drawn attention were the result of an attempt to take into account the observations made by Mr. Halpern himself at earlier sessions.

In conclusion he referred to the difficulties inherent in the preparation of a final report in which the Special Rapporteur had to co-ordinate the preceding draft reports, embody the suggestions made at previous sessions and at the same time take into account all the trends in opinion throughout the world. That had been his aim and he hoped that he had succeeded in attaining it.

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Chapter V. Trends and conclusions (paragraphs 190 to 206)

Mr. HALPERN said that he hoped that the Special Rapporteur would agree to amplify paragraph 205 of his report, which referred, inter alia, to the acts of persecution committed by the supporters of Nazism. In that connexion he pointed out that there was a dual connexion between religion and discrimination: (1) religion was a field of human activity in which discrimination could be practised; in that respect it was like the field of education; (2) religion was also a ground upon which discrimination might be practised in other fields of activity; in that respect it was like race. However, it differed from race in that adherence to a religion was voluntary and discrimination against its adherents in any field of activity would in the end become a discrimination in the field of religion itself, because it would discourage the continued adherence to the religion and thus discrimination in any field on the ground of religion was an indirect method of discriminating in the matter of religion.

Although some of the other fields had been made the subject of separate studies, such as the studies in employment, education and political rights, no study had been made or was in contemplation of discrimination in regard to security of the person. The recent anti-Semitic incidents in various parts of the world showed how necessary it was to include the subject of attacks upon the persons and property of the members of a group in the present study. The recent incidents would be made the subject of a separate resolution, to which he had already referred, but they illustrated the importance of dealing with the subject of religious persecution in the present study.

He would therefore ask the Special Rapporteur to amplify his report and to give more space to the subject of persecution. The Special Rapporteur should explicitly recognize that discrimination on the ground of religion was practised in numerous fields and that it was not only a historical but also a modern and current issue. It was essential that the Commission on Human Rights should receive information on the subject under the triennial reporting procedure. He suggested that the question should be dealt with in a special chapter, the title of which could be that of section C of the annex to the progress report submitted by Mr. Krishnaswami to the ninth session (E/CN.4/Sub.2/182): "Discrimination

in the enjoyment of other rights leading indirectly to a curtailment of the right to manifest a particular faith".

Mr. RODRIGUEZ FABREGAT maintained the view he had put forward at an earlier meeting concerning the gaps in the introduction and chapter V of Mr. Krishnaswami's report, although he recognized that the report had exceptional merit. He fully endorsed Mr. Halpern's remarks concerning the emphasis which should be laid on the current persecutions of particular racial or religious groups.

He also hoped that the Special Rapporteur would lay stress on the trend towards greater tolerance displayed by religious groups. The first sentence of paragraph 194 of the report touched briefly on the point, but it should be emphasized that in the past intolerance had been based on religious principles and that such demonstrations of religious intolerance were becoming increasingly infrequent in the modern world. Although intolerance generally was tending to decrease and some countries were doing their best to eliminate discriminatory systems based on racial, political and social grounds, others were trying to maintain discrimination against certain of their inhabitants, and even to intensify it by official measures. In that connexion, the Special Rapporteur seemed to have neglected the religious aspects of the policy of apartheid practised by the Government of the Union of South Africa, which the Committee on South West Africa had strongly condemned. The United Nations should not only fight against acts of religious discrimination based on race but should prevent their occurrence. Such acts were explicitly condemned by the Charter and in the advisory opinions of the International Court of Justice. The world was at present witnessing an outbreak of anti-semitic activities which ran counter to the efforts made since 1945. The Sub-Commission should publicly demonstrate its interest in the question of apartheid and in the question of anti-semitic incidents.

Mr. SAARIO said, with reference to measures to reduce bigotry, that two world religious conferences had been held since the Second World War and had given the participants an opportunity to acquaint themselves with the various beliefs and attitudes represented. The records of the conferences would have provided the Special Rapporteur with a wealth of material.

Mr. RIZK agreed with Mr. Halpern that the current anti-semitic incidents constituted an extremely grave and urgent problem and that the Sub-Commission should consider the problem and measures to eradicate it. He was afraid, however, that the Sub-Commission might be unable to study the problem properly under item 5 of its agenda and suggested that the subject should be considered under item 7 which dealt more specifically with acts of violence and bigotry.

The CHAIRMAN said that in examining chapter V, in which the question of Nazism was dealt with, the members of the Sub-Commission were free to suggest the inclusion of a reference to past or recent events. The comments of the members of the Sub-Commission should be considered in that spirit.

Mr. RIZK said that as the Special Rapporteur was free to include suggestions made by members of the Sub-Commission in his final report or to ignore them, he hoped that the Sub-Commission would study the question of anti-semitic activities in detail under item 7 of its agenda.

Mr. HALPERN said that his comments on the subject had been made in the spirit indicated by the Chairman. He did, however, propose to submit a draft resolution on the matter under item 5. Mr. Rizk would then be free, if he so desired, to propose that the question should be discussed under item 7.

Mr. RODRIGUEZ FABREGAT said that the inclusion in chapter V of a reference to the anti-semitic incidents mentioned, or to other current problems such as apartheid, might tend to obscure the issues and would fail to give due importance to the problem as a whole. For that reason he agreed in principle with Mr. Rizk. He would prefer the Sub-Commission to pass on for the moment to discussion of the basic rules. He was prepared to consider the question raised by the International League for the Rights of Man at any time that the Sub-Commission thought fit.

The CHAIRMAN supported that view.

Chapter VI. A Programme for Action (paragraphs 207-231)

The CHAIRMAN drew attention to the fact that chapter VI would provide a basis for the Sub-Commission's recommendations. He proposed that there should be general discussion of the chapter before the basic rules were considered in detail.

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Mr. HALPERN believed that it would be better to discuss the rules immediately, as had been done when the Sub-Commission had considered Mr. Ammoun's Study of Discrimination in Education, since the Special Rapporteur would have to recast the rules to a certain extent in order to take into account any decisions the Sub-Commission might take. The Sub-Commission would then decide upon the resolution and procedure which it thought should be adopted in regard to the basic rules.

Mr. HISCOCKS proposed in a spirit of compromise that there should be a general discussion, during which a draft resolution could be submitted, followed by detailed consideration of each of the basic rules. The Sub-Commission could then take a decision, on the basis of the draft resolution submitted, on the action that should be taken regarding the report as a whole and the basic rules in particular.

Mr. HALPERN supported that proposal.

In reply to a question from Mr. RIZK, Mr. LAWSON (Secretariat) said that in the case of the Study of Discrimination in Education, the basic rules had been worked out personally by Mr. Ammoun, and the various stages leading up to their adoption and the recommendation adopted by the Sub-Commission on the basis of the rules had been set forth in the report.

Mr. RIZK proposed that a similar procedure should be followed in the present instance.

Mr. HISCOCKS said that he did not believe the Sub-Commission should necessarily follow that procedure, which had resulted in protracted debate and considerable confusion.

The CHAIRMAN observed that it was in order to avoid a repetition of such a situation that he had proposed that there should be a general discussion followed by detailed consideration of the rules.

Mr. HALPERN said that he accepted that view and was prepared to support the Chairman's proposal.

Mr. SCHAULSOHN considered that for reasons of logic, the Sub-Commission should begin with an exchange of views on the form which it intended to give to the basic rules, as it seemed to him that there was already general agreement on substance.

The CHAIRMAN did not think that a formal question such as that of the title to be given to the rules would give rise to any great difficulty. The form to be given to the basic rules should, however, be considered in the general discussion.

Mr. HALPERN said that he was anxious to avoid a long procedural debate of the kind which had occurred during the study of discrimination in education. The so-called basic rules which he would prefer to have called principles could be incorporated either in a covenant or a recommendation as might be decided later, but in any event the Sub-Commission would propose a draft resolution recommending that Governments should be guided by the principles. This would be addressed to all Governments whether or not they became parties to any international instrument which might be subsequently formulated. He recalled that in the case of Mr. Ammoun's study, the Sub-Commission had been unable to take any decision on the procedure to be followed. He accordingly considered that the Special Rapporteur's proposal should be followed and that the Sub-Commission should examine the basic rules and adopt a recommendation on the subject, deciding, if necessary, on the title to be given to them. The higher organs of the United Nations would be free to decide whether to include them in a covenant, a recommendation or any other international instrument.

Mr. RODRIGUEZ FABREGAT said that he did not wish to prolong the procedural discussion, which was holding up the Sub-Commission's work. The Sub-Commission should not waste time, but should take a decision on chapter VI and on the basic rules, whatever the title to be given to them and in whatever form they were to be forwarded to the Sub-Commission's parent bodies. For that reason, despite the merits of Mr. Schaulsohn's suggestion, he favoured the procedure proposed by the Chairman, not because it followed a precedent but because it was sound.

Mr. JUVIGNY pointed out that the debate raised a series of problems which should be considered separately. The Sub-Commission's principal duty was obviously to decide whether it approved the substance of the basic rules. But there was also the problem of the nature of the instrument, in the broadest sense of the term, in which the rules were to be embodied. Even if the Sub-Commission recommended a specific form (convention, recommendation, declaration, resolution etc.), there was a possibility, as certain members had pointed out, that the proposed solution would be suitable for the first fifteen rules and not for the sixteenth, or at least for certain parts of it, particularly that concerning reservations, for which some other form would have to be found.

Connected with that problem, although more or less separate from it, was that of the relationship of certain rules to the draft Covenants on Human Rights. The Special Rapporteur wished to have some of the rules incorporated in the draft Covenants; in the case of others, he had confined himself to indicating their connexion with the drafts without suggesting any definite course of action. There again a distinction must be drawn: the Sub-Commission might consider that article 18 of the draft Covenant on Civil and Political Rights, which was to be examined at the next session of the General Assembly, should be brought into line with some of the rules, that article 14 of the draft Covenant on Economic, Social and Cultural Rights, already adopted by the Third Committee, should be taken up again and amended to incorporate some of the rules, and that, finally, article 14 should have some counterpart in the draft Covenant on Civil and Political Rights. On all those questions it might be appropriate to consider whether the Sub-Commission ought to make specific recommendations, whether it should draw the attention of the Commission on Human Rights to the need to submit specific proposals to the Third Committee, or even to reconsider the draft Covenants, or, on the other hand, whether it thought it sufficient to bring to the Commission's attention various aspects of the drafting of the Covenants.

Finally, there was the problem of the action which the Sub-Commission and the Commission on Human Rights would take on the basic rules, in particular the last part of the Special Rapporteur's proposals. For instance, once the rules had been adopted, in whatever form, was the question of discrimination in

(Mr. Juvigny)

religion to be laid aside for ever or, as the Special Rapporteur suggested, would it be taken up at periodic intervals? In that case would the implementation of the international instrument and the control of its application have to be examined on the basis of the three-yearly reports, or as part of the study of rights or specific groups of rights?

As those problems were not all of the same kind, he wondered if they might not be more effectively settled by first discussing the substance of the rules, as distinct from the juridical form in which they would be embodied. The Sub-Commission could then take up the difficulties separately as he had suggested.

Mr. KETRZYNSKI thought that Mr. Juvigny's analysis had pointed to the crux of the problem. At the present stage, any discussion of the future of the rules was bound to be at the expense of the debate on their substance. That was the point which should be taken first; the Sub-Commission could then go on to deal with the action to be taken on the rules when they had been drafted.

The CHAIRMAN proposed that the Sub-Commission should begin by a general debate on the first part of chapter VI; it could then discuss each rule separately; finally it could go on to the second part of the chapter, concerning its recommendations to its parent bodies concerning the future of the rules.

It was so decided.

Mr. HISCOCKS remarked that the drafting of rules which were intended to be universally valid was a very difficult task. At least one political philosopher had said that it called for almost semi-divine qualities, because anyone undertaking it was always exposed to the temptation, which must be resisted, of attributing too much importance to special cases.

He was glad that he could accept most of the basic rules proposed by the Special Rapporteur as they stood. The rules were undeniably an advance over those which had been submitted the previous year. In particular, he was glad to see that the Special Rapporteur had emphasized the positive side of the question and regrouped the limitations upon freedom of religion in rule 16. That was the rule which would cause the Sub-Commission the most trouble, not only on account of drafting problems but also because of its relationship with the rules preceding it.

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Mr. HALPERN made a formal proposal that the word "rules" used by the Special Rapporteur should be abandoned and replaced by "principles"; moreover that term should be used only in the title and not repeated in the case of each provision, which would become simply a paragraph or an article. In support of his proposal, he recalled precedents for general recommendations similar to those which the Sub-Commission was about to adopt; the word "principles" had been used by Mr. Amoun in his study on discrimination in education, by the Sub-Commission itself in its resolution on the subject, by the ILO in its report on discrimination in employment and occupation, in the Declaration of the Rights of the Child, and in a proposal concerning the right of asylum submitted by France to the General Assembly.

There was another reason of a logical nature, to which he had already referred in favour of such a change: the word "rule" carried an overtone of legal significance which provisions of the kind could not have until they had been embodied in an international instrument. Moreover, it must not be forgotten that there was a connexion between the proposed "rules" and the Universal Declaration of Human Rights, a connexion which he would like to see mentioned in the title and in the preamble; in fact the rules were merely an interpretation of certain provisions, of necessity rather vague, of the Declaration. As the Declaration was in itself merely a statement of moral principles, the Sub-Commission could hardly go beyond that and endow its elaboration of the principles of the Declaration with greater legal force than the Declaration. That difficulty could be avoided by the adoption of the word "principles".

The meeting rose at 12.50 p.m.