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DRAFT PRINCIPLES ON FREEDOM AND NON-DISCRIMINATION IN THE
MATTER OF RELIGIOUS RIGHTS AND PRACTICES

Note by the Secretary-General

As requested in the first operative paragraph of resolution 4 (XVI), which the Commission adopted at its sixteenth session, the Secretary-General transmitted to the Governments of States Members of the United Nations and of the specialized agencies the text of the draft principles on freedom and non-discrimination in the matter of religious rights and practices drawn up by the Sub-Commission on Prevention of Discrimination and Protection of Minorities (E/CN.4/800, para. 160, resolution 1 (XII), annex), so that they could submit their comments on the substance of the draft principles and the form in which such principles should be embodied.

The comments received from the Government of Italy are transmitted to the Commission herewith.

ITALY

The principles set forth in parts I and II of the draft principles on freedom of religion drawn up by the Sub-Commission on Prevention of Discrimination and Protection of Minorities appear acceptable in general outline, subject to the limitations expressly prescribed in part III for the purpose of securing the rights of others and meeting the just requirements of morality, health, public order and the general welfare in a democratic society.

(a) On the other hand, the draft places no restriction on the principle laid down in part II, paragraph 10, to the effect that no one shall be compelled to take an oath of a religious nature contrary to his convictions. It should be noted in this connexion that, under the rules in force in Italy, persons summoned to give evidence in judicial proceedings are first required to take an oath in a form which embodies wording of a religious nature; hence acceptance of that principle by Italy would entail a change in the form of the oath. The reader is referred, in this regard, to a recent decision of the Constitutional Court

(No. 58 of 6 July 1960) concerning the constitutional legitimacy of this form of oath. The Court did not declare it unconstitutional, but referred the question of amending the provisions governing the oath to the independent judgement of the legislator, thus implying that such a step would be appropriate.

(b) The principles set forth in part IV of the draft text also deserve special attention. This part stipulates a priori that public authorities shall refrain from making any adverse distinctions against, or giving undue preference to, individuals or groups of individuals with respect to the right to freedom of thought, conscience and religion; and shall endeavour to prevent any individual or group of individuals from doing so. This principle is then applied to two specific cases - firstly that of a conflict between the demands of two or more religions and secondly that of the grant of subsidies or exemptions from taxation to any religion or belief.

The first point to note in this connexion is that the unconditional adoption of the above a priori principle would conflict with the obligations assumed by Italy towards the Holy See through the Lateran Pacts and, more specifically, the

provisions of article 5, sub-paragraph 3 of the Concordat whereby, as is generally known, the Italian State undertook that no apostate priest or priest on whom the penalty of censure (censura) had been imposed should be appointed to or retained in any teaching post, office or employment which brought him into direct contact with the public. As will be seen, this undertaking stems from an agreement concluded on equal terms between two sovereign judicial systems which have evolved separately - those of the State and the Church - with the result that the rule prescribed by the Concordat can be amended only by agreement between the parties, which is also required under article 7 of the Constitution. In view of the foregoing, acceptance by Italy of the principle in question would, in this Ministry's opinion, have to be subject to the proviso that the treaty obligations previously assumed in the matter should not be affected.

(c) Next, the draft principles provide that, in the event of a conflict between the demands of two or more religions, the public authorities shall endeavour to find a solution reconciling these demands in a manner such as to ensure the greatest measure of freedom to society as a whole. The first comment is that, in the context of this principle, which refers to conflict between the demands of two or more "religions" or "beliefs". these two terms cannot be interpreted in the strict sense, as denoting that complex of beliefs and principles which constitutes the theoretical and individual aspect of the religious phenomenon, but must refer to social organizations which are set up by the adherents to those beliefs and principles and which carry on activities of a nature such as to affect the life of the State community as a whole. On this assumption, it would seem evident that the State, in reconciling the demands of two or more religious organizations, cannot leave out of account possible differences in legal status between those organizations. On that understanding, the provision in question would be acceptable.

The foregoing comments also apply to the principle set forth in part IV, paragraph 2, which forbids the State to make any adverse distinctions between, or to give undue preference to, any religion or belief or its followers in the granting of subsidies or exemptions from taxation. In this case, too, as will be seen, the terms used in the text proposed appear to refer less to religions as such than to religious organizations - in other words, to groups of "followers" of

the various religions. Hence there must not, it would seem, be excluded a situation in which a distinction between different religious denominations in this matter might be warranted by a difference in their status.

(d) So far as tax exemptions are concerned, the main tendency of the law in force in Italy seems to be towards substantial equality for all religious denominations. This is especially evident if we compare article 29, paragraph (h), sub-paragraph 1 of the Lateran Concordat with article 12 of Royal Decree No. 289 of 28 February 1930. The same cannot be said of subsidies, since as we know, contributions and subsidies are granted by the Government only for the Catholic clergy or in order to cover the cost of buildings intended for practice of the Catholic religion. This situation, however, is not directly ascribable to any special favouritism towards the Catholic religion, but is connected with certain action taken by the Italian State to the disadvantage of the Catholic Church in the last century, and more specifically with two Acts of 1866 and 1867, which suppressed many categories of ecclesiastical bodies and transferred their assets to the State. The latter undertook to pay the income therefrom into the Fondo per il Culto (Fund for Religion), which was then required to cover certain costs of the Catholic religion out of that income. This system is still in operation inasmuch as the subsidies and contributions granted are a charge not on the State budget but on the still autonomous budget of the Fondo per il Culto; as a result of successive currency devaluations, however, this latter budget is now balanced by the State. Generally speaking, therefore, it may be claimed that the favourable treatment currently accorded to the Catholic Church with regard to subsidies constitutes one of the exceptions explicitly provided for in part IV, paragraph 2 of the draft principles, where it is said that public authorities shall not be precluded from carrying out obligations assumed as a result of arrangements made to compensate a religious organization for property taken over by the State; for despite the fact that, in the case in point, these obligations were assumed by the public authorities in an almost entirely unilateral manner, their justification lies, as we have seen, in the State's own intention to make good the damage caused by its own action.

Subject to the foregoing limitations and reservations, the Italian Government feels able to accept the draft principles in broad outline.