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STUDY OF DISCRIMINATION IN THE MATTER OF RELIGIOUS RIGHTS AND PRACTICES

(Draft Report prepared by the Special Rapporteur,
Mr. Arcot Krishnaswami)

The Secretary-General has received from the Special Rapporteur, Mr. Arcot Krishnaswami, the attached draft report, and has the honour to communicate it to the Sub-Commission. The draft report was prepared in pursuance of resolution F. adopted by the Sub-Commission at its ninth session (E/CN.4/740, para. 231).

STUDY OF DISCRIMINATION IN THE MATTER OF RELIGIOUS RIGHTS AND PRACTICES

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PART ONE: A GENERAL VIEW

I. INTRODUCTION

1. At its ninth session the Sub-Commission requested the Special Rapporteur:

> "to prepare, with the assistance of the Secretary-General, in time for consideration by the Sub-Commission at its tenth session, a draft report on discrimination in the matter of religious rights and practices which will as far as possible be similar in scope to the final report, which it is hoped will be ready for consideration and approval by the Sub-Commission at its eleventh session."

2. The Sub-Commission also requested the Special Rapporteur, in drawing up the draft report:

> "to take into account not only the result of his inquiries, which have already been incorporated in his progress report (E/CN.4/Sub.2/182), but also the comments of members of the Sub-Commission on that report, the preliminary report on the same subject submitted by Mr. Halpern to the Sub-Commission at its seventh session (E/CN.4/Sub.2/162), and the comments of members of the Sub-Commission on the preliminary report, thus ensuring that the views of all members of the Sub-Commission will be taken into consideration in the draft report ..."

3. In order to assist the Special Rapporteur in his work the Commission on Human Rights at its thirteenth session, on the recommendation of the Sub-Commission, requested the Secretary-General:

> "to invite Governments, the appropriate specialized agencies, and the competent non-governmental organizations, to whom requests for information have already been addressed, to co-operate in this study by replying as soon as possible in order that all relevant material may be available to the Special Rapporteur by 15 August 1957 for use in the preparation of the draft report requested by the Sub-Commission."

The Secretary-General subsequently communicated this request to the Governments and the non-governmental organizations concerned.

A. Information Available to the Special Rapporteur

4. In preparing the draft report the Special Rapporteur used material collected from Governments, non-governmental organizations, the Secretary-General, and the writings of recognized scholars and scientists.

5. Information from Governments: At the time of preparation of the draft report information on discrimination in the matter of religious rights and practices - including the texts of constitutions, laws, administrative arrangements, judicial decisions and statistical data, and other material that could throw light on the situation in each country - had been received from the Governments of the following fifty-four countries:

Afghanistan	France	Pakistan
Argentina	Greece	Philippines
Australia	Haiti	Poland
Austria	Honduras	Portugal
Belgium	Hungary	Romania
Brazil	Iceland	Spain
Bulgaria	Iran	Sweden
Byelorussian SSR	Ireland	Syria
Cambodia	Japan	Thailand
Canada	Jordan	Turkey
Ceylon	Laos	USSR
Colombia	Luxembourg	United Kingdom
Costa Rica	Mexico	United States of America
Cuba	Morocco	Federal Republic of Germany
Czechoslovakia	Nepal	Korea (Republic of)
Denmark	Netherlands	Liechtenstein
Dominican Republic	New Zealand	Switzerland
Finland	Norway	Viet Nam

6. Information from non-governmental organizations: Information had also been received from the following twenty-five non-governmental organizations in consultative status with the Economic and Social Council:

Agudas Israel World Organization
All India Women's Conference
American Jewish Committee
Canadian Jewish Congress
Catholic International Union for Social Service
Commission of the Churches on International Affairs

Committee on Cooperation in Latin America

Consultative Council of Jewish Organizations

Coordinating Board of Jewish Organizations

International Alliance of Women

International Catholic Child Bureau

International Confederation of Free Trade Unions

International Federation "Amies de la jeune fille"

International Federation of Women Lawyers

International League for the Rights of Man

Lutheran World Federation

PAX ROMANA - International Catholic Movement for Intellectual and Cultural Affairs

Société Européenne de Culture

Women's International League for Peace and Freedom

World Alliance of Young Men's Christian Associations

World Federation for Mental Health

World Federation of Catholic Young Women and Girls

World Jewish Congress

World Movement of Mothers

World Union for Progressive Judaism

In addition, information had been received from the following six non-governmental organizations not having consultative status with the Economic and Social Council:

American Civil Liberties Union

American Ethical Union

Bahá'i International Community

B'nai B'rith

The Liberation Society

Missionary Research Library

7. The Special Rapporteur is grateful to these non-governmental organizations. Some of them established large-scale research projects in order to obtain and analyse the relevant information, while others initiated far-reaching enquiries either directly or through their affiliated national or local branches.

8. The material submitted by them was particularly valuable because it gave a clear indication of where discrimination was considered to exist by individuals or

groups directly concerned. It provided a factual basis for the Special Rapporteur's work that otherwise might have been unobtainable, and assisted him in carrying out his mandate to consider the de facto as well as the de jure situation. The procedures whereby such information as the Special Rapporteur intends to use in his report is first submitted to the Governments concerned for ccmment and supplementary data, and whereby such comments and data are carefully considered before the information is included in the final report, guarantee that the study will be objective as well as factual.

9. However, it is to be regretted that so few non-governmental organizations were able to supply the Special Rapporteur with information. It would have helped if more of the organizations having first-hand knowledge of what is occurring in different parts of the world with respect to discrimination in the matter of religious rights had submitted information.

10. Information from the Secretary-General: Utilizing the information collected from Governments and non-governmental organizations and supplementing it when necessary from other sources at its disposal, including the writings of recognized scholars and scientists, the Secretariat prepared tentative "country reports" relating to thirty countries and submitted them to the Special Rapporteur. These "country reports" are now to be forwarded to the Governments concerned for ccmment and supplementary data.

11. The Special Rapporteur examined each "country report" thoroughly and used the information they contained as a general basis for the preparation of this draft report.

12. While deeply appreciative of the valuable assistance provided by the Secretariat, which gave him an insight into the problems involved in the study of discrimination in the matter of religious rights and practices, the Special Rapporteur realized that it was impossible for the Secretariat to prepare even tentative "country reports" on all States Members of the United Nations and of the specialized agencies in the limited time, and with the limited staff, at its disposal. The fact that thirty reports should have been produced is in itself an achievement which should be recognized by the Sub-Commission and its parent bodies. This fact, however, only highlights the need for providing adequate personnel to deal with studies of this nature. As fifty-four additional

"country reports" have yet to be prepared, sent to Governments for comment and supplementary data, and in some cases completely revised before a final appraisal of the situation can be attempted, it is clear that unless more personnel is provided the preparation of the final study cannot be even attempted during 1958.

13. It is seldom realized that the study of discrimination in the matter of religious rights and practices requires not only a great deal of research but also an understanding of the emotions of the people concerned in different countries, of the manner in which religious rights and practices have evolved, and even of the attitudes of the various religious groups. Indeed, without such an understanding it would be next to impossible to reach valid conclusions and to make recommendations which advance recognition of human rights in this field.

14. In addition to the "country reports" mentioned above, the Secretariat prepared, at the Special Rapporteur's request, a summary of the activities of other organs of the United Nations relating to discrimination in the matter of religious rights and practices; this summary is attached to the draft report as an Appendix, as it may serve to throw light on the subject under study.

15. Further, the Special Rapporteur has requested the Secretariat to prepare a summary, for inclusion in the final report, of the information available with regard to discrimination in the matter of religious rights and practices in Trust and Non-Self-Governing Territories, based on the reports of the various Administering Authorities and, where applicable, Visiting Missions, and on petitions accepted and examined by the General Assembly and the Trusteeship Council in consultation with the Administering Authorities in accordance with Article 87(b) of the Charter.

B. Limitations Affecting the Draft Report

16. A serious limitation upon the draft report stems from the decision adopted by the Commission on Human Rights at its twelfth session (E/2844, para. 157):

> "... that the materials and studies in the field of discrimination should relate to States Members of the United Nations and of the specialized agencies ..."

As a consequence of this decision the Special Rapporteur is prevented from communicating with the authorities in control of such countries and territories

as the People's Republic of China, the German Democratic Republic, the Democratic People's Republic of Korea, the Democratic Republic of Viet-Nam, and the Mongolian People's Republic. In consequence, he is unable to prepare a global study dealing with all countries and territories.

17. Another limitation upon the draft report stems from the fact that at the time of its preparation the Special Rapporteur had at his disposal information relating only to a limited number of countries.

18. Still a third limitation is a self-imposed one: because the information available had not been tested by reference to the Governments concerned for comment and supplementary data, the Special Rapporteur generally refrained from quoting it, and for the most part avoided mentioning the names of countries which he selected as examples. This had the effect of removing most of the factual data from the draft report, and making it less concrete than such a report should be.

19. At one stage the Special Rapporteur considered the advisability of reporting to the Sub-Commission his inability to prepare for the tenth session a draft report which would approximate the final study; however,he considered that the Sub-Commission itself had taken this contingency into account by its use of the phrase "as far as possible." He therefore proceeded to prepare a tentative analysis, based largely upon as-yet-untested information.

C. Importance of the Supporting "Country Reports"

20. The Special Rapporteur must draw special attention to the rule laid down by the Economic and Social Council in the annex to resolution 664 (XXIV), to the effect:

> "... that with regard to the programme of studies of discrimination which the Sub-Commission on Prevention of Discrimination and Protection of Minorities is engaged the country reports utilized in the preparation of these studies be not normally issued as documents..."

21. The unique feature of the studies of discrimination carried out by the Sub-Commission, which distinguishes them from a number of studies carried on by a scientific organization or a private foundation, is the fact that they are prepared with the active co-operation of Governments at all stages. The instrument of this co-operation is the "country report", which is sent to the Government concerned for comment and supplementary data before being put into

definitive form. Nowhere else - not even in the final report, which is necessarily a condensation of all the available material - can there be found detailed information on the situation with regard to religious rights and practices in various countries, including the texts of the relevant laws, decrees, ordinances and judgements, information on the historical background of the problem and the existing trends, and statistical data. Such information, collected from many sources and verified by submission to the Governments concerned, constitutes a comprehensive and up-to-date compilation of important data which could only be assembled through such a medium as the United Nations.

22. Moreover, the Special Rapporteur feels that the final report and its supporting materials are inseparable. Together they furnish a picture of the situation in each country, and in the world as a whole. Necessarily, in the report itself, the material concerning each country must be fragmented. Classifications must be adopted, and frequently these classifications bracket countries in which the situations are not strictly comparable.

23. This process might have certain further unfortunate consequences on the evolution of concepts: unless the circumstances in each country, the trend of events, and the historical factors are taken into account, there is a danger of concepts acquiring a restrictive meaning, or of their acquiring a significance for only a few countries. Progress in this field, which is always slow, can be achieved only if there is sufficient elasticity, and such elasticity can be promoted only if the study as a whole - the final report and the supporting "country reports" - can be made available in document form.

24. The above arguments apply to all studies carried out by the Sub-Commission. There are, in addition, arguments of a particularly compelling character to be put forward in the case of the study of discrimination in the matter of religious rights and practices.

25. A study concerned with conditions in the world as a whole must, in the very nature of things, be selective. As will be seen from a perusal of the present draft report, only such information as indicates that discrimination - or at least differential treatment - may exist, can be included. But this obviously is not the whole story. Seen out of context, this selected information may convey a distorted impression despite all the endeavours of the Special Rapporteur to be as objective as possible.

26. Further, in the assessment of specific information indicating discrimination, it is important to know whether it refers to what may be called residual discrimination - a mere remnant of historical circumstances which has, however, lost any real significance - or whether it forms part and parcel of a larger pattern of present-day discriminatory treatment. For the assessment of such information one must have a knowledge of historic antecedents, of the evolutionary process which led to the present situation, and of the political and social factors prevailing in the country. The numerical importance of the group subjected to discriminatory or differential treatment, as compared to the population as a whole, should also be taken into consideration; not only do certain quantitative differences become qualitative ones, but the relationship of numbers may throw light upon the reasons which have caused a country to adopt a certain policy with regard to a particular religious group.

27. Only a "country report" can furnish the necessary balanced, detailed picture and the reader of the completed study must be able to refer to these "country reports" for detailed information concerning matters touched on only briefly in the study. It would not seem out of place to recall that the Charter of the United Nations emphasizes not only the promotion of respect for human rights, but also the need for harmonizing the action of nations in the attainment of this common end. A selective study alone could hardly foster this latter purpose; on the contrary, it may well be used, by States as well as by the various religions, as an instrument for attacking each other - an end which could not have been intended by the Economic and Social Council.

28. The Special Rapporteur submits that the Councils, in the light of the arguments adduced above, may wish to reconsider its decision. In any event, he trusts that the Secretary-General will find it possible to make an exception in the case of the present study, and to arrange for the "country reports" to be issued as documents. By including the word "normally" in its decision the Council recognized that such exceptions could be made when warranted by particular circumstances. He has no doubt that the study of discrimination in the matter of religious rights and practices constitutes the very exception envisaged by the Council, and he has therefore requested the Secretariat to arrange for the issuance as documents of the "country reports" prepared in connexion with the study. It is to be hoped that the Sub-Commission will support this request.

II. THE PROBLEM IN ITS SETTING

Introduction

29. World-wide interest in ensuring the right to freedom of thought, conscience and religion is attributable to the realization that such freedom is basic; groups professing religious or philosophical beliefs have played a vital role in the development of society. Historically, such groups have been responsible "for widening the bounds of good neighbourliness and the obligation to meet human need Although in practice ethical tenets have been often neglected, nevertheless these tenets - which are the foundation of great religions of the past as well as of the living religions of today - have demanded an exercise of social responsibility from their followers.

30. The precept that one should love one's neighbour as oneself goes back to the earliest days of all religions. The extension of this command without qualification - "There is neither Greek nor Jew, circumcision nor uncircumcision, Barbarian, Scythian, bond nor free" - was part of the faith of early Christianity before even a church had come into being. This idea permeates not only Christianity but all the world religions, including Buddhism, Hinduism and Islam. All great religious teachers have attempted to influence the tone and habit of thought of mankind by emphasizing the need for treating all people alike.

31. But while the original precepts are imbued with the sense of oneness of mankind, history probably records more instances of man's inhumanity to man than examples of good-neighbourliness and the desire to satisfy the needs of the less fortunately placed. This stems from the body of traditions, practices and interpretations which were built around the religions. Each religion generally considers that it is the sole repository of truth, and that therefore there is a duty to combat other religions or philosophies in the name of truth. In other words, while the oneness of mankind and the equality of all men is emphasized by religious teachers, religions have often shown a disposition to be intolerant. In certain periods of our history, religious organizations have restricted human liberties unduly, curtailed freedom of thought, and slowed down the development of art and culture. In other periods the same attitude was adopted by followers of certain philosophical teachings towards all religious beliefs rather than towards one particular religion.

32. It is superfluous to recall that in the past untold suffering has been inflicted upon humanity in the name of religion. Wars were fought to impose the faith of the conqueror upon the conquered; minorities were massacred, or expelled from their countries, because they refused to follow the teachings of the dominant religion. Even when extreme measures of persecution were not applied, use was made of more subtle types of pressure in attempts to obtain conversions, ranging from a refusal to grant civil rights, the debarring of dissenters from the exercise of certain trades or professions, or the offering of material advantages or even giving outright bribes. The colonial phenomenon, for a long time, found its major justification in the need to bring the light of true faith to "pagans" or "heathens"!

33. Times have changed and few instances of this kind occur in the second half of the twentieth century. Nonetheless, religious tolerance has not prevailed everywhere; equal treatment for all creeds as a matter of right rather than a matter of sufferance has not as yet been universally accepted. Further, our world has witnessed in the recent past persecutions on a more colossal scale than ever before, based primarily on grounds other than religion but involving to some extent religious motives.

34. Our duty as an international community is not only to eliminate discrimination in the matter of religious rights and practices, but also to establish on firm foundations positive principles and standards of conduct which would preclude a hark back to religious wars and religious persecutions. In our time, which has witnessed astonishing discoveries in the realm of science - the penetration of the incomprehensible - there is all the more need for reaffirming our faith in fundamental human rights and in the dignity and worth of the human person.

35. It should not be forgotten that even in the periods of most severe restriction certain individuals and associations fought to remove the fetters placed on society, and by their efforts succeeded in large measure in widening the horizon of human endeavour, if not in their own generation at least in succeeding

ones. The trend towards a greater measure of freedom and tolerance, although slowed down in certain periods of our history has never been arrested.[1]

36. An example of humanism and liberal outlook was King Asoka, patron of Buddhism, who recommended to his subjects that they should follow a principle of toleration which sounds as alive today as it was when propounded twenty-three centuries ago:

> "Acting thus, we contribute to the progress of our creed by serving the others. Acting otherwise, we harm our own faith, bringing discredit upon the others. He who exalts his own belief, discrediting all others does so surely to obey his religion with the intention of making a display of it. But behaving thus, he gives it the hardest blows. And for this reason concord is good only in so far as all listen to each other's creeds and love to listen to them. It is the desire of the king, dear to the gods, that all creeds be illumined and they profess pure doctrines."

37. St. Thomas of Aquinas taught - as early as the thirteenth century - that:

> "Human law does not forbid - need not forbid - all those vices from which virtuous people abstain, but only the most flagrant, those which are shunned by the average man, those especially which prejudice the rights of others, and the repression of which is essential to the preservation of human society."[2]

> "It is perfectly just [he says elsewhere] that in human governments the authorities allow certain reprehensible practices to exist unchecked, for fear of empeding other good, or of provoking evils which are worse."[3]

St. Thomas himself then applies these principles to the freedom before the law of dissident religions, justifying them by the "duty" incumbent upon governments:

> "to avoid the scandals and dissensions which suppression of these liberties and guarantees would entail;"

the duty also,

> "to avoid compromising the eternal salvation of the dissidents who, thus given their freedom, may freely be converted to the truth."

1/ W.E.H. Lecky, The Rise and Influence of Rationalism in Europe.

2/ Summa Theologica, I, II, q.96, a.2, as quoted by Michel Riquet, S.J., in The Church and Tolerance, reprinted from "Thought", March 1929, the American Press, New York, pp. 15-16.

3/ Ibid., II, II, q.10, a.11.

38. Modern Catholic writers quote the sixteenth century Catholic authority, Suarez, as being no less emphatic:[1/]

> "The temporal power of the prince does not extend to the prohibition of the religious rites (of dissidents); no reason for such prohibition can be advanced, save their contrariety to the true Faith, and this reason is not sufficient with respect to those who are not subject to the spiritual power of the Church."

39. The Prophet Mohamed issued a code of conduct to his followers in Majran in which he said:[2/]

> "To the Christians of Majran and its neighbouring territories, the security of God and the pledge of Monammed the Prophet, the Messenger of God, are extended for their lives, their religion, their land, their property - to those thereof who are absent as well as to those who are present - to their caravans, their messengers and their images. The status quo shall be maintained; none of their rights (religious observances) and images shall be changed. No bishop shall be removed from his bishopric, nor a monk from his monastery, nor a sexton from his church ... For what in this instrument is contained they have the security of God, and the pledge of Mohamed, the Prophet forever, until doomsday, so long as they give right counsel (to Moslems) and duly perform their obligations, provided they are not unjustly charged therewith."

40. The doctrine of tolerance in modern times was enunciated with particular clarity by John Locke in his first Letter Concerning Toleration. In this letter, published in 1689 - the year after the English revolution - Locke wrote:[3/]

> "Thus if solemn assemblies, observations of festivals, public worship be permitted to any one sort of professors, all these things ought to be permitted to the Presbyterians, Independents, Anabaptists, Armenians, Quakers, and others, with the same liberty. Nay, if we may openly speak the truth, and as becomes one man to another neither pagan nor Mahometan nor Jew ought to be excluded from the civil rights of the commonwealth because of his religion ... And the commonwealth which embraces indifferently all men that are honest, peaceable, and industrious, requires it not. Shall we suffer a pagan to deal and trade with us, and shall we not suffer him to pray unto and worship God? If we allow the Jews to have private houses and

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1/ De Fide, Disp. 18, sect. 4, N. 10, Quoted by Riquet, op. et loc. cit.

2/ Khairallah, Ibrahim A., The Law of Inheritance in the Republics of Syria and Lebanon, American Press, Beirut; 1941, p. 316.

3/ John Locke, A Letter Concerning Toleration.

dwellings amongst us, why should we not allow them to have synagogues? Is their doctrine more false, their worship more abominable, or is the civil peace more endangered by their meeting in public than in their private houses? But if these things may be granted to Jews and pagans, surely the condition of any Christians ought not to be worse than theirs in a Christian commonwealth.

"....If anything passes in a religious meeting seditiously and contrary to the public peace, it is to be punished in the same manner, and no otherwise than as if it had happened in a fair or market. These meetings ought not to be sanctuaries for factious and flagitious fellows. Nor ought it to be less lawful for man to meet in churches than in halls; nor are one part of the subjects to be esteemed more blameable for their meeting together than others."

In another passage of the same Letter Locke enunciates an idea which has a modern ring about it:

"No man by nature is bound unto any particular church or sect, but everyone joins himself voluntarily to that society in which he believes he has found that profession and worship which is truly acceptable to God. The hope of salvation, as it was the only cause of his entrance into that communion, so it can be the only reason of his stay there...A church, then, is a society of members voluntarily united to that end."1/

However, it should be stressed that Locke's theory of toleration, although formulated in general terms, admits of certain limitations in its applicability. Thus, while arguing that the State should offer equal protection to members of the established Church, to Protestant dissenters, and even to Jews, Muslims, and "pagans", Locke specifically excludes Roman Catholics. Furthermore, he is definitely of the view that free-thinkers should not be allowed to enjoy any rights or privileges.

41. Whatever their limitations, Locke's writings have considerable interest since they represent the first attempt to present a theory of religious rights and practices in a systematic form. As can be seen, he makes a distinction between the liberty to maintain or to change religion or belief on the one hand, and the liberty to manifest religion or belief on the other. Further, he expresses the view that whereas liberty to maintain or to change one's religion or belief does not admit of any limitation, liberty to manifest religion or belief is subject to limitation by the State "in the same manner, and no otherwise", as liberty to

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1/ Ibid.

manifest any other civil right. Both ideas have been incorporated into the Universal Declaration of Human Rights; both have been spelled out even more clearly in the draft covenant on civil and political rights.

III. FACTORS AFFECTING THE POSITION OF RELIGIOUS GROUPS

A. The Relationship Between the State and Religion

42. From a purely juridical point of view it would appear worthwhile to classify countries into three groups: (1) those which have an established or State religion; (2) those in which a number of religions are recognized, and (3) those which are based upon the principle of separation of State from religion.

43. In olden times, a close relationship normally existed between the State and religion. Religion enjoyed a special status within the State whether or not it was established by law or recognized by formal treaty or informal agreement with a supra-national Church. Even now a few countries give a preferential status to a particular religion or Church. But rarely does such preferential status involve - as it often did in the past - a complete exclusion of all other religions or Churches, or at least severe discrimination against them and their followers.

44. The case for exclusion of members of religions other than the established one was stated by Blackstone in his "Commentaries on the Laws of England" thus:[1/]

> "If every sect was to be indulged in a free communion of civil employments, the idea of a national establishment would at once be destroyed, and the Episcopal Church would no longer be the Church of England."

45. In theory it may be argued that if a State has an established religion, or if a certain religion is recognized as the religion of the State, the ineluctable consequence is discrimination - or at least inequality of treatment - directed at other religions. It may further be pointed out that in these circumstances there is also an inherent discrimination against those who adhere to no religion. However, in actual fact it is quite possible to have no discrimination against other relgions or beliefs - or at least against their followers - despite the existence of a State church. In many cases, in the present day, an established or State church may connote only the survival of an historic tradition without any real significance in the sense of its being discriminatory either against dissenter groups or against the followers of other religions or beliefs.

46. In this connexion it is appropriate to quote the following passage from a memorandum submitted by the Government of the United Kingdom:

1/ Comm. IV. 53.

> "The marks of the established Churches' superiority are perpetuations of old constitutional forms beyond their active legal significance of a kind very common in Britain; they no longer imply the unmistakable superiority of the established over the non-established churches which marked the 17th and 18th centuries. Complaints are still made from time to time about the absence of absolute equality of all churches before the law, but for the sake of the principle of equality only. No one suffers in conscience or in pocket from the few remaining privileges of the established Churches. The existence of the established Churches of England and Scotland must therefore not be taken to make any real inroads upon the rule of religious freedom and equality before the law: the rights and privileges resulting from their establishemnt are probably smaller than those of any other established churches in the world."

47. Indeed, if one recalls the controversy that took place over the adoption of the English Prayer Book in the late twenties by a Parliament which included many members who did not belong to the established Church, one wonders whether the established Church was really in a privileged position! It may even be argued that in this case the established Church was in a disadvantageous position since, unlike other religions and beliefs, its doctrines and forms of worship were determined by a body which consisted of many members who did not belong to the established Church.

48. From the fact of the State having a "State religion", it cannot be inferred that other religions or churches, or their adepts, are treated in a discriminatory manner. In our times in certain cases the Concordats, while they assure certain rights or privileges to the Roman Catholic Church in respect of the followers of Catholicism, do not preclude a fairly equal treatment to other religions or Churches. Those who belong to other faiths are excluded from the operation of these Concordats. They can, however, be subject to the regulations of their respective religions or Churches. There may be countries having at the same time a national established Church and a Concordat with the Holy See.

49. In the second group of countries - those in which a number of religions find recognition - there may be considerable differences. In certain cases two or more religions have an equal status; in others one religion may enjoy a predominant status, while others have a status in law and still others survive as a matter of sufferance. It may be said therefore that the countries of the first two categories overlap to a large extent, and that discrimination is not a necessary consequence either of having a State Church, a State religion, or a number of recognized religions.

50. Countries recognizing the principle of separation of State and Church present a great variety. Within the framework of this principle, de facto pre-eminence may be granted to certain religious faiths or philosophies. Although in such a State the subjects live under the operation of civil and not religious law, it is sometimes considered to be discriminatory because the law which applies to everyone reflects the rule of the dominant group. Even if a State maintains neutrality as between various denominations, and grants them the right of organization on an equal basis, such treatment may be in full compliance with the religious practice of one or several religious groups, but not in conformity with the practice of another group or groups. Naturally the group which is incapacitated to take advantage of the right to organize and manage its own affairs in the manner prescribed by the law of the land considers such a law to be discriminatory.

51. Moreover, the interpretation of the principle of separation of State and religion varies greatly from country to country. In some cases separation implies a prohibition for the State not only to intervene in the affairs of the religious groups, but also to assist them financially, either directly or indirectly. In other cases this principle is not interpreted as precluding an equal subsidation for all churches or religious groups. In certain countries, where separation of State and Church has been accepted in principle, the State may yet be the proprietor of all religious buildings and put them at the disposal of the various religious groups. It will be apparent that whatever the desire of the Government to be as impartial as possible in its attitude toward different religions or beliefs, no system can produce more than a rough approximation to equality of treatment. Probably this is inevitable in a multi-religious society where there is room for all faiths or beliefs.

52. It will be seen therefore that although the juridical relationship which subsists in a country between the State and the Church is not without significance for the present study, it is not the whole story. We do not necessarily obtain, from a study of this factor alone, a complete picture of the actual measure of religious freedom - or lack of freedom - enjoyed by citizens belonging to different faiths. For this reason it is necessary to go behind the veil of didactic classifications, to consider the actual situation in each country, to examine the trends - more particularly the recent trends -

and to compare both the situation and the trends with those prevalent in other countries.

B. The Relationship Between Various Religious Groups

53. In addition to the relationship subsisting between State and Church, certain other factors have to be considered when evaluating the scope of freedom in a particular country. The question of the position which a religious minority enjoys in a country to a large extent depends upon the proportion of its adherents to the total population of the country or to the number of adherents of the dominant group. Where the minority is small and, in addition, does not exhibit a tendency to expand by attempting to convert members of the dominant group, usually tolerance is shown. However, the numerical smallness of the group may make it impossible for it to avail itself of certain material facilities, such as subsidies for the maintenance of denominational schools, even though the Government offers such facilities to all religious groups on an impartial basis. Conversely, if the minority is large and moreover tends not only to gain new adepts but also to exert political influence, the majority will often show impatience, frequently turning into intolerance.

54. However, a balance may be established between the various religious groups in such a manner that, for all practical purposes, no particular group will assume a dominant position: in this case, mutual toleration is usually the consequence. A classic example is that of Switzerland, where the Central Government maintains a balance conducive to toleration for all religions and churches even though individual cantons sometimes give preferential treatment either to the Roman Catholic Church or to certain Protestant denominations. Another example of such a delicate balance is offered by Lebanon, with regard to which it has been said that "the country has no majority and is composed only of minorities". It is therefore imperative, when one assesses the situation in a particular country, that full account should be taken of the composition of the population.

55. The Special Rapporteur has taken pains in collecting, for each country, relevant data indicating not only the present population of the country but also the trends which, over a number of years, have affected the relative importance of various religious groups. Often this task has been beset with

difficulties; many States do not include information concerning religious affiliation in their official censuses. In other instances, although the census takes account of religious affiliations, certain religious groups are ignored because the Governments concerned do not wish to recognize the separate existence of these groups. The members of such groups are included among the adherents of the dominant religion. Or, a State may even postpone the taking of a census because the results of such an enumeration might reveal trends in population growth which would upset the current balance of political power based on religious affiliation.

56. Wherever possible, the Special Rapporteur has tried, by recourse to sources other than official statistics, to supplement the available data on this subject. Since the matter is of such great importance for judging the over-all situation, one could not dispense with attempts at securing the necessary information.

57. Another factor of a political nature which cannot be overlooked is the loyalty of the minority towards the State, and its attitude towards the majority. No State can turn a blind eye towards activities aimed at its destruction. Particularly is this true of certain new States which have only recently achieved independence and in which traditions of common loyalty have not yet taken root. Nonetheless, it should be apparent that in evaluating this aspect of the State's attitude towards the minority, the greatest caution would have to be observed; for we have to avoid falling into the pitfall of slogans such as "social cohesion" invoked by States and majorities to justify the worst tyrannies and persecutions.

C. Factors of an Historical Nature

58. For centuries there have been in many countries dominant Churches, with the concomitant exclusion of other confessions and beliefs - or at least the reduction of these latter to a subordinate status. However, the situation in most countries has changed steadily, and the process is still continuing. It would therefore be misleading, at least in some cases, to attach undue importance to certain facts which may be considered as discriminatory, but are nothing more than survivals of the past. As pointed out in the memorandum of the Government of the United Kingdom mentioned above:

"Religious freedom in modern Britain is complete: and a general state of legal equality between the many different religious bodies is well-nigh complete also, with qualified exceptions in the cases of the established Churches of England and Scotland. These retain some marks of their once very real legal superiority. For example, the monarch is still styled,... 'Fidei Defensor' and 'Supreme Governor of the Church of England'; and must be in communion with the Church of England. Again, the prelates of the established Church play the leading part in the Coronation ceremony; twenty-six Anglican prelates sit, by virtue of their office, in the House of Lords as Lords Spiritual. Yet Anglican clergy cannot sit in the House of Commons."

59. The same may apply in some instances to the so-called "millet" system.[1/] In the beginning its purpose was to serve as a concession to Christian and Jewish communities in Islamic countries which kept them outside the pale of the State and the law. Today, in some countries it has evolved into a system which places religious communities - including other than Christians and Jews - on a similar footing, although some traces of former dominance persist. In both cases it would appear more appropriate to take the situation in a country in its entirety rather than to lay stress on isolated facts. This is an additional reason why the "country reports" are so important: only within their country-by-country framework may the relative significance of the reported facts be truly assessed. In any analysis, perspective is only too often lost.

60. It is not only the remote past that may throw a light upon the situation. To take one example: there may be a great difference between the attitude of the majority towards the so-called "traditional minorities," and its attitude towards religious groups representing, in the eyes of traditional religion, "schism" or "heresy" which pursue a proselytizing policy endangering the position and status of the dominant faith.

1/ The millet system was adopted in Islamic States at a time when the law of such States was more religious than secular. It allowed the non-Muslim communities in such States complete local autonomy in all matters of personal status and religious administration, and gave them temporal powers over their members. With the change of State authority from religious to secular, the autonomy of the non-Muslim communities has been reduced and restricted to matters of personal status such as marriage, divorce, alimony, guardianships, successions, and testaments; and religious administrations.

IV. THE MEANING OF FREEDOM OF THOUGHT, CONSCIENCE AND RELIGION

A. Basic Texts Dealing with Freedom of Thought, Conscience and Religion

61. In analysing what constitutes discrimination in the matter of religious rights and practices, one cannot do better than consider the articles in the Universal Declaration of Human Rights and in the draft covenant on civil and political rights dealing with this subject. Thus article 18 of the Declaration stipulates:

> "Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance."

62. Article 18 must be considered in conjunction with articles 29 and 30 of the Declaration, which read:

> "Article 29. (1) Everyone has duties to the community in which alone the free and full development of his personality is possible.
>
> (2) In the exercise of his rights and freedoms, everyone shall be 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.
>
> (3) These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations."
>
> "Article 30. Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein."

63. Article 18 of the draft covenant on civil and political rights reads:

> "1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to maintain or to change his religion, or belief, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.
>
> "2. No one shall be subject to coercion which would impair his freedom to maintain or to change his religion or belief.

"3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others."

B. Distinction Between Freedom to Change Religion or Belief and Freedom to Manifest Religion or Belief

64. In describing the content of the right to freedom of thought, conscience and religion, article 18 of the Universal Declaration of Human Rights makes a distinction between "freedom to change ... religion or belief" on the one hand, and "freedom, either alone or in community with others, and in public or private, to manifest ... religion or belief in teaching, practice, worship and observance". The distinction is corroborated, and appears even more sharply, in the corresponding text of the draft covenant on civil and political rights.

65. Although article 18 of the Universal Declaration of Human Rights does not explicitly mention - as does the corresponding text of the draft covenant - freedom to maintain religion or belief along with freedom to change, this omission does not appear upon reflection to involve any question of substance: it would be strange indeed to acknowledge the right to change over from one religion or belief to another without admitting the right to maintain one's religion or belief! But it does not follow that where the right to maintain one's religion or belief is acknowledged, the right to change is conceded. There are instances where a change of religion or belief is prohibited while the right to maintain is allowed to remain intact.

66. The essential difference between the two freedoms - freedom to maintain or change a religion or belief and freedom to manifest religion or belief - lies in the fact that while the first is conceived as an absolute right, admitting of no limitations, the second is assumed to be a right subject to limitation by the State for certain defined purposes. Here again the text of the draft covenant on civil and political rights is more explicit than the corresponding text of the Declaration: article 18, paragraph 3, of the draft covenant contains a limitations clause which refers only to limitations to be placed on the freedom to manifest. The limitations clause of the Declaration, on the other hand, is applicable to all the rights and freedoms set forth in the Declaration. Perhaps

this is a result of the different methods of drafting followed in the case of the two instruments: in the draft covenant the limitations clause is appended to the article setting out the substantive rights. Naturally it could be formulated with a greater degree of precision than in the Declaration, where articles 29 and 30 are placed at the end of the catalogue of rights and freedoms. However, this difference does not raise any question of substance: the reason for freedom to maintain or change one's religion or belief not admitting of any limitation is that these matters fall essentially within the province of faith and inner conviction. But the freedom to manifest a religion or belief may impinge on the rights and freedoms of other members of society or on the rights and vital interests of society as a whole. It may be recalled, as a matter of historical interest, that a distinction between these two aspects was made by Locke three centuries ago, and precisely for the reason indicated above. Moreover, according to Locke, this distinction had the practical significance which has also been indicated: freedom to maintain or to change religion or belief ought to be unlimited, whereas freedom to manifest can admit of limitations imposed by the State.

67. The distinction that he made is borne out by legislative practice and judicial decisions on matters pertaining to the exercise of religious rights in a number of countries. In interpreting the provisions of the First Amendment to the Constitution of the United States of America, for example, the Supreme Court pointed out:

> "The First Amendment forestalls compulsion by law of the acceptance of any creed or the practice of any form of worship. Freedom of conscience and freedom to adhere to such religious organizations or form of worship as the individual may choose cannot be restricted by law ... Thus the amendment embraces two concepts: freedom to believe and freedom to act. The first is absolute, but, in the nature of things, the second cannot be." 1/

68. In India as early as 1850 the East Indian Company removed by an Act, any disabilities which otherwise would have followed a change of religion in matters

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1/ United States of America: (Cantwell vs. Connecticut) 310 U.S. 296 (1940).

of property, inheritance, etc. The present Indian Constitution of 1950, as interpreted by the courts,[1] guarantees freedom of conscience absolutely while subjecting to limitations the right to propagate and certain other outward or secular activities pertaining to religion.

69. The Government of the Union of Soviet Socialist Republics, in its reply to the Special Rapporteur's request for information, states:

> "Every citizen of the Soviet Union has the right, not only freely to choose his religion and freely to profess any religion, but also to recognize and to profess no religion at all and to conduct anti-religious propaganda (in a manner not offensive to the religious susceptibilities of believers), while enjoying full civil rights, regardless of his religious beliefs or anti-religious convictions."

On the other hand, a decree of the People's Commissars of Russia dated 23 January/5 February 1918, to which the reply refers, contains the following provision:

> "5. Freedom of carrying out of religious rites is ensured provided they do not disturb public order and are not connected with any attempt to infringe the rights of the citizens of the Soviet Republic.
>
> "The local authorities have the right in such circumstances to take all the necessary measures for ensuring public order and security."

70. Although most countries in our day admit the principle that freedom to maintain or to change religion or belief should not be impaired, there are certain exceptions. In some instances the limitations imposed are of a formal nature while in others they are of a serious character.[2]

C. The Meaning of Freedom to Maintain or to Change Religion or Belief

71. Freedom to maintain or to change a religion or belief falls essentially within the domain of the inner faith and conscience of an individual. Viewed from this angle, one would think that any intervention from outside is not only

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1/ United States of America: (Cantwell vs. Connecticut) 310 U.S. 296 (1940).

2/ India: Justice Mukherjee in Lakshmindar Thifthar vs. Commissionor of Hindu Religious Endowment Board, Madras (S.C.), 1953.

illegitimate but impossible. Nonetheless, problems do arise and there are cases of interference with at least the exterior aspects of this right. In some cases a person or group of persons has been compelled to renounce formally his or their religion or belief, or to remain formally within a group even when he or they cease to believe in the teachings of that group. In other cases strong inducements - amounting in some instances to bribes - have produced the same effect. If it be considered - and it is so rightly considered by the consensus of world opinion - that freedom to maintain or to change a religion or belief does not admit of any restraint, every instance of compulsory conversion, or of prevention of a person from leaving the religion or belief in which he has lost faith, must be considered to be an infringement of the right to freedom of thought, conscience and religion. This is brought out succinctly in the second paragraph of article 18 of the draft covenant on civil and political rights: "No one shall be subject to coercion which would impair his freedom to maintain or to change his religion or belief".

D. The Scope of Freedom to Manifest Religion or Belief

72. It is necessary to study at some length the nature and content of the freedom to manifest religion or belief. According to article 18 of the Universal Declaration of Human Rights, religion or belief may be manifested "in teaching, practice, worship and observance". Similarly, article 18 of the draft covenant describes manifestations of religion or belief in terms of "worship, observance, practice and teaching".

73. In this connexion two questions pertaining to the terms employed arise for consideration. Firstly, are teaching, practice, worship and observance to be thought of as distinctive liberties or are they meant to be taken as a whole, representing different aspects of a single freedom, namely freedom to manifest a religion or belief? Secondly, do the four elements mentioned in the two articles form an exhaustive list, thus implying that any manifestation of a religion or belief not falling within one of the four categories is outside the ambit of the freedom to manifest? Since the two issues are closely inter-related, they will be dealt with simultaneously.

74. It will be recalled that a general outline of topics for study was annexed to the progress report submitted to the ninth session of the Sub-Commission. In that outline, under the heading "Freedom to Manifest Religion or Belief", each one of these terms was considered separately. But the outline was prepared solely to serve a practical end: the collection of information. It was essential to indicate in as precise a manner as possible the nature of the information required. The outline had therefore a purely descriptive character and was meant to guide Governments and non-governmental organizations. This was particularly necessary since neither the authors of the Universal Declaration of Human Rights nor those of the draft covenant on civil and political rights had given a definition of the terms employed.

75. The approach followed in the outline does not mean, however, that the Special Rapporteur has taken a stand as regards the two issues raised above. As a matter of fact, he would be inclined to think that the terms "teaching, practice, worship and observance", used in the Declaration and in the draft covenant were meant to be taken as a whole. One cannot overlook the fact that these texts were prepared with a view to bringing all religions and beliefs within their compass. The forms of manifestation vary greatly from one religion or belief to another. Some religions attach great importance to formal worship; others give great weight to particular rituals, while still others consider teaching in the widest sense of the word as the most important form of manifestation. It may be safe to assume that the aim of the authors of article 18 of the Declaration was to include all possible manifestations of religion or belief within these terms. The enumeration is intended to be illustrative and not exhaustive. Therefore, freedom to manifest religion or belief will be treated in this report as a whole. Where, however, any particular aspect - such as dissemination - is singled out for special consideration, it is because of distinctive practical problems to which it gives rise.

76. A second problem arises in connexion with the approach adopted by the authors of article 18 to manifestation of a religion or belief. While for the majority of rights considered in the Declaration, only the individual aspect of a right is taken into account, article 18 explicitly affirms that freedom to manifest a

religion or belief may be exercised "alone" as well as "in community with others". One has therefore to take into account not only the individual but also the collective aspect of this freedom. From our viewpoint, the collective aspect acquires particular significance since intervention by the State regulating or limiting manifestations of religion or belief "in community with others" is more frequent than when the liberty is exercised by an individual "alone". This will be seen throughout the study, but more particularly in the chapter dealing with the management of religious affairs. The same observation applies to another term to be found in article 18. Here manifestation may be either "in public" or "in private". State intervention is more frequent when manifestations take place in public than when they take place in private. It may be appropriately pointed out that the main field in which limitations on the freedom to manifest religion or belief occur is when such manifestations are at the same time "in community with others" and "in public".

E. Limitations on Freedom to Manifest Religion or Belief

77. It is clear that an analysis of the freedom to manifest religion or belief would necessarily involve a discussion of the question as to which limitations are to be considered legitimate. As long as no limitations are imposed on the enjoyment of a particular human right, no problem arises. The limitations that can be justifiably imposed are to be found in articles 29 and 30 of the Universal Declaration of Human Rights, and in paragraph 3 of article 18 of the draft covenant on civil and political rights.

78. Article 29 of the Declaration consists of three paragraphs, all of which have a bearing on the subject of limitations. The first and third paragraphs affirm that "everyone has duties to the community, in which alone the free and full development of his personality is possible", and that "the rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations". The kernel is to be found in the second paragraph of article 29. This provision states that in the exercise of his rights and freedoms "everyone shall be 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 for meeting the just requirements of morality, public order, and the general welfare in a democratic society".

79. What are legitimate limitations on the exercise of the right to manifest religion or belief? A limitation, in order to be legitimate, must satisfy two essential criteria at the same time: it must be determined by law and must be enforced solely for one or several of the purposes outlined in article 29, paragraph 2. It must be pointed out that one is not giving an exhaustive interpretation of the meaning of article 29, paragraph 2 of the Declaration, which has applicability not only to the freedom to manifest religion or belief but to all the rights and freedoms set out in the Declaration. However, it is necessary to see how the limitations included in article 29 can be applied to the particular freedom now under scrutiny.

80. Let us examine the content of the expression "determined by law" a bit further. In a country having a written constitution, with fundamental rights spelled out, the entire activity of the State is governed by the prescriptions of that constitution. Even when a limitation is imposed by legislation, it would still be necessary to ascertain that such legislation is in conformity with the principles enshrined in the constitution.

81. There are other countries where parliament is sovereign. In such countries laws adopted by the competent legislative authorities cannot be questioned in courts of law. Even here the presence of "constitutional conventions" - which if not in the narrow legal sense at least in fact and morality - exercises a check on legislative power. In countries having a written constition, religious liberty is usually guaranteed in the constitution. In those parliamentary democracies which operate under an unwritten constitution, this principle is so firmly ingrained in the society that it would be highly improbable that a law would be passed superseding it. But whether countries have a written constitution or not, regulations to control manifestations of religion or belief are normally issued by the executive and executed by subordinate administrative authorities; perhaps this is unavoidable because they bear responsibility for the maintenance of peace and tranquillity. However, their actions must always be within the scope of authority given them by a law which is enacted by the proper authority and which is valid.

82. In most cases the acts of the executive are subject to the control of an independent judiciary considered as the guardian of the law and in some countries

as the guardian of the constitution. This is naturally a guarantee that the action of the executive will be in conformity with the law and not arbitrary. It may be observed that this guarantee may play an important role not only in countries where the legislative and the executive functions are exercised by two distinct and separate organs, but even in countries where both are concentrated in the hands of a single body or individual. In the latter case it is not unusual that a distinction is maintained between two kinds of activities exercised by the single organ: enactments containing prescriptions of a general character, and decisions of a concrete nature. Thus there may be a hierarchical subordination of decisions of a concrete nature to the enactments of a general character. The single organ is entitled to change an enactment of a general character, but as long as it has not done so, it is bound by the norm which it has itself put into force. The judiciary has the right and the duty to verify whether or not the decision of a concrete nature has disregarded the terms set out in the enactment of a general character.

83. The second and more important element in these limitations is that they have to serve solely certain purposes enumerated in article 29, paragraph 2, and cannot be used for any other purpose. Taken along with the need to have limitations determined by law, this means that the acts of the executive and of the subordinate authorities, and the law itself, should not be unduly restrictive of the exercise of this freedom. The first of the purposes for which a limitation may be devised is to secure due recognition and respect for the rights and freedoms of others. In a multi-religious society, sometimes certain limitations or religious practices and such customs as owe their origin to religious doctrines, are necessary in order to reconcile the interests of different groups, notably minorities and the majority. The very purpose of such a limitation ought to be to ensure a greater totality of freedom for society as a whole, and not to sacrifice minorities on the altar of the majority.

84. A good example of such legislation may be cited. In India, a choice had to be made between acquiescing in a traditional type of discrimination against a minority or eliminating it by measures which, according to a certain group purporting to speak in the name of the majority, were contrary to the religious

tradition of the people. The question whether "untouchability" should be abolished, or allowed to remain as part and parcel of a religious practice presented itself in a sharp form to the statesmen of that country. But with the adoption of the Constitution in 1950, "untouchability" has been abolished by law and the Constitution provides, in article 15, paragraph 2, that:

> "No citizen shall, on grounds only of religion ... be subjected to any disability, liability, restriction or condition with regard to:
>
> (a) access to shops, public restaurants, hotels and places of public entertainment; or
>
> (b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public."

Another provision of the Constitution (article 17) states in more general terms:

> "'Untouchability' is abolished and its practice in any form is forbidden. The enforcement of any disability arising out of 'untouchability' shall be an offence punishable in accordance with law."

85. Since the adoption of this Constitution, various legislative enactments and administrative measures have been adopted by the Union and by the States to implement the directives of the Constitution. Where traditional religious practices are in conflict with the basic rights of a minority, it is the former that have had to give way. Thus, this limitation by the State on religious practices has increased the totality of freedom for Indian society.

86. Legitimate limitations can also be imposed, according to article 29 (2) of the Declaration, "to satisfy the just requirements of morality, public order, and the general welfare in a democratic society". It has to be realized that the terms "morality", "public order", and "general welfare" are not precise. Nor would the authors have succeeded in giving them a precision, for they had to prepare a text of universal application and the terminology employed varies greatly from country to country. The employment of the terms "morality", "public order" and "the general welfare" only connotes a consensus of opinion that the exercise of human rights could be limited in the interests of the common good of society. Such questions as what is to be considered morality, what

considerations ought to be taken into account in determining public order, and what are the constituent elements of general welfare can be determined only in the light of the circumstances in each country. The important question should be whether the measures adopted in the particular instance were justified and motivated by the best interests of society. The point to emphasize is that the authors of the Declaration took great pains to avoid the possibility of arbitrary judgement being exercised; the introduction of the two terms "just requirements" and "in a democratic society" has obviously no other purpose than to prevent the exercise of arbitrary judgement.

87. A similar analysis can be made of the limitation clause in the draft covenant on civil and political rights, even though the terms employed in it are slightly different. Freedom to manifest one's religion or belief may be subject only to such limitations as are prescribed by law and as are necessary to protect public safety, order, health, morals, or the fundamental rights and freedoms of others.

88. The fact that a Government alleges that it has imposed a limitation with the sole view to satisfying "the just requirements of morality, public order, and the general welfare in a democratic society" is not a proof in itself that the limitation is legitimate. Only a comprehensive study of various instances where limitations have been imposed by public authorities upon the exercise of the right to manifest religion or belief can make it possible for us to assess, in the light of the surrounding circumstances, whether these limitations are legitimate or whether they should be considered as excessive and hence not permissible.

89. However, the analysis of limitations imposed by Governments does not exhaust all aspects of the problem of discrimination in the matter of religious rights and practices.

90. It will be recalled that article 30 of the Declaration states that:

> "Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein."

This article, introduced at the last stage of the drafting, has been conceived - as attested by statements made by its sponsors - as a limitation on the limitation clause in article 29 (2). In addition, it also constitutes a limitation in itself. It will be observed that this article contains a prohibition from engaging "in any activity" or performing "any act aimed at the destruction" - as distinct from the "limitation" - of any of the rights and freedoms, including of course freedom of thought, conscience and religion. Furthermore, the directive is applicable not only to States, but also to "any ... group or person". This provision clarifies the whole position when taken in conjunction with article 7 of the Declaration, which reads:

> "All are equall before the law and are entitled to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination."

Particularly in the field of religious rights and practices, restraints and even denials of the exercise of such rights may often be due not to direct or indirect governmental pressure, but to group pressure within a society. There is a duty cast on the State to protect the equal enjoyment of rights and freedoms by all its citizens. But the State cannot function in a vacuum. Would it always be possible for the State to extend effective protection to those threatened by social pressure? It cannot be overlooked that in many cases social pressures and social intolerance are exercised through subtle methods of exclusion from social life or other forms of social ostracism.

91. It is difficult if not impossible for the Government to exercise authority in such fields as these. In some cases social pressures are exercised by large and powerful groups and attempts to oppose them on the part of the Government might lead not only to an increase in social tensions but also to an open clash endangering peace and tranquillity.

92. It is clear that when public authorities have to make a choice between enforcing the equal enjoyment of religious rights and practices by all sections of the population and maintaining public peace and tranquillity, whatever their desire to guarantee religious freedom, they have to take into account social intolerance and other pressures. Probably in most cases some kind of compromise

solution will be sought; the Government itself might indirectly assist other forces of progress to act as a counter-check to the die-hards, and with their help make a move in favour of enforcement of these rights. However, if the pressures are of a compelling nature and a satisfactory compromise cannot be achieved, considerations of peace and tranquillity would out of necessity be given priority by public authorities. When assessing acts of omission by a government, these considerations should be borne in mind. Even here a close scrutiny is imperative in order to determine whether the argument of peace and tranquillity has been used as a pretext for perpetuating infringements of religious rights and practices. In this case more than in any other, when assessing the attitude of a State, it is necessary to take into account factors such as whether or not the attitude is only occasional or forms part of a system, as this will throw a light on whether it is consideration of peace or tranquillity or a desire to stamp out a religion or belief which weighs with the public authority. In short, it is essential to concentrate one's attention on the entire situation prevailing in a country, rather than on isolated facts.

PART TWO: EXAMINATION OF INFORMATION

NOTE: Part II has been drafted, for the most part, without specific reference to countries. The Special Rapporteur had at his disposal only tentative information concerning thirty countries; furthermore, this information is only now being submitted to Governments "for comment and supplementary data." An attempt has been made, however, to present as clearly as possible the various categories of discrimination or differential treatment meted out to individuals and groups in the field of religious rights and practices.

V. FREEDOM TO MAINTAIN OR TO CHANGE RELIGION OR BELIEF

93. It will be recollected that according to the concept of Article 18 of the Universal Declaration of Human Rights freedom to maintain or to change religion, or belief ought not to admit of any limitation. Such in fact is the situation in a large number of countries and territories, although there are some exceptions.

A. Denial of the Freedom to Maintain Religion or Belief

94. Generally freedom to maintain a religion or belief is recognized in almost all areas of the world. Instances of compulsory conversion, or of legislation specifically banning a particular religion or sect - so frequent in the past - are nowadays not very much in evidence. However, a similar result was in some cases achieved by less direct pressures, ranging from a denial of civil or other rights to members of a religious group, to measures of an economic character, such as excluding them from certain trades and professions. But such examples of direct action by public authorities have been infrequent, at least in the last few years.

95. In certain countries constitutional and other legislative enactments, while establishing no bar to maintenance of a religion or belief, view with disfavour beliefs or philosophies which are not of a religious character. This attitude sometimes stems from political considerations, since such beliefs or philosophies are considered to be dangerous to society.

96. Conversely, in other countries a preferential treatment - in fact if not in law - is meted out to adherents of a "rational" or philosophic belief. This preferential treatment may act as a positive inducement to members of religious groups to abandon those groups, and also as a bar against joining a religious group.

97. In recent times there have been examples of similar pressures being exerted by a religious group enjoying a preferential position, which are not curbed sufficiently by the public authorities. Often intolerance is shown not towards individuals professing a different religion, but to "heretical" or "schismatic" groups which have broken away from the "parent" religion. This is an apparent paradox; but, it can be explained on the ground that an offshoot of the parent religion is a more dangerous competitor to the "parent church" than any other religion. If the "heretical" or "schismatic" sect gains strength, there is a greater likelihood of its attracting followers from the parent religion. In other words, it is not so much the maintenance of a religion which is at the root of such intolerance, but rather the prospect of losing followers to what the "parent church" considers to be an "inferior faith".

98. In other cases, religious groups, (inclusive of their hierarchy and their followers), after putting up a resistance against intolerance from outside, have been compelled to yield to external pressures and to merge with another religious group. Public authorities have given official sanction to such integration, disregarding the wishes of the followers who, left to themselves, would not have been in favour of a merger. Once more the groups subjected to pressures were, historically speaking, splinter groups of the parent body with which they were again forcibly united.

B. Resistance to Change of Religion or Belief

99. From the examples cited above it is clear that freedom to change religion or belief is impaired as much as freedom to maintain it. When freedom to maintain religion or belief is disregarded, freedom to change is also disregarded. However, the reverse is not true. In a number of cases, law, custom, or social pressures result in a status quo where individuals are not supposed to change religions; the right to maintain is respected, but limitations are put upon a possible change of religion, often resulting in a total denial of the right to change religion or belief.

100. It must be realized that change of religion or belief on the part of an individual meets very often with social resistance. While most religions welcome the conversion of persons belonging to other faiths, and in some cases even

encourage such conversions, they are extremely reluctant to admit conversions of members belonging to their own faith; apostasy is viewed with disfavour and often leads to social ostracism. While this point of view is understandable, and while it will be admitted that almost every religion considers membership in it to be invested with a significance different from membership in a civil society, it must nonetheless be pointed out that the consensus of world opinion is unequivocally in favour of permitting an individual to maintain or to change his religion or belief if he wishes.

101. As already indicated, authorities are not always in a position to assure to all individuals the full enjoyment of this freedom, because pressures operate either within a closed circle, such as the family, or because the group exerting them is so powerful that the State has to take into account considerations of peace and tranquillity. In the past, when State and religion were closely associated, the attitude of the churches to this question found expression in legislation by the State, particularly in matters pertaining to membership of the dominant or the established church. Whereas conversion to this church was made easy, apostasy was often severely punished by measures such as excommunication, exile, or even death. In our day examples of such harsh treatment are no longer in evidence. However, legal prohibition against changing religion or belief probably survives, at least in an attenuated form.

102. In a number of countries matters of personal law - such as marriage, divorce, alimony, guardianship, and in a few countries, succession and the right of inheritance - are regulated not by the civil law but by the religious law of various recognized communities. Membership in such a community is therefore a condition precedent to enjoying legal rights included within the law of personal status. Quite apart from the social pressures that might be exercised by the community, a change of religion necessarily affects the status of the individual. In addition, these countries usually admit change of religion but the operation of religious personal law may have such far-reaching consequences as to result in practically barring such a change by depriving the apostate of certain benefits which are recognized exclusively in the case of members of the original church.

103. Of a different category are those countries in which a change of religion has legal effect only after formal registration by religious or State authorities. Usually this is a remnant of the practices of an established State Church, which in the past had exercised full control over its members. In our day the formality of registration is not considered to be a bar against the individual changing his religion, and generally is applied equally either to members of the State Church or to members of the recognized dissident churches. There is, however, a possibility of such a formality being employed to dissuade the individual from changing his religion.

104. Another example of at least a partial curtailment of the freedom to change religion is to be found in countries in which legal recognition is given to ante-nuptial agreements concerning the religion in which the children are to be brought up. Some religions require, as a condition for the marriage of one of their member with a non-member, the conclusion of an ante-nuptial agreement that the children will be brought up in conformity with the teaching of the religion of the member. Even if the parent who has guardianship over the child wants the child to follow a different religion, the change cannot be made until the child achieves majority. The courts in these countries have upheld the validity of such ante-nuptial agreements, thus overruling the wishes of the guardian parent.

VI. FREEDOM TO MANIFEST RELIGION OR BELIEF

105. It must be admitted that whatever the endeavours of the Special Rapporteur to acquire knowledge of every manifestation of each religion or belief in the world, and the various limitations that have been imposed on them by the different States, the task would never be complete. Nor is it necessary to have an encyclopedic knowledge of all manifestations for our purpose, which is to examine the practices of States, their approach to the problem of manifestations of religion or belief, and the limitations that they have imposed on such manifestations. It is necessary to ascertain whether such limitations are in conformity with the provisions in the limitations clauses of articles 29 and 30 of the Universal Declaration of Human Rights, or whether they go beyond these provisions and hence constitute an infringement of a right. However, there is a possibility that information concerning even such manifestations as are considered essential by a particular religion or belief may be overlooked; it must not be assumed in such a case that they have been overlooked because they are unimportant.

106. Generally, freedom to manifest religion or belief is treated in this chapter as a whole, whether it takes the form of teaching, or worship, or practice, or observance. However, one particular aspect, namely dissemination of religion or belief, has been for practical reasons singled out for specific consideration in a succeeding Chapter.

107. The problem of religious instruction has already been examined in detail in the Study of Discrimination in Education. However, the approach to this problem of the Special Rapporteur on discrimination in education was mainly from the point of view of the recipients. The approach of the Special Rapporteur on discrimination in the matter of religious rights and practices, on the other hand, ought to be from the angle of those who should have the right to impart instruction in religion or belief. In practice it was not possible for the Special Rapporteur on discrimination in education to disassociate the two aspects of the question. This study will therefore only deal with problems which were not considered in the earlier one.

108. If one considers the cases where limitations are imposed upon various manifestations of religion or belief, it would appear that they can be classified, broadly speaking, into three categories. In a few cases the need to impose

limitations appears so evident that the question of discrimination cannot possibly arise. At the other end of the scale are other cases where the limitations - or rather denials of the right to manifest religion or belief - are so serious and of such a massive character as to admit of no doubt of their being discriminatory. Between these two extremes there is a vast category of manifestations on which limitations have been imposed, the effect of which it would be impossible to assess without a consideration of the particular circumstances of each case.

A. Instances of limitations which are not discriminatory

109. There are undoubtedly instances of limitations - or even outright prohibitions of certain manifestations of a religion or belief - which will be universally pronounced to be justified. No State can permit sacrifice of human beings, self-immolation, mutilation of self or of others, even though they are manifestations of a religion or belief. The exercise of witchcraft also falls into this category.

110. Nor can any State allow subversive activities, even though religious or philosophical grounds are invoked in support. However, here a certain degree of caution has to be exercised since it is not always easy to determine whether the State acts in order to preserve the security of the country or uses a specious argument to justify repression.

111. But is has to be realized that every Government has not only the right, but also the duty, to repress a rebellion irrespective of whether or not the rebels belong to a religious group, provided the Government limits itself to the amount of force necessary to suppress such a rebellion and does not embark on a policy of persecution against the religious group as such. The general attitude of the Government in this respect can be judged only if all the circumstances of the case are taken into consideration. The real motives of the Government may be inferred from such factors as its endeavour to find a solution satisfactory both for the group concerned and for the State as a whole by way of negotiations, and its attitude toward other groups in other parts of the country, belonging to the same religion as the rebels. On the other hand, in the case of a country which has only recently acquired independence, and where the common loyalty to the State is not yet a tradition, the necessity of establishing the authority of the State is also a factor not to be overlooked.

112. Similar considerations apply to subversive acts committed by religious dignitaries or clerics. As pointed out by an American judge:

> "if such (subversive) action should be actually attempted by a cleric, neither his robe nor his pulpit would be a defence." 1/

However, in some instances it is difficult to establish whether ministers of religion have been restrained from performing their functions because they were considered to endanger the security of the State or only because they were religious personalities. Whatever might be the merits of the individual case, restrictions that are imposed should not be of such a character as to exceed the demands of national security.

113. Other problems are involved in the relationship of the individual to the State. Refusal to pay taxes on religious grounds would not be admitted. However, there are marginal cases where the practice of different states is not uniform. Here certain factors which may vary from country to country, and within the same country from time to time, have to be taken into consideration.

B. Instances of limitations which may or may not constitute discrimination according to circumstances

1. Exemption from military service on the ground of conscientious objection

114. Many countries acknowledge the right of a person to refuse to perform military service at least in time of peace, on the ground of his belief. However, in certain countries of this group, conscientious objection is admitted only for persons exercising certain functions, such as the clergy, or for members of certain specified categories of religions or sects, whereas in others, the declaration by any individual that his beliefs prevent him from undertaking military duties is accepted as sufficient.

115. In other countries, a different view of this matter is taken, and an individual is not allowed to refuse to perform military service, whatever be the grounds adduced by him.

1/ United States: Frankfurter, J., in Kedroff v. St. Nicholas Cathedral, 344 U.S. 94 (1952), p. 109 infra.

116. Still other countries take an intermediate view: while the conscientious objector is relieved from performing combat service, he is required to undertake some kind of compensatory national service. However, even this attitude on the part of the State may not solve all the difficulties, because the religious convictions of an individual may make it unacceptable for him to perform the civil duties imposed in lieu of military service.

117. In all such cases, the State has no other recourse than to follow the views prevailing in the society as a whole. Obviously, these views may fluctuate to a great extent depending not only upon the historical tradition of the country, but also upon the particular circumstances prevailing at the time. In a weak or small State engaged in a battle for survival, society would probably be disinclined to recognize the rights of conscientious objectors and would impose penalties on those who fail to submit to military duty.

2. Compulsory participation in religious and civic ceremonies

118. A similar problem arises in connexion with compulsory participation in certain ceremonies sponsored by the State of a religious or even purely civic character. School children, soldiers, inmates of penal institutions and patients in hospitals are sometimes required to attend ceremonies of a religion to which they do not belong, or to salute a symbol of the State such as its flag. There is no doubt that the persons concerned often consider that duties imposed upon them are contrary to their religious or other convictions. However, when they refuse to obey orders, they are penalized. Whatever our desire to respect the convictions of the persons concerned, it is impossible to decide in the abstract whether the attitude of the public authorities in such cases is justified or not. Even within the same country, courts of law - and sometimes the same court within a few years - have adopted a different approach to the question of compulsory salute of a flag. Thus, in 1940 the Supreme Court of the United States of America in eight-to-one decision delivered by Justice Frankfurter, J., stated:

> "Conscientious scruples have not, in the course of the long struggle for religious toleration, relieved the individual from obedience to a general law not aimed at the promotion or restriction of religious beliefs." 1/

1/ United States, Supreme Court, No. 690, October Term 1939, decided 3 June 1940.

A few years later, Justice Jackson, speaking on behalf of the majority of the same court, stated as follows:1/

> "We think the action of the local authorities in compelling the flag salute and pledge transcends constitutional limitations on their powers and invades the sphere of intellect and spirit which it is the purpose of the First Amendment to our Constitution to reserve from all official control ...
>
> "To sustain the compulsory flag salute we are required to say that a Bill of Rights which guards the individual's right to speak his own mind left it open to public authorities to compel him to utter what is not in his mind ...
>
> "If there is any fixed star in our Constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein."

Here again, particular circumstances such as a state of war or the need to consolidate the common allegiance to a new State may be factors influencing the attitude both of the authorities and of the courts.

3. Imposition of oath

119. In the case where the law prescribes that an oath should be taken by an individual, the law generally permits those who object on religious grounds to make a binding solemn declaration. However, examples are to be found where the substitution of a solemn declaration for an oath is not permitted for persons having no religious beliefs. Conversely, a State may impose upon clergymen an oath of allegiance to it. This may result in a conflict for the persons affected, when their religious belief does not allow them to take such an oath. (This case is of course totally different from that of a clergyman engaging in subversive activities.) Normally the religious convictions of the individual should be respected in this matter. However, in certain cases, it would be difficult for the Government to disregard the existence of a long-standing tradition or the attitude of the population as a whole.

1/ United States of America: (Board of Education v. Barnette), 319 U.S. 624, 642 (1943).

4. Observance of religious holidays and days of rest

120. A difficult problem in a multi-religious society arises in connexion with the observance of religious holidays and festivals. One of the most common fields in which public authority gives effect to the practices of a dominant religion is in the designation of days of rest and holidays. This is the position even in the case of many countries where there is an official separation of State from religion. In some instances, to be sure, special provision is made for those who observe a weekly day of rest different from the one observed by the majority. However, in most cases there either is no option, or the law allows the option of observing in addition or instead, the day of rest of the person concerned. A similar situation exists with regard to other religious holidays. Public convenience probably requires at least a certain degree of uniformity and this would not appear to be discriminatory as long as the needs of the minority are taken into account as far as practicable, subject to the overriding consideration of the interest of society as a whole. The economic consideration - that of promoting the productivity of the society as quickly as possible - may in certain States dictate a reduction in the number of holidays granted to religious groups, including those of the majority group.

5. Observance of particular practices prescribed by religion

121. Dietetic practices prescribed by religious law generally do not give rise to difficulties, as these are mainly in private. However, certain questions arise when such practices are prevented because the individual is part of a mixed group, as in the army or in an educational, medical or penitentiary establishment. In certain cases, when the number is significant, it may be possible to meet the demands of the religion; in other cases this might not be practicable.

122. Another aspect of the same problem arises in connexion with the slaughtering of animals according to the Jewish rite (shehitah). In certain countries the law regulates slaughtering in such a way that this rite cannot be practised. The law itself is phrased in general terms, but this does not mean that it is not discriminatory in practice. It may be so considered by the group affected. It is therefore necessary to study the application of the law in order to assess its impact. In the few cases where "shehitah" is still prohibited, practical arrangements have usually been made in order to mitigate the effects of this prohibition.

123. The wearing of religious dress or display of religious symbols, in particular by clergymen outside places of worship, has sometimes been prohibited or curtailed. Such measures may in some instances constitute an infringement of a religious right; but in certain cases the Government may be motivated by a desire to protect the clergy against mob hostility which might be great in a period of acute social tension or to prevent exploitation by persons wearing religious attire. From the act of prohibition alone one cannot infer an infringement of a religious right; the surrounding circumstances and the policy of the Government in curbing social tensions have all to be taken into account before an evaluation can be made.

124. Some difficulties arise in connexion with healing by faith and refusal on religious grounds to submit to vaccination or innoculation. What should be the attitude of the public authority? Obviously it has to reconcile respect for religious scruples with the interests of society as a totality. Thus parents, by virtue of the responsibility that they have for the maintenance and upbringing of their children, sometimes affirm that it is for them to decide whether or not the child should be healed by faith or protected against disease by vaccination or innoculation. In such cases the State has to face a difficult choice, and it usually solves the difficulty by affirming its interest in the welfare of children, even to the point of overriding the wishes of the parents.

6. Form of Marriage and its dissolution

125. A number of countries only recognize marriage according to civil law; others give equal recognition to marriage according to religious rites; those in a third group permit only marriage according to religious rites.

126. In countries where only marriage according to civil law is recognized, there would appear to be equal treatment for members of all religions or beliefs. However, if this implies prohibition of subsequent celebration of marriage according to religious rites, it would be considered to be discriminatory by religious groups.

127. In certain countries the law prescribes that civil marriage should precede religious rites. A religious marriage performed in disregard of this provision is nul and void and the law penalizes clergymen who perform such a marriage. Such a measure is not discriminatory, since it is of general application and is not directed against any religion or belief, or any group practising a religion or belief.

128. In other countries, where marriage according to religious rites is permissible, along with marriage according to civil law, there can be no discrimination if the right to perform the necessary religious rites is granted to all religious groups. But it sometimes happens that marriage according to religious rites is conceded only to members of recognized religions. This generally affects only small groups of people; furthermore, marriage according to civil law is permissible for all, and may be followed by a religious ceremony.

129. The question acquires a quite different significance in a country where it is necessary for persons belonging to the dominant church to go through a religious ceremony, and where the Church alone has the right to determine who belongs to it. A legal marriage then becomes impossible for persons who have broken away from the dominant Church, unless they agree to a ceremony not in conformity with their belief.

130. In one country where both types of marriage are permissible, one particular group practices a form of marriage which is not in conformity with legislative provisions regulating religious marriages in general. Members of this group, on the other hand, refuse to perform marriages according to the civil law because it is an article of faith with them not to conform to such regulations. The result is that marriages within this group do not have legal validity.

131. In some countries where only marriage according to ecclesiastical law is recognized, the right to perform marriage ceremonies is granted only to religious authorities of the recognized communities. Religious authorities apply the law of their religion. The consequence is that persons outside those recognized communities may be deprived of the possibility of contracting a valid marriage. In some instances, the religious law of a particular community may prohibit the marriage of a member of the community with a person outside this religion; if furthermore the religious law prohibits change of religion, marriage becomes impossible.

132. In considerable areas of the world monogamy is the accepted practice, and polygamy is not only prohibited but punished as a criminal offense. This affects of course persons who belong to religions or beliefs admitting polygamy or even prescribing it as a duty. It would be difficult, however, to argue that such a prohibition constitutes a discriminatory practice; the family being a social

institution, a ban on polygamy can be justified on considerations of morality, public order, and general welfare even though such considerations are determined by the religion of the majority of the population.

133. In other areas polygamy, while admitted in the case of certain groups, is prohibited for others. When this results from recognition of the religious law of each group in the matter, it is only an acknowledgement of the mores of different heterogeneous groups. However, in certain cases legislation overrides religious law in the case of certain groups by prohibiting polygamy for members of these groups. But other groups in the same country are allowed to practice polygamy. The validity of such enactments was tested recently in the courts of two countries.

134. In India, the High Court of Madras said:1/

> "Marriage is a social institution - an institution in which the State is vitally interested. If therefore the State of Madras compels Hindus to be monogamous, it is a measure of social reform, and the State is empowered to legislate with regard to social reform under article 25 (2) (b) notwithstanding the fact that it may interfere with the right of a citizen freely to profess, practice and propagate religion".

The Court therefore stated that legislation prohibiting polygamy among adherents of the Hindu religion was not directed against the religion of the Hindus but against

> "Those who preserved and followed a certain personal law, peculiar to themselves, as derived from the Scriptures. It was this personal law that was thought to be affected by the Madras Act (Bigamy Prevention and Divorce Act, 1949), to the extent of modifying and abrogating the rule that a Hindu is entitled to marry more than one wife".

The Supreme Court of Israel, adjudicating on a similar problem stated:2/

> "... When you have a heterogeneous, culturally mixed population ... it is quite easy to imagine that a particular law is necessary for the preservation of order in one only of the several sectors of population found in the country... Not all setting apart is discrimination, and at times there is no more than distinction; that is to say, when there

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1/ India: (Srinivasa Aiyar vs. Saraswathi Ammal), AIR, 1952, Madras 193.

2/ Israel: (Yosipol vs. Attorney-General), Pisker Din (Official Law Reports), vol. 5 (1951), p. 481. As summarized in the Yearbook on Human Rights (1951), p. 188.

> exists a real difference between the objects of the discrimination, from whatever aspect, and the setting apart is not arbitrary. What underlies the prohibition on discrimination is: not to restrict a man only because of his racial or religious association. There is no discrimination if the elements emphasized do not exist... The polygamist is not punished because he is a Jew, but he is prevented, by specific provisions of the law and by punishment, from performing an act for the reason that the body with which he is associated - the Jewish community - has found that polygamy is not compatible with its conceptions of social discipline and culture, and cannot therefore allow the sanction formerly given to polygamy to continue to exist...".

Thus it was held in both countries that differential treatment did not involve discrimination.

135. Similar problems arise in connexion with the dissolution of marriage. Some countries prohibit divorce altogether irrespective of whether or not a particular religion or belief permits it; in other countries the civil law allows divorce and here members of a religious group which does not recognize divorce may feel aggrieved. Furthermore, according to the law regulating divorce it may be granted on grounds which the religious law forbids; conversely the civil law may not permit divorce on certain grounds considered valid by a particular religious law. Whatever the situation, and even if the civil law takes over prescriptions from the religious law of the dominant group, it would not be proper to consider the result a hardship. The reason is the same as in the case of polygamy: the family is a social institution and the State is entitled to regulate marriage and divorce in conformity with the views entertained by society.

7. Arrangements for Disposal of the Dead

136. In certain countries, as regards the disposal of the dead, all burial grounds are under the control of civil authorities. If they disregard the religious practices of a group, without justification on grounds such as public order, decorum, and so forth, it may constitute an infringement of a right. On the other hand, where the administration of burial grounds is under the control of the dominant Church, and minorities are prevented from burying their dead, either in these grounds or in other appropriate places, there is undoubtedly discrimination.

137. In certain countries the clergy of the dominant Church have the right to decide which persons are to be buried in accordance with the rites of the Church.

When taking this decision, they sometimes disregard the express will of the deceased or of his next of kin. Those who have broken away from the dominant religion may wish to be buried either according to the rites of their adopted church, or without any rites. Where nevertheless a clergyman insists on performing the rites of the dominant Church, there is discrimination of a particularly severe type.

138. Closely allied with the question of disposal of the dead is the taking out of funeral processions, on which in some countries severe limitations are placed, not only with respect to the number that should constitute a procession but also with regard to the time of the day during which such processions should take place. Where such regulations are applicable to the members of a particular faith, and are part of the normal policy of the State, it is apparent that discrimination is practiced. However, the matter will be dealt with at length in the paragraphs below pertaining to the holding of religious processions.

8. Public Worship

139. In a number of countries complaints have been made regarding denials of the right of public worship. This must be distinguished from prohibition of public worship of a particular group or groups. Here each complaint must be considered on its merits. Authorities may refuse permits to build a place of worship or to hold a service, on such legitimate grounds as sanitation, fire hazards, or the need to prevent a clash between two groups. In the last case, the intent may be inferred from the terms of the law, as to whether it applies impartially to the various religious groups. This is of particular importance in judging, for instance, the prohibition of the construction of a new place of worship within a certain perimeter of an existing one.

140. Similar considerations apply to regulations relating to matters such as the ringing of bells, playing of music, and loud chanting of hymns or prayers. These instances of limitations may be an infringement of a right, but they may have been imposed with no other view except to respect the rights of others, or meeting the just requirements of morality, public order, and the general welfare.

9. Religious Processions

141. A particular difficulty arises in many countries in connexion with religious processions. Apart from countries which prohibit them altogether, for all religious or other groups, there are countries where a distinction is made between the "traditional" and other religious processions. While no permission need be obtained for the former, the latter can take place only after a special permit has been granted. The permit may be refused, or granted subject to the observance of certain conditions prescribed by the issuing authorities. The distinction may often, at least apparently, involve a differential treatment amongst various religious groups; "traditional" processions are normally taken out by long-established groups, while non-traditional processions are usually organized by new groups. However, these cases should be examined with great care in order to decide whether or not there is discrimination. In many cases non-traditional processions are likely to provoke clashes with rival groups (which are often the long-established or dominant groups), whereas "traditional" processions - familiar to the population as a whole do not provoke clashes. In addition, non-traditional processions often serve the purpose of propagating a new religious belief, which may in certain circumstances involve the risk of a disturbance of peace and order.

142. A special case is presented by limitations upon burial processions of dissident religious groups or of non-believers. Sometimes there is an outright prohibition against using certain thoroughfares. In other cases processions may be taken out only at certain hours - either early in the morning or late at night. Usually this constitutes a discrimination. However, it is not inconceivable that special circumstances, such as a state of social strife and tension, may justify such limitations in specific circumstances.

C. Instances of Systematic Limitations of Freedom to Manifest Religion or Belief

143. A distinction must be made between limitations either of a circumscribed or temporary character, and continuous limitations which are imposed as a matter of social policy. The latter may involve a partial destruction of the freedom to manifest religion or belief, and of other rights and freedoms, contrary to the terms of article 30 of the Universal Declaration of Human Rights. There are a few instances of this nature which may be mentioned.

144. Thus the constitution of one country contains an express prohibition of all public manifestations of all religions other than the State religion, and admits for dissident religions only the right to worship, or otherwise to manifest religion, "in private". This Constitution is supplemented by a series of legislative and administrative measures of a permanent and systematic character, making it difficult if not altogether impossible to open houses of worship. Even when permission is granted, it is under specified conditions as to their location (inner courtyards or blind alleys, or up a flight of stairs), absence of external religious signs or inscriptions, a ban on religious processions at least at certain hours and in certain locations, and a ban on the distribution of religious literature even to co-religionists.

145. In another country there is no constitutional provision of the kind referred to above, but the interpretation of the laws, and the entire administrative practice, leads to the non-recognition of a religious group and the prohibition of religious worship and other manifestations, even in private, such as the performance of marriages, and the burial of the dead in accordance with the prescription of the group's religion. Furthermore, public authorities do not always take the necessary measures to protect the members of the group against mob violence and propaganda of hatred.

146. In a third case the State systematically abstains from guiding and supervising local authorities in the matter of protection of the personal safety of members of a minority group in the manifestation of religious beliefs, although the law admits the legality of such manifestations.

147. It is sometimes contended that a systematic policy pursued by a State, based on "rational" or philosophic beliefs, which curtails - if not in law at least in fact - rights of all religious groups, amounts to a discrimination against all believers. However, it may be argued that such an attitude, which affects not a minority or several minorities but the population as a whole, does not raise a problem of discrimination but the broader question of the enjoyment by all of human rights and fundamental freedoms.

Conclusion

148. Between the two extremes - of limitations on manifestation which are justifiable and those which are not justifiable - there is a large domain. The

justifiability of limitations imposed cannot be determined without a comprehensive knowledge of the particular circumstances in each case. The difficulty of determining the limits of the exercise of the right of manifest religion or belief may be illustrated by the fact that in a country which admits exemption of conscientious objectors from the performance of military duty even during a period of war, it was held[1/] that the endeavours of a religious sect to propagate anti-war doctrines in such a period exceeded the permissible limits. The amount of liberty under any given system of Government may differ not only from country to country, but also from time to time.

> "The words as well as the acts, which tend to endanger society, differ from time to time in proportion as society is stable or insecure in fact, or is believed by its reasonable members to be open to assault. In the present day, meetings or processions are held lawful which 150 years ago would have been deemed seditious and this is not because the law is weaker or has changed, but because the times having changed, society is stronger than before. In the present day, reasonable men do not apprehend the dissolution or the downfall of society because religion is publicly assailed by methods not scandalous". 2/

1/ Australia: (Adelaide vs. Commonwealth), 1943, 67 CIR 116, pp. 115-160.

2/ United Kingdom: Lord Sumner, in Bowman vs Secular Society, 1917, Appeal.

VII. DISSEMINATION OF RELIGION OR BELIEF

149. There is no doubt that dissemination or propagation is part and parcel of the right to manifest a religion or belief. True, some religions do not consider dissemination or propagation of their beliefs to be basic. However, others do consider it a fundamental part of their being and in such cases it must be accepted as an essential part of religious manifestation. Even if one considers the right to disseminate or to propagate as not included under article 18, it is clear that article 19[1/] assures the right to impart information and ideas through any media and regardless of frontiers.

150. The reason for dealing with dissemination of religion or belief in a separate chapter is essentially a practical one. Dissemination of a religion or a belief involves, to a greater degree than in any other field, problems of adjustment both from the point of view of the State and from that of the religion or belief.

151. In the first place it must not be forgotten that dissemination of a religion or belief, usually occurs only at the expense of another religious group and the conversion of its members. Whatever has already been said with regard to the opposition of existing religions to change of belief on the part of their members applies, therefore, with even greater force to the problem of dissemination. Propagation of religions or beliefs may lead to clashes between different religions, thus raising the question of how to assure peace and tranquillity within the country.

152. Even where dissemination is not crowned with success in the sense that converts are not won over, it may nevertheless instill doubts in the minds of the followers of the existing religion, thus undermining social stability.

153. Cultural factors also play a part in determining the attitude of the State and Society towards dissemination. When a new religion introduced from outside,

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1/ Article 19 of the Declaration reads:

"Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers."

disseminates its faith, it usually represents a fresh cultural pattern which may clash with traditional patterns; furthermore, in certain cases this may affect the bonds of social unity.

154. Quite apart from the general problems raised by dissemination, some special problems result from the manner in which dissemination occurs.

155. In certain cases propagation of a belief is advanced by means of collecting, organizing or forming processions on public thoroughfares. Here, if public authorities resort to measures to regulate such gatherings or processions - or even to prohibit them - because they interfere with the normal use of the highway by other citizens, or because there is a probability of their provoking a clash with members of a rival faith, it cannot be termed an illegitimate exercise of power.

156. In other cases dissemination of a faith takes the form of distributing or peddling books or pamphlets, either in the streets or from house to house. Such activities have sometimes been prohibited outright, or permitted subject only to a licence involving in some cases the payment of a fee.

157. Here, whether or not the limitation is legitimate cannot be judged on a priori grounds; account has to be taken of the circumstances of each case. The factors that would weigh in an assessment of such a limitation would be assurance of freedom to disseminate, the inconveniences suffered by society as a whole or by individual citizens, and the probable maintenance of peace.

158. A similar question arises in connexion with the manner in which a belief or religion is presented. Sometimes it is alleged that the contents of a propagated message are offensive to other religions or beliefs. It is to protect against such propagation that laws against blasphemy have been enacted in some countries. However, the law against blasphemy may be framed or administered in such a manner that any pronouncement not in conformity with the teachings of the dominant religion may be considered to be blasphemous, and thus open to penalty. Sometimes censorship of books, pamphlets, newspapers - as well as control of such media of mass communication as films, radio, television and the like - may be used to limit or prohibit altogether dissemination of certain, or even all beliefs other than those of the dominant religion or philosophy.

159. We are not concerned here with the broader aspects of censorship - freedom of information and of the press. But the use made of censorship in certain countries, either by State authorities or by those of the dominant religion or philosophy, cannot be ignored. If restrictive measures are taken with the sole, or main, intention of stifling the expression of dissident religious or philosophical opinions, or of a particular opinion, there is discrimination. If, however, these measures are undertaken with a view to meeting "the just requirements of morality, public order, and general welfare," the situation would be different. But the distinction between legitimate and undue restrictions is often a fine one, because "morality" in some cases is nothing else but the teaching of the dominant religion or philosophy.

160. As will be seen, the problems raised by dissemination of religion or belief are fundamentally the same as those which came up for examination in connexion with freedom to manifest religion or belief. But in view of the peculiar nature of dissemination, these issues present a sharpness not often found in other manifestations of religion or belief. Therefore an assessment of whether a limitation is legitimate or discriminatory is even more difficult to make and can be made only with a knowledge of the general background of the special circumstances of each case.

161. Some recent constitutions recognize freedom of religious worship and freedom of anti-religious propaganda for all citizens. To the extent that such provisions place religion and absence of religion on an equal footing, it cannot be said that there is discrimination against religion. It has been alleged, with regard to such constitutional texts, that they imply preferential treatment of anti-religious groups, because to them the right to conduct propaganda is granted while the activities of persons and groups professing a religion are restricted to worship. It has been argued, on the other hand, that the interpretation and application of these provisions gives scope to churches and religions to disseminate their faiths and the provisions therefore are not, in fact, discriminatory.

162. A particular problem may arise when people consider educational activities, such as the maintenance of orphanages or schools by missionaries, to be a form of propagation; here, they feel the freedom to propagate has to be weighed against the freedom to maintain religion or belief, as propagation operates mainly amongst

children - a particularly impressionable group. It is often argued that children have to be protected against possible conversions which would not be entirely free. This argument has been invoked in several countries, if not for an outright ban on educational institutions run by missionaries, at least for a limitation upon their educational work such as a prohibition against their imparting religious education to children who do not belong to their faith. Such a limitation is normally considered to be a legitimate one, as long as it does not override the prior right of parents to request such education for their children. However, in fairness to missionaries, it should be pointed out that they have achieved remarkable results in many parts of the world where children would not otherwise have been educated.

163. Similar arguments have been adduced against certain humanitarian aspects of missionary work, such as the running of hospitals, dispensaries, or workshops, or distribution of food or clothing. It has sometimes been argued that advantages procured through educational or humanitarian work constitute a material inducement to people to change their religion or beliefs. While it may be true that the material advantages in certain isolated cases have amounted to outright bribes to induce members of the less fortunately-placed sections of society to change their faith, it would certainly be improper to generalize from a few instances.

164. That fears of undue influence being exercised by missionaries are sometimes exaggerated may be seen from the experience of several countries. To cite a single example, the so-called Niyogi Committee, constituted in India to enquire into the activities of Christian missionaries, reported that undesirable pressure was being exerted by missionaries in certain parts of India. Even if the instances mentioned in the Committee's report had been substantiated, they would not have justified the Committee in arriving at the conclusion that foreign missionaries pursued activities of an undesirable character. However, it has been found that the examples of unfair conversion given by this Committee were not proved. The Committee's analysis of missionary activities and its recommendations provoked outspoken criticisms not only from members of the Christian faith but from members of other faiths as well. The general consensus of opinion in India has been, and is, opposed to drawing up a bill of indictment against missionaries, and it was therefore not surprising to find responsible men belonging to different political schools of thought criticizing the Niyogi Committee not only for erring in its presentation of facts, but also for

overstepping the bounds of propriety and national interest in attempting to reverse the general trend in favour of a broad-based freedom.

165. It must be recognized, however, that even isolated cases of undue pressure or influence being exercised may create great excitement in the public mind. This was indicated in a speech by Mr. Nehru, Prime Minister of India, during a debate that took place in Parliament on 2 December 1955, on a bill to regulate and register converts, in which he said in part:

> "I fear this bill...will not help very much in suppressing the evil methods, but might very well be the cause of great harassment to a large number of people. Also, we have to take into consideration that, however carefully you define these matters, you cannot find really proper phraseology for them. Some members of this House may remember that this very question, in its various aspects, was considered in the Constituent Assembly, /and/ before the Constituent Assembly formally met, by various Sub-Committees... Ultimately, Sardar Patel got up and said, 'Let there be no heat about this matter - because there was heat - it is obvious that three Committees have considered this matter and have not arrived at any conclusion which is generally accepted. After that, they came to the conclusion that it is better not to have any such thing because they could not find a really adequate formula which could not be abused later on.'."

The Prime Minister indicated, however, that he was not in favour of special measures restricting missionary activities:

> "The major evils of coercion and deception can be dealt with under the general law. It may be difficult to obtain proof but so is it difficult to obtain proof in the case of many other offences, but to suggest that there should be a licensing system for propagating a faith is not proper. It would lead in its wake to the police having too large a power of interference.".

166. In the same speech, which was an affirmation of public policy, Mr. Nehru pointed out that a faith which had been established for nearly two thousand years in India - Christianity - had a right to enjoy a position of equality with other faiths. The legislature of India, accepting Mr. Nehru's advice, rejected the bill. It had the support of only one Member, the rest of the House being opposed to its adoption.

167. The above considerations apply, of course, to all missionary work. They may acquire, however, a special meaning when missionaries come from abroad. In this case they may be influenced by two sets of political conditions: those of their native land and those of the country where they perform their duties. In some

instances the history of the relationship between the two countries may affect the attitude of the receiving country and its society towards the missionary. A missionary may be motivated by the best of intentions; nonetheless he can be a victim of past grievances accumulated during the colonial period when missionaries were often the forerunners of the colonizers.

168. The State cannot, of course, entirely disregard the feelings of the local population. Even in colonial days the administering power had to take account of the local climate of opinion and frequently had to curtail the work of missionaries coming from abroad either in the colony as a whole or in certain regions. Thus the Government of the United Kingdom in a memorandum submitted on 1 October 1957 on the subject of "Religious Discrimination in British Non-Self-Governing Territories" stated that:

> "...Generally speaking, immigrant missionaries are treated in the same way as other immigrants under the Immigration Law. In the early years of this century, however, there was some friction both in Northern Nigeria and in the Sudan between the British authorities and the various Christian Missionary Societies. The Christian missionaries claimed that as these lands were now under effective British rule, they should be free to travel there and to preach Christianity to any of the people who wished to listen. The Government, on the other hand, took the line that since Northern Nigeria and the Sudan were Islamic countries and the indigenous rulers were unwilling to permit Christian preaching, it would be wrong for them to permit Christian missionary work until public opinion should change. This applies also to the Somaliland Protectorate.".

However, the Government of the United Kingdom points out that a similar attitude was shown in the same territories to education sponsored by the Government; the opposition was directed more against Western influence than against Christian influence as such.

169. Of course, the attitude towards missionaries will be determined not only in the light of their own conduct, but also in the light of the conduct of the country to which they belong. Exceptional measures curtailing or even prohibiting missionary activity in the country as a whole, or in certain regions such as frontier areas, would be considered as justified in periods of acute international tension. This would not be evidence of a specific hostility towards missionary work but of a general attitude towards foreigners or towards citizens of the particular foreign country.

170. In this connexion, it may be pointed out that in a European country with a well-established democratic tradition the Constitution prohibits all participation of the members of a certain religious order and of affiliated societies, either in church or school. This Constitution further permits extension of this prohibition by law to "other religious orders whose action is dangerous to the State or tends to destroy the peace between the various confessions."

171. In certain countries where missionary work is to be conducted among indigenous populations, the Government grants preferential treatment and sometimes even an outright monopoly to missionaries belonging to the religion of the State or to a religion recognized by the Constitution. It is stated, in support of such a policy, that it helps to develop national unity based on historic tradition. However, there is no doubt that such a policy represents a particularly clear example of differential treatment.

VIII. MANAGEMENT OF RELIGIOUS AFFAIRS

A. Collective Aspect of the Right to Manifest Religion or Belief

172. When discussing the scope of freedom to manifest religion or belief, it was indicated that this freedom was proclaimed in the Universal Declaration of Human Rights both as a collective and as an individual right. The expression "either alone or in community with others," in article 18, emphasizes the collective aspect of this right. The question arises as to whether the words "in community with others" imply only the right to congregate from time to time for the purposes of teaching, practice, worship and observance, or whether they also imply the right to organize on a permanent basis for these purposes. In other words, do these words imply only freedom of assembly or also freedom of association?

173. This question may appear superfluous in the light of article 20 of the Declaration, which reads:

> "(1) Everyone has the right to freedom of peaceful assembly and association.
>
> "(2) No one may be compelled to belong to an association."

It may be argued that in view of the generality of the terms of article 20, the right proclaimed by it applies to the right to manifest religion or belief. However, history and contemporary practice show a remarkable difference in the attitude of public authorities to freedom of assembly and association in the religious field and to the same freedom in other fields. In other fields freedom to associate has been more readily conceded than freedom to assemble. In the religious field, on the contrary, freedom to associate has been often denied or severely curtailed, whereas freedom to assemble has been recognized first at least for the dominant religion, and later for a number of recognized - or even all - religions.

174. Therefore, the question whether or not the right of association for religious purposes is included in article 18 of the Universal Declaration of Human Rights is not devoid of interest.

175. The travaux préparatoires which led eventually to the adoption of the present text of the article throw some light. In an intervention before the working group on the Declaration of Human Rights set up by the second session of the Commission on Human Rights, the representative of the Commission of the Churches on International Affairs indicated that religious freedom has five aspects: (1) freedom of worship; (2) freedom of observance; (3) freedom of teaching; (4) freedom of association; (5) freedom of practice (E/CN.4/AC.2/SR.6, p. 9). Article 18 mentions teaching, practice, worship and observance. But freedom of association has not been incorporated in this article in its initial form. The expression "in community with others" however, appears to cover this idea.

176. Nonetheless, in the field of religion, freedom of association often acquires a particular significance. Viewed from the angle of the religions themselves, their internal organization and administration are to a large extent questions of dogma, since they involve matters of faith, doctrine and ritual. If we take the case of an oecumenical Church having a supra-national organization, it would hardly be correct to speak of freedom of association in the normal sense for the national branches of the Church. Here matters of faith, doctrine and ritual are determined by the supra-national organs of the oecumenical Church. The right to determine membership and leadership is usually also within the competence of the supra-national organs. It is true that the supra-national church may enter into a more or less formal agreement with a State and allow to a certain extent participation of the latter in matters of administration such as the appointment of the local clergy, including the local hierarchy, the use of buildings for religious purposes, and the support of the church from State funds. Incidentally, this is usually the price paid by the Church for recognition as official religion of the State; but this may occur even without such a recognition. Whatever be the case, it is clear that such arrangements do not promote freedom of association in the normal sense. At best they imply a grant by the State of juridical personality to certain church organs or bodies for various purposes (acquisition and management of property, operation of schools and other institutions, etc.).

177. But freedom of association for religious purposes has also to be viewed from the angle of the State. In the first place, the right of a religious group to organize may often have a bearing on the right of the individual to freedom of thought, conscience and religion. To take but one exaple, religions often deny the right of the individual to leave the faith in which he is born, or at best, view apostasy with disfavour. Consequently, if a religious group assumes the right to determine its membership, the right of the individual to maintain or to change his religion or belief can be impaired. In other words, there may be a conflict between the right of a religion to organize and the right of the individual to follow the dictates of his conscience. In such a situation, the State cannot remain indifferent and has to make a choice. If the State follows article 18 of the Universal Declaration and affirms the right of an individual to maintain or change his religion or belief, it will necessarily have to limit the right of the group to determine its membership, even though this may curtail the right to freedom of association.

178. But the freedom to organize has also a bearing on the rights and interests of society as a whole, of which the State is the guardian. In this respect, it must be realized that religions and beliefs have a great impact on their followers, who are also citizens of various States. The days when the Church competed with the State for secular power are past, at least in many countries. Nevertheless, in certain countries, the competition for power takes new forms, such as the formation of denominational parties, with more or less overt support from the Church. This may in certain circumstances tend to undermine the foundations of a State, or may lead to a clash between rival parties supported by rival churches. In either case, the State cannot remain aloof. It is for these reasons that the State does not recognize complete freedom for religions or beliefs to organize, and regulates, to a certain extent, the relationship between religions and Government. The solutions adopted vary greatly from country to country, and within a country from time to time, but they always affect and limit, to a lesser or greater degree, freedom of association for religious purposes, as well as the right of religious groups to organize, and their internal administration.

B. Freedom of Association for Religious Purposes

179. In a country where there is an established State Church, there is as little freedom of association for members of this church as for those of an oecumenical church. Relationships between such a State and the Church are so intimate that political organs of the State have the competence to decide not only matters of church administration but also questions pertaining to faith, doctrine and ritual. In short, church organization is part of State organization. (Conversely, it is not unusual for the established Church to participate in the political life of the country as when Church dignitaries are ex officio members of political bodies). It is true that today the State often grants a large measure of autonomy to church bodies, at least on the lower and local levels, such as parishes, and that sometimes even members of the hierarchy are appointed by the State, either upon the recommendation or upon representations made by church assemblies. The established Church is also dependent in many cases upon the State in financial matters; it is either supported from the general budget or the State levies special taxes for its upkeep.

180. Under present conditions, the existence of an established Church does not necessarily imply discrimination against other religious groups. The State may grant recognition to other churches or religions, which are specifically designated by name or which satisfy certain general requirements established by law. Even financial privileges of the established Church are often balanced by similar advantages given to other churches. In fact, in some cases members of the established Church find themselves at a disadvantage as compared with members of other churches, because the latter are not subject to intervention by the State in matters of faith, doctrine and ritual; they may also possess a greater degree of autonomy in internal administration, including the determination of membership and leadership. But even for recognized dissident churches or religions there is no freedom of association in the normal sense, because the law determines, either for each separate church or religion, or for all of them, the nature of the relationship with the State, as well as the measure of autonomy in matters of internal organization. These conditions are not the same as granted for associations organized for other purposes. If on the other hand,

in a State where there are recognized churches, the existence of non-recognized churches is also admitted, these non-recognized churches are in a similar position in relation to the State as that of religious groups in general in countries applying the principle of separation of State and religion.

181. A similar situation prevails in countries where religious groups are organized into communities or "millets". Here again it would be improper to speak of freedom of association, not only because such freedom does not exist for groups not recognized as communities, but also because the organization of each recognized community is determined by an act of concession on the part of public authorities; any change in their constitution is valid only if recognized or approved by the State.

182. It appears that freedom to associate for religious purposes is to be found in its full and undiminished form only in countries which apply the principle of separation of State and religion. Here, at least theoretically, all religions and beliefs are treated on the same footing. This does not however necessarily mean the recognition by the State of freedom of association in the normal sense, nor freedom of internal administration. Nor does it mean that there is no discrimination, in fact, as between the various groups. Equality may well be more apparent than real because various religious groups do not require either the same degree of autonomy, or autonomy in the same fields. Although the law is general in its terms and of general applicability, it will often be considered as discriminatory by a particular religious group because it does not meet, or meets only partially, its particular needs.

183. To take only a few examples: the State may prescribe a certain form of religious organization, based on the democratic principle, whereby all members of the religious group have an equal voice in the internal management of religious affairs, such as the selection of their leaders. As already indicated, this law would be unacceptable for a religious group whose ecclesiastical principles prescribe a hierarchical organization and submission to a supra-national authority. The apparent paradox in this case is that the enforcement of freedom of association might itself be a discrimination.

184. Another example of the same kind would be where the law prescribes a minimum membership to form a religious association, but according to the religion, a smaller number of members is required: the group in question may be handicapped and hence feel discriminated against.

185. The same applies to the scope of permitted activities. If the right to organize is solely for the purpose of holding religious services, this may be perfectly acceptable to a group whose religious tenets lay main stress on formal worship. It would, however, be considered a severe limitation, if not an outright discrimination, by those groups for whom propagation of their faith, social, cultural or humanitarian activities, or the distribution of alms are essential parts of their teaching.

186. Similarly, a limitation on the right to correspond with co-religionists abroad may be without much significance, or present only a serious inconvenience to certain groups. This can be, however, resented as a grievous discrimination by a group belonging to an oecumenical Church whose spiritual head or directing organ is located outside the country.

187. It will be seen therefore that the question as to whether or not there is discrimination in matters concerning internal administration cannot be decided without taking into account the particular objectives of a religion. But this is of course only one side of the picture.

188. The other side is presented by the "limitation clause" of article 29 (2) of the Universal Declaration of Human Rights. There is no doubt that this clause applies to internal administration as well as to other aspects of freedom to manifest religion or belief. All that has been said with regard to the application of the limitation clause in article 29 (2) applies mutatis mutandis.[1/]

1/ For example, the Constitution of Switzerland subjects to State approval the establishment of bishoprics and prohibits the establishment of new, or the restoration of disestablished monasteries or orders. These limitations and prohibitions were included in the Constitution during a period when political considerations warranted them. Today, according to Pax Romana, these provisions have fallen to a large extent into desuetude and are at present subject to a slow procedure of abrogation.

189. While discussing the application of the limitation clause of article 29 (2) to the matter of internal administration, attention should be drawn to one aspect of this question. Reference was made above to the struggle between Church and State in the past. A considerable role in this struggle was played by factors of an economic and financial character. The influence of a church was often due to a large extent to the wealth it had accumulated in the form both of movable and immovable property. Furthermore, under a feudal regime, immovable property was in itself a source of political power.

190. At different times, States have reacted to this situation by expropriating church property. The establishment of a State church has in many cases been one way of achieving this end. The State also often prevented, or at least limited, acquisition of property by a church, or by churches in general, or imposed special rules for administration of church property. Such measures undoubtedly constitute interference with the internal administration of religious groups. Are they to be reprobated, or would it not be proper to apply here again to each individual situation the criteria set out in the "limitation clause" of article 29 (2) of the Universal Declaration?

C. The Financial Relationship Between the State and Religion

191. With regard to the broader aspects of the financial relationship between State and religion, there is no doubt that the authorities of a State may - and sometimes do - use the powers which they possess in financial matters as a potent weapon of discrimination against various religious groups. Complaints are often heard that in its policy of granting subsidies, some Governments favour one particular group and disregard the needs of others. But complaints are also heard that certain groups are favoured, because they are exempted from paying taxes.

192. However, these complaints are not always to be accepted at their face value. If in a country where there is an established Church or a State religion, the Government places church buildings at the disposal of the established Church or State religion and also pays for their maintenance from government funds, while no buildings are provided for the religious needs of the dissenter groups, this does connote inequality of treatment: it may be the result of arrangements made at a time when church property of the dominant religious group was taken over by the State by way of sequestration or otherwise.

193. Payment of salaries by the State to members of the clergy of the State church or official religion may be justified, on the ground that this clergy is entrusted with certain tasks such as registration of births, marriages and deaths, whereas the dissident clergy does not have to perform these duties. Also, Governments may in some countries levy special taxes for the support of the official church or religion. If such taxes are paid both by members and non-members of the church, the latter can point out that they are being discriminated against. But on the other hand, if the Governments levy taxes only on members of one church, leaving other churches to support themselves by voluntary contributions, this cannot be considered to be discriminatory. It may only be the consequence of the disproportionate costs of collection compared to the amount to be collected from a multitude of small groups, often scattered over different areas.

194. Usually, the situation appears more simple in a country where State and religion are separated. However, even here complications can arise, since separation of State and religion is not understood in the same manner in different countries, and, because the needs of the various religious or philosophical groups are not the same. Thus in certain countries where this principle is accepted, the State puts the necessary buildings at the disposal of followers of different religious beliefs. Theoretically, all are treated on an equal footing. But it is possible for State authorities to disregard in fact the needs of a particular religious group, or of particular groups, while fully providing for the needs of others. The same result may be achieved when the State has a monopoly of printing presses, factories and workshops producing religious accessories, and assumes the responsibility for putting them at the disposal of various religious groups, but in fact disregards the needs of certain groups.

195. Enforcement of this principle of separation of State from religion may be felt in certain cases to be discriminatory, as in the case where the State, in applying the rule that no religion should be subsidized, refuses to support religious schools. Some groups consider this refusal to be a correct application of this principle, while other groups argue that education for their children costs double since they must maintain religious schools, and still pay taxes to support public schools.

196. The question is more complicated when certain activities of religious groups, going beyond the domain of worship, are exempted from the payment of taxes. Where certain commercial or industrial undertakings are run by certain religious groups, and these are exempted from the payment of taxes, the complaint has been voiced justifiably by other groups which do not obtain such benefits, that they are discriminated against.

197. Where institutions of an educational or humanitarian character are run on commercial lines by religious associations, it is argued that they should not be exempted from the payment of taxation since other enterprises of a similar nature, run by non-religious groups, are taxed. It is further pointed out that certain religions enjoin on their followers to undertake activities of a humanitarian or educational character, while other religions do not prescribe such duties. The result, according to the latter, is that certain manifestations are encouraged by the State and this constitutes an indirect propagation of such beliefs.

198. However, the greatest difficulty is encountered where the educational or humanitarian enterprises are run on an entirely non-commercial basis but mainly for the benefit of members of the group which operates them. The members of the group enjoying the benefit of exemption from payment of taxes affirm that such exemption is justified because the group is providing the community with facilities which the State would otherwise have to provide. On the other hand, it is contended by other groups that the sole function of the State is to provide equal facilities to all citizens, without taking account of their religion or belief, and that it should not promote, even indirectly, the establishment of separate facilities for members of a particular group. A possible solution of this difficulty would be to take into account the benefit that accrues to the community. Where it is on such a scale that it takes the form of a public service, benefiting the population as a whole, exemption from payment of taxes - and even grants from the State exchequer - may be justified provided the same facilities are available to any other group which wishes to compete. Where the activities are on a purely sectarian basis, with the sole aim of providing facilities to co-religionists, the nature of the relationship between State and religion will be a decisive factor in determining whether it should, or should not, receive aid from the public exchequer. Even in countries admitting the

separation of State from religion, the interpretation of this principle has not prevented certain direct or indirect forms of State subsidization. In other instances, the interpretation of the principle may lead to a precisely opposite result, and any form of subsidization - even in the form of exemption from taxation - would be considered improper and illegitimate.

D. State Interference in the Internal Affairs of Religious Groups

199. Lastly, it should be realized that, however strong the desire of a government to apply the principle of separation of State from religion and to refrain from interference in internal matters, circumstances can compel the State to take a stand not only on questions of internal administration but even on matters of faith, doctrine and ritual. Such has been the case where two rival groups dispute over the right to conduct services or perform religious rites in a house of worship or over the right to appoint religious leaders. Where this matter comes before a civil court, lay judges are called upon to decide between the claims, and not infrequently they can only make a decision by taking cognizance of and interpreting the provisions of the religious law. This cannot necessarily imply interference in internal management even though the aggrieved party may claim that it does.

200. The line between interference and exertion of pressure is extremely thin. Where there are two rival claimants to the headship of a religion, or where two sects claim to perform a certain ritual and there is a possibility of the organization being torn by strife, or of a breach of the peace occurring, the State has the right at a certain stage to intervene and even to pronounce its views on matters of ritual and doctrine. But where the State intervenes in the affairs of a religious community without justification and to such an extent as to exert pressures on the members of the group, in order to achieve certain extra-religious ends, and where this is proved, even though the real nature of the action is thinly veiled, it might not only be a case of serious discrimination - it may even amount to a denial of religious rights and fundamental freedoms.

I.. GENERAL TRENDS AND CONCLUSIONS

201. It would be apparent from the analysis made in the preceding chapters that the conclusions reached can only be of a provisional character. When one attempts to estimate the trend of events, even greater caution will have to be exercised than in analysing events and manifestations. In any case, estimates of trends are in the nature of prophecy, and it is quite possible that any estimate - either of a favourable or unfavourable character - might be reversed by history. It is even more hazardous to generalize about the trends which are in operation in the world without having at one's disposal complete and verified information on all the countries. These are formidable difficulties. Nonetheless our task would not be complete without presenting a picture - certainly incomplete in many respects but useful all the same - in order that the scope of this freedom and the limitations placed on it may be viewed at least in a general way. There are factors of a positive character which help to give a wider recognition to the principle of religious freedom; there are also factors operating in precisely the opposite direction.

202. Among the favourable factors that operate may be instanced the change which has taken place in the attitude of a large number of religions. In the past most religions held intolerant views and even displayed a belligerent attitude against those who did not share what each one of them considered to be "the eternal truth". True, a few scholars and expositors of religious doctrines attempted to create a climate of understanding towards those who were "in error". But their writings had little effect either on the Church or on their contemporaries. Today their philosophy has been adopted not only by individuals and large segments of public opinion, but even by the religions themselves.

203. Addressing the National Convention of Italian Catholic Jurists on 6 December 1953, Pope Pius XII made the following declaration:

> "....Reality shows that error and sin are in the world in great measure. God reprobates them but He permits them to exist. Hence the affirmation: religious and moral error must always be impeded, when it is possible, because toleration of them is in itself immoral, is not valid absolutely and unconditionally. Moreover, God has not given even to human authority such an absolute and universal command in matters of faith and morality. Such a command is unknown to the common convictions of mankind, to Christian conscience, to the sources of revelation and to the practice of the Church."

204. In other religions also the trend is towards a greater measure of toleration. The impact of modern developments on society, both in the East and West, has tended to bring about a livelier interchange of cultures, a disturbance of complacent, pathetic contentment and the resurgence of a new interest in the changes that are taking place. Naturally poets, philosophers and scholars tend to challenge rules, customs and conventions that are frozen. Indeed in Islamic society as in other societies there has been a re-interpretation of religious precepts with a view to reconciling them with the needs of a new age.

205. This movement for bridging the gap between traditional learning and modernism was initiated by Jamal Eddin Afghani (1838-1897) and Shaikh Muhammad Abdo (1849-1905) of Egypt. Generally, the theme of writers of this school is the dignity of man and the responsibilities which he owes to other members of society. That they have had influence on contemporary Islamic society is borne out by the greater emphasis that has been given in recent years to the freedom of the individual as such rather than to the freedom of a specific group. Interpretations of the Koran underline the spirit of social democracy and receptivity to new ideas. According to the Encyclopedia Britannica (1956) there has sprung up a new band of writers who point out that "....intolerance /is/ declared to receive no sanction from the Koran, as rightly interpreted."

206. In a memorandum entitled "Judaism and Tolerance Towards Other Religions", submitted by the World Jewish Congress on 14 February 1957, proponents of Conservative Judaism and Orthodox Judaism are reported to have restated the traditional doctrine of "Israel's fundamental teaching to humanity, the reality of universal brotherhood...." The same memorandum points out that the Reform movement in Judaism, although it broke with rabinical tradition, still accepts those moral tenets of Judaism.

207. We have culled a few examples from some religions to illustrate the attitude of present-day churches and religions to the question of toleration; similar expositions are to be found in the writings of authoritative proponents of other great religions and beliefs. This attitude on the part of churches and religions, and the stress laid by modern thinkers on the need to assure individuals a greater measure of religious freedom have naturally had an impact on society in different parts of the world; the impact has varied from country to country depending on the degree of education, receptivity to new ideas, and the general climate of opinion in favour of freedom.

208. Since Governments generally reflect public opinion, it is possible to discern a change of attitude on their part towards religions and beliefs. In many countries it is assumed that the separation of State from religion assures a greater totality of freedom both for the various groups and and for individuals. But it must not be thought that religious freedom and toleration are to be found only in countries which have accepted this principle. In countries where there is either an Established Church or a State religion, the position and status of non-conformist groups, and to a lesser extent, of "rationalists" often present fewer difficulties as compared with what they were even a few decades ago. Both in law and in fact the non-conformists are treated on an almost equal footing with the members of the Established Church or State religion.

209. A similar change in outlook may be witnessed in countries where religious communities are recognized and organized into "millets". In the past toleration was assured to them as a matter of sufferance. They were dissenters with whom the State had to put up. But today they are part and parcel of society and enjoy a position similar to the one which obtains for the members of the State religion or Established Church.

210. In brief, there is a trend toward equality of treatment of individuals without regard to whether they belong to a certain Church or religion or whether they are agnostics or atheists.

211. Jacques Maritain, a Catholic philosopher, has underlined the position today thus:[1/]

> "....there was a sacral age, the age of mediaeval Christendom.... characterized....by the fact that the unity of faith was a prerequisite for political unity....
>
> "The modern age is not a sacral, but a secular age....which is something normal in itself required by the Gospel's very distinction between God's and Caesar's domains....
>
> "....Whereas 'mediaeval man', as Father Courtney Murray puts it, entered the State....to become a 'citizen' through the Church and his membership in the Church, modern man is a citizen with full civic rights whether he is a member of the Church or not.

1/ Jacques Maritain, "Church and State", in Church and Society, edited by Joseph N. Moody Arts Inc., New York, 1789-1950, pp 894-96.

> "....Even if, by the grace of God, religious unity were to return, no return to the sacral regime in which the civil power was the instrument of the secular arm of the spiritual power could be conceivable in a Christianly inspired democratic society."

212. But it must not be assumed that every factor works in favour of greater toleration and respect for religious rights and freedoms. Quite a few unfavourable factors operate and these should not be overlooked both from the point of view of objectivity and from that of social interest.

213. While it will be recognized that the State, in imposing limitations on the exercise of religious rights, has to take into account considerations of "morality, public order and the general welfare in a democratic society", it ought to be realized that in the very nature of things these concepts are not precise and may in effect mean sometimes the imposition of the mores of a dominant group which does not sufficiently take account of the rights and freedoms of others. In any society such conflicts between the concept of morality entertained by the majority and that entertained by the minority occur. Not always are they resolved in such a manner as to meet the just requirements of a democratic society. Sometimes, laws of blasphemy and censorship tend to smother the rights of minorities and thus to minimize the totality of freedom of society. Even to this day, there are in a few countries archaic enactments which are not employed in normal times but which acquire a dangerous strength in certain periods and lead to massive discrimination against a particular religious group or against all dissident religions or beliefs. For in a society which is not monolithic, and which is heterogeneous or multi-religious, the stirring up of prejudices against particular groups may be easy, and to the extent that archaic laws are on the statute books they serve as an additional weapon.

214. However, laws - important though they are in moulding public opinion - are not everything. Even when public authorities display a willingness to improve the climate of opinion, they may be prevented because of a lack of co-operation, sometimes bordering on definite hostility, by certain dominant groups within a society. In certain cases "heretical" or "schismatic" groups, whose teachings are considered to present a vital threat to traditional religion, are viewed with great disfavour and are not able to live a normal life because of social pressures and intolerance.

215. Therefore it is not only legislative action, but something more, that is required in order to overcome such stubborn prejudices. The redeeming feature in such cases is that even exponents of an intolerant attitude towards schismatic groups usually do not have the courage to put forward their true reasons, and attempt to cover them up by some kind of specious argumentation.

216. Closely allied to the question of social pressures exerted by a dominant religious group is that of certain consequences that flow from religious zeal displayed in certain areas of the world which have recently achieved independence from foreign domination. When, as happens often, the bulk of the inhabitants of some of these new States profess a particular belief different from that of the former rulers, old resentments and suspicions tend to influence the policies towards those who are of the same religion as the former rulers. However, although this is a disturbing factor, it cannot be pronounced to be a continuing one; outbursts of passion are sporadic and tend to create rather a change in the atmosphere than a change in the laws. It is hoped that with an improvement of social and political conditions the forces of reaction will be eliminated, if not recede into the background.

217. A comparatively recent phenomenon is the emergence of new ruling classes in certain countries of the world. As a result of revolutionary changes the traditional ruling group which was usually closely associated with a particular religion or with religions in general, has been displaced by other ruling groups which profess certain philosophies. Since religion and the traditional group were closely intertwined, and since the former gave sustenance to the latter, the new rulers consider it to represent a threat to the State. While realizing that a revolution brings in its wake many far-reaching changes, it must be pointed out that sometimes the measures adopted may go far beyond the needs of the situation. However, as the danger of a counter-revolution recedes into the background, a more tolerant attitude toward religion is adopted. But the climate of opinion may not sufficiently change to make it possible for believers to achieve positions of responsibility in the State or in society.

218. From the perfunctory survey made above, a general conclusion emerges. While the trend is broadly in favour of enjoyment of greater freedom, certain unfavourable factors continue to operate; also, the establishment of greater freedom in this

field is not only a long-drawn-out process but a continuing one. During the first decades of the present century, a large measure of religious freedom and liberty was assured to citizens and groups in most parts of the world. But suddenly in the thirties, owing to Nazi activities against people on grounds of race and religion, this was reversed and many of the assurances given to religious minorities were not respected. The provisions protecting religious minorities under international instruments after World War I ceased to be applied in many countries because the countries themselves ceased to exist as independent units. (However, the provisions remain significant elsewhere.)

219. No doubt traditional forms of discrimination disappear under the impact of a changing attitude on the part of the churches towards dissenters, and because of the emergence of an enlightened public opinion. Nonetheless, there is a danger that a new upheaval might bring old forms of discrimination into being again and reverse the trend. History has offered many examples of such reversals.

220. Formulation of specific conclusions or recommendations must await the completion of the study and, in particular, a detailed examination of instances where discrimination has been overcome and of the measures taken, in various countries, to that end. However, an observation seems to be called for at this stage. While it is relatively easy to formulate conclusions and recommendations with regard to the surviving cases of what could be termed traditional discrimination between various religious faiths, it would be more difficult to do so in the case of legal systems which are based on an a-religious philosophy. In the first case we can draw on the experience accumulated during centuries of struggle by the proponents of enlightenment and tolerance. But in the latter case it may be doubted whether, if and where a genuine human rights problem exists, measures for the prevention of discrimination or for the protection of minorities would be the solution. Where it is alleged that the religious freedom - not only of the minority, but also of the majority - is affected, it may well be that the problem should be attacked on the broader basis of an examination of whether the right to freedom of thought, conscience and religion as set forth in the Universal Declaration of Human Rights is respected.

APPENDIX

ACTIVITIES OF OTHER ORGANS OF THE UNITED NATIONS RELATING TO DISCRIMINATION IN THE MATTER OF RELIGIOUS RIGHTS AND PRACTICES

(Note by the Secretariat)

1. The Sub-Commission on Prevention of Discrimination and Protection of Minorities is not the only organ of the United Nations to concern itself with the problem of discrimination in the matter of religious rights and practices. The General Assembly, the Committee on Information from Non-Self-Governing Territories, the International Law Commission and various other organs have dealt with aspects of the problem within their respective terms of reference. These activities are summarized below.

I. General Questions

2. In its resolution 103(I) of 19 November 1946, the General Assembly declared that "it is in the higher interests of humanity to put an immediate end to religious ... persecution and discrimination", and called on the Governments and responsible authorities to conform both to the letter and to the spirit of the Charter, and to take the most prompt and energetic steps to that end. This principle has been reaffirmed in a number of General Assembly resolutions.[1/]

3. General Assembly resolution 290(IV) of 1 December 1949 called upon every nation to promote, "in recognition of the paramount importance of preserving the dignity and worth of the human person ... full opportunity for the exercise of religious freedom."

II. Conventions and International Instruments Initiated and Concluded by the United Nations or under its auspices

4. The Convention on the Prevention and Punishment of the Crime of Genocide adopted by the General Assembly on 9 December 1948[2/] contains the following provisions:

1/ See in particular, GA resolutions 395(V), 511(VI), 616 A (VII), 721(VIII), and 917(X).

2/ GA resolution 260 A (III).

"Article I. The Contracting Parties confirm that genocide, whether committed in time of peace or in time of war, is a crime under international law which they undertake to prevent and to punish.

"Article II. In the present Convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group as such:

(a) Killing members of the group;

(b) Causing serious bodily or mental harm to members of the group;

(c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;

(d) Imposing measures intended to prevent births within the group;

(e) Forcibly transferring children of the group to another group."

5. Convention Relating to the Status of Refugees,[1/] Geneva, 28 July 1951, provided in its article 4:

"The Contracting States shall accord to refugees[2/] within their territories treatment at least as favourable as that accorded to their nationals with respect to freedom to practice their religion and freedom as regards the religious education of their children."

6. Convention Relating to the Status of Stateless Persons,[3/] New York, 28 September 1954, contains in its article 4 an identical provision relating to freedom of religion to be accorded to stateless persons.

7. Trusteeship Agreements concluded under the auspices of the United Nations contain articles providing for freedom of conscience, of religious worship and of freedom of religious teaching for all religious communities. Thus, article 13 of the Trusteeship Agreement for the Territory of Tanganyika (as approved by the General Assembly on 13 December 1946) provides:[4/]

1/ A/Conf.2/108.

2/ For the purposes of the present Convention, the term "refugee" shall apply to any person who inter alia, "as a result of events occurring before 1 January 1951 and owing to well-founded fear of being persecuted for reasons of ... religion ... is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country ..." (Article 1).

3/ E/Conf.17/5/Rev.1.

4/ T/Agreement/2, 9 June 1947.

"The Administering Authority shall ensure in Tanganyika, complete freedom of conscience and, so far as is consistent with the requirements of public order and morality, freedom of religious teaching and the free exercise of all forms of worship. Subject to the provisions of article 8 of this Agreement and the local law, missionaries who are nationals of Members of the United Nations shall be free to enter Tanganyika and to travel and reside therein to acquire and possess property to erect religious buildings and to open schools and hospitals in the Territory. The provisions of this article shall not, however, affect the right and duty of the Administering Authority to exercise such controls as he may consider necessary for the maintenance of peace, order and good government and for the educational advancement of the inhabitants of Tanganyika and to take all measures required for such control."

The agreements for Western Samoa (article 9), British Cameroons (article 13), French Cameroons (article 10), British Togoland (article 10), Ruanda Urundi (article 13), New Guinea (article 8), and for Nauru (article 5 (d)) contain similar provisions. Article 19 of the Agreement for Somaliland deals with the matter in broader terms.

III. Draft Code of Offences Against the Peace and Security of Mankind

8. Prepared by the International Law Commission, the Draft Code of Offences contained in article 2, paragraph 10, a definition of a crime against the peace and security of mankind, which reads:[1/]

"Inhuman acts by the authorities of a State or by private individuals against any civilian population such as murder, extermination, enslavement, deportation, or persecutions on political, racial, religious or cultural grounds, when such acts are committed in execution of or in connexion with other offences defined in this article."

The General Assembly has postponed further consideration of the Draft Code until the Special Committee on the question of defining aggression has submitted its report.[2/]

IV. Question of an International Regime for the Jerusalem Area and the Protection of the Holy Places.

9. In resolutions 181(II) and 303(IV), the General Assembly stated its intention that Jerusalem should be placed under a permanent international regime,

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1/ Official Records of the General Assembly, Ninth Session, Supplement No. 9.

2/ GA resolution 897(IX).

and requested the Trusteeship Council to complete the preparation of the Statute for Jerusalem. The Council approved the Statute in 1950.[1] Article 9 of the Statute is devoted to human rights and contains the following provisions:

...

"2. All persons shall enjoy freedom of conscience and shall, subject only to the requirements of public order, public morals and public health, enjoy all other human rights and fundamental freedoms, including freedom of religion and worship ...

"Subject to the same requirements no measures shall be taken to obstruct or interfere with the activities of religious or charitable bodies of all faiths.

"4. ... All persons are entitled to equal protection against any discrimination in violation of this Statute and against any incitement to such discrimination.

"10. All persons have the right to freedom of thought, conscience and religion; this right includes freedom to change their religion or belief, and freedom, either alone or in community with others, either in public or in private, to manifest their religion or belief in teaching, practice, worship and observance.

"12. The legislation of the City shall neither place nor recognize any restriction upon the free use by any person of any language ... in religious matters ...

"13. The family law and personal status of all persons and communities and their religious interests, including endowments, shall be respected."

V. The Question of the Disposition of the Former Italian Colonies Eritrea

10. General Assembly resolution 390 A (IV) of 14 December 1950 recommended a Federal Act between Ethiopia and Eritrea to include among the human rights provisions specifically set forth, "the right of adopting and practicing any creed or religion."

VI. Observance in Bulgaria, Hungary and Romania of Human Rights and Fundamental Freedoms

11. The General Assembly, at its third session, discussed the question of the observance in Bulgaria and Hungary of human rights and fundamental freedoms. At its fourth and fifth session, the Assembly broadened the scope of the agenda item

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1/ T/592.

to cover the observance of the rights in question in the two above-mentioned countries and also in Romania. The charges of violation of human rights made in the course of the discussion against the Government concerned related, inter alia to freedom of thought, conscience and religion. Specific action taken by the General Assembly in the matter included the following: By resolution 272(III), the Assembly expressed,

> "its deep concern at the grave accusations made against the Governments of Bulgaria and Hungary regarding the suppression of human rights and fundamental freedoms in these countries".

Similar language was used in resolution 294(IV) adopted by the Assembly at its fourth session. At its fifth session, the Assembly adopted resolution 385(V), which reads in part as follows:

> "The General Assembly
>
> .....
>
> 3. Is of the opinion that the conduct of the Governments of Bulgaria, Hungary and Romania in this matter is such as to indicate that they are aware of breaches being committed of those articles of the Treaties of Peace under which they are obligated to secure the enjoyment of human rights and fundamental freedoms in their countries; and that they are callously indifferent to the sentiments of the world community;
>
> 4. Notes with anxiety the continuance of serious accusations on these matters against the Governments of Bulgaria, Hungary and Romania, and that the three Governments have made on satisfactory refutation of these accusations;
>
> ....."

VII. Discrimination in the Matter of Religious Rights and Practices in Trust Territories

12. The Trusteeship Council's Questionnaire[1] on the political, economic, social and educational advancement of the inhabitants of Trust Territories, contains in chapter VII (Social Advancement) the following questions:

> "87. Describe the measures taken to safeguard or to supervise indigenous religions. State whether an indigenous religious or similar movement has arisen in the Territory in recent times. If so, describe such movements, and, if possible, explain the factors responsible for their rise and the forms which they have taken and describe such measures as have been taken by the territorial government in relation to these movements.

1/ T/1010.

"88. Give details concerning missionary and other religious activities in the Territory; state what financial or other assistance from public bodies has been given to this work. Give the number and distribution of missionaries, their denomination, their nationalities, and the number of adherents.

"State whether any restrictions on missionary activities were imposed during the year under review and, if so, state the reasons therefor."

13. The Trusteeship Council and the General Assembly have in some instances adopted resolutions making recommendations with regard to discriminatory measures in particular Trust Territories. In addition, these organs have adopted from time to time general resolutions dealing with discrimination including discrimination in the matter of religious rights and practices in the Trust Territories.

14. Thus, at its fourth session, the General Assembly adopted on 15 November 1949 resolution 323(IV) in which it was decided inter alia:

"4. To recommend the abolition of discriminatory laws and practices contrary to the principles of the Charter and the Trusteeship Agreements, in all Trust Territories in which such laws and practices still exist;

"5. To recommend that the Trusteeship Council should examine all laws, statutes and ordinances, as well as their application, in the Trust Territories and make positive recommendations to the Administering Authorities concerned with a view to the abolition of all discriminatory provisions or practices;

"6. To ask the Trusteeship Council to include in its annual reports to the General Assembly a special section dealing with the implementation by the Administering Authorities of its recommendations concerning the improvement of social conditions in Trust Territories... and, in particular the action taken in pursuance of the recommendation contained in paragraph 5 above."

VIII. Discrimination in the Matter of Religious Rights and Practices in Non-Self-Governing Territories

15. Since 1950 the Committee on Information from Non-Self-Governing Territories has given special attention each year to one of the three functional fields, educational, social and economic.

16. On the initiative of the Committee on Information the General Assembly adopted on 10 December 1952 resolution 644(VII) in which it recommended;

"(1) the abolition in those Territories of discriminatory laws and practices contrary to the principles of the Charter and of the Universal Declaration of Human Rights;

"(2) that the Administering Members should examine all laws, statutes and ordinances in force in the Non-Self-Governing Territories ... as well as their application ... with a view to the abolition of any such discriminatory provisions or practices;

"(3) that, in any Non-Self-Governing Territory where laws are in existence which distinguish between citizens and non-citizens primarily on racial and religious grounds, these laws should similarly be examined;".
