COMMISSION ON HUMAN RIGHTS

SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND PROTECTION OF MINORITIES

Twelfth Session

SUMMARY RECORD OF THE TWO HUNDRED AND NINETY-SEVENTH MEETING

Held at Headquarters, New York,
on Friday, 22 January 1960, at 3.20 p.m.

CONTENTS

PRESENT:

Chairman: Mr. INGLES (Philippines)
Rapporteur: Mr. SALARIO (Finland)
Members: Mr. ABDEL-GHANI (United Arab Republic)
Mr. HALPERN (United States of America)
Mr. HISCOCKS (United Kingdom of Great Britain and Northern Ireland)
Mr. JUVIGNY (France)
Mr. KETRZYNSKI (Poland)
Mr. KRISHNASWAMI (India)
Mr. MATHSCH (Austria)
Mrs. MIRONOVA (Union of Soviet Socialist Republics)
Mr. RIZK (Lebanon)
Mr. RODRIGUEZ FABREGAT (Uruguay)
Mr. SCHAULSOHN (Chile)

Also present: Mrs. LEFAUCHEUX Commission on the Status of Women

Observers from Member States:
Mr. RASY Cambodia
Mr. ELIZUR Israel

Representative of a specialized agency:
Mr. ZMIROV International Labour Organisation

Secretariat:
Mr. HUMPEREY Director, Division of Human Rights
Mr. LAWSON Secretary of the Sub-Commission
Mr. KRISENAWSKI, Special Rapporteur, said that he could accept Mr. Halpern's amendment to the first sentence of rule 4 (E/CN.4/Sub.2/L.187) if the form were slightly changed to read: "Everyone shall be free to journey to places sacred to his religion or belief, as an act of devotion, whether inside or outside his country". He felt that the second paragraph proposed by Mr. Halpern (E/CN.4/Sub.2/L.181) was too far removed from the spirit of rule 4 and he proposed the following wording: "The freedom to travel abroad to attend meetings enjoined by the dogma of a religion or a belief shall not be denied to persons whose attendance is prescribed by such dogma". Lastly, he proposed that his own text as it appeared in his report should be included as a third paragraph, with the words "prescribed by their religion or belief" deleted. He thought that Mr. Juvigny was going too far in his amendment (E/CN.4/Sub.2/L.184), since it would introduce the concept of a guarantee which would go beyond the general intent of the rule. Finally, he could not agree to Mr. Halpern's third amendment (E/CN.4/Sub.2/L.187).

Mr. JUVIGNY said that he supported Mr. Halpern's wording, which did not impose any obligation, financial or otherwise, on public authorities. While he sympathized with the Special Rapporteur's desire to find a satisfactory compromise text, he did not think that the word "dogma" could be used in the second paragraph. That word, which was used in a very narrow sense in some religions, was too often vague and there was a danger that the police authorities might in the last resort become the interpreters of the paragraph if it were adopted. In conclusion, he appealed to the Sub-Commission to adopt as concise a wording as possible.

Mr. SAARIO felt that it would be sufficient to state a basic principle. He was prepared to vote in favour of Mr. Halpern's text, as amended by the Special Rapporteur. The Sub-Commission should avoid broadening the scope of the text too much or going into too many details. While he approved of the substance of Mr. Sapozhnikov's amendment (E/CN.4/Sub.2/L.185), he thought it should come under rule 16.
Mrs. MIRONOVA agreed with Mr. Saario that the Sub-Commission should keep within certain limits in the statement of principles. She found the text in the report entirely satisfactory, provided the limitation proposed by Mr. Sapozhnikov (E/CN.4/Sub.2/L.185) was inserted. In submitting an amendment dealing with convocations and meetings, Mr. Halpern was introducing a factor which had no connexion with the principle dealt with in rule 4.

Recalling the provisions of article 13 of the Universal Declaration of Human Rights and of article 12 of the draft Covenant on Civil and Political Rights concerning the right of everyone to freedom of movement, as also the title of item 8 of the Sub-Commission's agenda, she said she saw no reason why that principle, which was of universal scope, should be introduced into the basic principles in order to ensure the protection of a particular category of persons, namely believers.

Mr. HISCOCKS fully endorsed Mr. Juvigny's appeal. He agreed with Mr. Saario that Mr. Sapozhnikov's amendment (E/CN.4/Sub.2/L.185) came under rule 16 and that Mr. Halpern's last amendment (E/CN.4/Sub.2/L.187, paragraph 3) was out of place in rule 4. Nor did he see the point of Mr. Rizk's proposal at the previous meeting that the words "sacred places" should be replaced by the words "places sacred to his religion or belief"; the words "as acts of devotion" covered that idea.

Mr. HALPERN explained that the new paragraph he was proposing dealt with the right to travel outside one's country to attend religious meetings and convocations and the right of adherents of a religion to communicate with other adherents, both within and without the country. Those rights were of fundamental importance. A limited aspect of the same principle had been recognized in principle No. 10 in the Study on Discrimination in Education.

With regard to the compromise text proposed by the Special Rapporteur, he did not see any reason for restricting the scope of the freedom dealt with in rule 4 by introducing the concept of dogma into it, since rule 4 had to be read and interpreted in the light of rule 2.

Mr. KEFRZYNSKI thought that it would be a serious mistake to introduce the word "dogma" into rule 4, for he was unaware of any dogma that required the
members of a religion to travel abroad. In his opinion, Mr. Halpern’s last amendment (E/CN.4/Sub.2/L.187, paragraph 3) had nothing to do with the subject under discussion.

Mr. SAARIO felt that the Sub-Commission was going too far afield in its discussion; he reminded it of the Special Rapporteur’s definition of the word “pilgrimage”. It would be enough for the Sub-Commission to adopt either Mr. Krishnaswami’s original text or Mr. Halpern’s amendment, as changed by the Special Rapporteur. The new paragraph 2 proposed by the Special Rapporteur seemed to him unnecessary.

Mr. KRISHNASWAMI (Special Rapporteur, replying to Mr. Juvigny’s and Mr. Ketrzynski’s objections, said that he had had in mind synods, conclaves and other convocations of that kind; in view of Mr. Halpern’s observations, he withdrew paragraph 2 of his amended text.

Mr. HALPERN withdrew his amendments (E/CN.4/Sub.2/L.181 and L.187, paragraph 3) in order to facilitate the Sub-Commission’s work, although he was still convinced of their importance.

Mr. HISCOCKS proposed that the two remaining paragraphs should be combined in a single paragraph.

Mr. KRISHNASWAMI, Special Rapporteur, agreed to the proposal. The final text of rule 4 would read: “Everyone shall be free to journey to places sacred to his religion or belief, as an act of devotion, whether inside or outside his country, and the possibility of such journeys shall be assured”.

Mr. KETRZYNSKI observed that the Sub-Commission had so far been anxious to avoid anything imposing an obligation on the State. He therefore asked for a separate vote on the last phrase of the new text of rule 4.

The CHAIRMAN put Mr. Sapozhnikov’s amendment (E/CN.4/Sub.2/L.185) to rule 4 to the vote.

The amendment was rejected by 6 votes to 2, with 5 abstentions.

The CHAIRMAN put to the vote the first part of the new text proposed by the Special Rapporteur for rule 4 up to the words "outside his country".

The first part of the new text of rule 4 was adopted unanimously.
The CHAIRMAN put to the vote the second part of rule 4, consisting of the phrase: "and the possibility of such journeys shall be assured".

The second part of the new text of rule 4 was rejected by 6 votes to 4, with 3 abstentions.

Mr. KRISHNASWAMI, Special Rapporteur, said that he had voted against Mr. Sapozhnikov's amendment (E/CN.4/Sub.2/L.185), not because it was not important but because it should come under rule 16.

Mr. KETRZYNSKI and Mrs. MIRONOVA said that they would revert to the substance of Mr. Sapozhnikov's amendment (E/CN.4/Sub.2/L.185) when the Sub-Commission discussed rule 16.

Rule 10 (continued)

The CHAIRMAN recalled that the Special Rapporteur had amended the original text of rule 10, as it appeared in his report, by deleting the last part, from the words "in so far as...", and retaining the first part of the rule worded as follows: "Everyone shall be free to disseminate his religion or belief".

Mr. HALPERN presented his amendment to rule 10 (E/CN.4/Sub.2/L.181). The object of the first sentence of the new paragraph which he was proposing for addition to the rule was to state in clear terms that equal opportunity and protection should be given for the propagation of all religions and beliefs. There were some countries which permitted only anti-religious propaganda and did not give equal opportunity for the propagation of religious beliefs. The principle which Governments were to be asked to observe should therefore be clearly stated and affirmed. The provision in the second sentence of the new paragraph was intended not only to bring rule 10 into line with rule 5 but also to ensure that such equality should really exist in countries where the Government controlled the means of production and distribution and was thus in a position to favour one belief over one or more other beliefs. The freedom proclaimed in the rule proposed by the Special Rapporteur would be non-existent unless there was equal opportunity for the propagation of religions or beliefs.

Mrs. MIRONOVA pointed out that the obligations of Governments were dealt with in rule 16. She therefore thought the amendment superfluous.
Mr. KETRZYNSKI shared that view. He did not see the need for a provision in rule 10 dealing with specific instances which came under the domestic regulations of States; the place for such a provision would be in rule 16.

Mr. KRISHNASWAMI, Special Rapporteur, said that he could not accept Mr. Halpern's amendment, for the same reasons which had led him to delete the limitation included in his original text.

Mr. HALPERN agreed with Mr. Krishnaswami. There was justification for a provision of that kind in rule 5, as adopted by the Sub-Commission, because that rule dealt specifically with dietetic rituals and it was essential to speak of acquiring the means necessary for the performance of those rituals. The problem did not arise in connexion with rule 10. The provisions of rule 16 were sufficient to meet the case; if they were not, there would have to be a provision of that kind following every rule.

Mr. HALPERN conceded the validity of the arguments adduced to show that rule 16 was applicable to the case he had envisaged; he therefore withdrew the second sentence of his amendment (E/CN.4/Sub.2/L.181), although he still thought that it was important for the members of a belief to have the material means of disseminating and propagating that belief. He withdrew the second sentence of the amendment on the ground that it would be covered by rule 16. However, he still maintained that the first sentence of his amendment was useful. It should be explicitly stated that equal protection and equal opportunity should be given for the dissemination of all religions and beliefs.

Mr. KETRZYNSKI, on the contrary, held the view that the principle of freedom to propagate a religion or belief was weakened if, once having stated that principle, the rule went on to say that equal opportunity to exercise it should be granted, because that implied that such freedom did not exist. He reiterated his opinion that rule 16 and rule 2 sufficed to prevent any discrimination in that respect.

Mr. SAARIO considered it necessary to include in rule 10 a limitation which was not stated in rule 16. He therefore preferred the original text in the Special Rapporteur's report.
Mr. RODRIGUEZ FABREGAT said that he too preferred the original text. He certainly thought it essential that everyone should be able to propagate his ideas - that was a fundamental freedom - but he wondered whether the right to disseminate an opinion could be granted so unreservedly without allowing for the possibility of the State's intervening in the public interest; conversely, he would like to know how far the State was obliged to go in order to facilitate the exercise of that right.

Mr. JUVIGNY thought that a distinction should be made in the first sentence of the amendment between equal protection and equal opportunity. While it was desirable to stress the former, he felt that it would be better not to speak of the latter lest the same difficulties encountered with respect to rule 4 should arise; it would be a mistake to give the impression that the public authorities were obliged to ensure the exercise of the freedom or right under discussion by positive action.

Mr. HALPERN, replying to Mr. Rodriguez Fabregat and Mr. Saario, said that the violations of the law to which acts of propagation might give rise were covered by rule 16 and that the adoption of rules 1 and 2 obviated the need for the part of rule 10 which the Special Rapporteur had rightly deleted.

In order to take account of Mr. Juvigny's comments, he agreed to amend the first sentence of his amendment to read: "Equal protection shall be given ...", but he was still deeply convinced of the importance of equal opportunity.

Mrs. MIRONOVA thought that Mr. Halpern's amendment, even as redrafted to request nothing more than "equal protection", weakened the impact of rule 16, which made it the duty of the public authorities to "refrain from making any adverse distinction against ...".

Mr. SCHAULSOHN said that he agreed with Mr. Rodriguez Fabregat and Mr. Saario in preferring the original text of rule 10, which was incomplete as it stood. The propagation of a belief was an entirely different matter from maintaining a belief and it should not impair the rights of those maintaining other beliefs. Consequently, he suggested that the Special Rapporteur's original text should be restored, with the last phrase amended to read: "... the equal right of any other individual professing a different religion or belief".
Mr. KRISHTNASWAMI, Special Rapporteur, said that he understood and shared the concern of Mr. Rodriguez Fabregat but felt that he should be reassured by rule 16. His object in deleting the last part of the sentence had been to avoid placing undue stress on the limitation included in his original version of rule 10.

Mr. HALPERN noted that Mr. Schaulsohn’s amendment would alter the intention of the original text, which was to protect the right of all persons to propagate their religion or belief, whereas Mr. Schaulsohn’s amendment would seek to protect the right of others to maintain their religion or belief, a right which was already covered by another rule.

Mr. SAARIO shared that view and still preferred the original text, although he had no objection to that suggested by Mr. Schaulsohn.

Mr. HISCOCKS said that, in view of the proposals for the restoration of the original text, he wished to resubmit his amendment (E/CN.4/Sub.2/L.162), but with the insertion of the word "equal" before the word "freedom".

The CHAIRMAN, speaking in his personal capacity, pointed out that the Special Rapporteur’s text, in its revised form, merely laid down the right to disseminate a religion or belief. That text should be interpreted in the light of paragraph 4 (b) of rule 16, which ensured "respect for the rights and freedoms of others". Those rights and freedoms included not only the right to maintain one’s religion or belief referred to in the Special Rapporteur’s original text, but also the right to disseminate it referred to in Mr. Schaulsohn’s amendment. The Special Rapporteur’s revised text was therefore sufficient, since rule 16 guaranteed that no one could exercise that freedom to infringe the right of others to maintain or disseminate their religion; it would be superfluous to repeat the guarantee in rule 10.

Mr. SCHaulsohn withdrew his amendment.

The CHAIRMAN put to the vote Mr. Halpern’s amendment (E/CN.4/Sub.2/L.181), in its revised form.

The amendment was rejected by 5 votes to 1, with 7 abstentions.
The CHAIRMAN put to the vote rule 10, in the revised form proposed by the Special Rapporteur.

Rule 10, as amended, was adopted unanimously.

Mr. SCHAUERSON proposed that in the Spanish text the word "disseminate" should be translated by the phrase "difundir y propagar".

The CHAIRMAN said that the proposal would be taken into account.

Rule 11

Mr. KRISHNASWAMI, Special Rapporteur, amended the end of paragraph 1 of rule 11 to read: "...for the performance of its practices or observances".

Mrs. LEFAUCHEUX, representative of the Commission on the Status of Women, supported by Mr. SCHAUERSON, considered that the word "required" was inappropriate, since it contained the idea of coercion. In certain African communities, women were subjected to pressure and forced to enter the service of religious sects, while their families were unable or did not dare to intervene. It was essential to specify that the service must be voluntary.

Mr. JUVIGNY proposed that the words "the personnel required for the performance of practices..." should be replaced by "the personnel intending to devote themselves to the performance of practices".

Mr. KRISHNASWAMI, Special Rapporteur, accepted Mr. Juvigny's amendment.

Mr. KETRZYSKI considered that Mr. Ingles' amendment to rule 11 (E/CN.4/Sub.2/L.172) referred to cases which were too specific and was therefore out of place in a document which laid down basic rules. He was also afraid that that amendment might provide a pretext for granting international privileges to certain religious groups.

Mr. INGLES, speaking as a member of the Sub-Commission, explained that his amendment embodied the idea expressed in communications from non-governmental organizations representing two great religions (E/CN.4/Sub.2/NGO/13 and 15). Some religious communities did not have the facilities to train the personnel they needed or to send their members abroad to receive the desired training. It was desirable that those communities should have the opportunity to bring the necessary personnel from abroad, a procedure which might prove economically advantageous.
He realized, however, that his amendment was too rigidly worded, since it spoke of a "right", whereas in the other rules the Sub-Commission had preferred the concept of "freedom". Moreover, the phrase "necessary religious teachers" might give the impression that he was making a distinction in favour of religious personnel. He would therefore modify his amendment, which was now to add the following phrase at the end of paragraph 1, as revised by the Special Rapporteur: "or from bringing from abroad the teachers necessary for that purpose".

Replying to Mr. Kętrzynski’s last argument, he emphasized that the rule, thus modified, would not establish an absolute right, since the right would remain subject to the limitations specified in rule 16, and particularly in the clause referring to the "general welfare".

Mr. ABDEL-GHANI drew the Sub-Commission’s attention to the fact that rule 11 was not applicable to Moslems. Anyone who was deeply versed in Mohammedanism could teach that religion and no special personnel was required. If rule 11 was to be universally applicable, it should refer to training in general and not to the training of personnel. He therefore proposed that the expression "training the personnel required" should be replaced by "giving the training required".

Mr. KRISHNASWAMI, Special Rapporteur, replied that some religions had religious personnel who devoted themselves to the performance of practices or observances, and that it had been his intention, in rule 11, to take into account the requirements of the various religions.

Mr. HALPERN requested a separate vote on the word "permanent" in paragraph 2 of rule 11.

The word "permanent" was retained by 8 votes to 2, with 1 abstention.

Mr. Ingles' amendment (E/CN.4/Sub.2/L.172), as modified by its sponsor, was adopted by 10 votes to none, with 3 abstentions.

Rule 11 as a whole, as amended, was adopted by 12 votes to none, with 1 abstention.
New rule proposed by Mr. Halpern (E/CN.4/Sub.2/L.179)

Mr. HALPERN introduced his amendment (E/CN.4/Sub.2/L.179), the purpose of which was to add a new rule concerning the right to manifest religion or belief in teaching. He explained that, in substance, paragraph 1 of the amendment reproduced the idea expressed in article 18 of the Universal Declaration of Human Rights, under which everyone was free "either alone or in community with others and in public or private, to manifest his religion or belief in teaching...". Moreover, the first basic rule, as adopted by the Sub-Commission, affirmed the right of parents or legal guardians to decide upon the religion or belief in which their children should be brought up. That right could not be exercised unless the child had an opportunity to receive the instruction desired by the parents in a religious school maintained for that purpose. However, it was clear from the monographs that religious instruction was prohibited in certain countries. It was therefore necessary to add to the basic rules a new rule which would enable the various groups to conduct public classes and to maintain private schools for the teaching of a religion or belief. It was, of course, contemplated that the religious class or school would be conducted on days when the general schools were not in session or after school hours so that there would be no conflict with attendance at the general schools.

He deleted paragraph 2 of his amendment, but reserved the right to resubmit it in connexion with rule 16.

Paragraph 3 of the amendment was in substance a restatement of the fifth principle laid down in the Study on Discrimination in Education. It was designed to obviate a conflict which could cause great psychological harm as, for example, in the case of children who were brought up at home in one religion or belief but who were compelled to receive instruction in a State school in a different religious belief or who were compelled to receive anti-religious instruction. The principle laid down in the Study on Discrimination in Education stated that no one should be compelled to receive religious or anti-religious instruction, contrary to his convictions. He had been requested to use the softer word "atheistic" by some of his colleagues but the word was intended to have the same meaning as "anti-religious" in the education principle.
Mr. RODRIGUEZ FABREGAT emphasized that Mr. Halpern's amendment touched on the crucial question of education, which was one of the fundamental tasks of society. He was strongly opposed to the idea that everyone should have the right to teach, or that the State should make available to everyone without distinction the materials necessary for such teaching.

The meeting rose at 6 p.m.