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16 (discussion continued) (E/CN.4/272)

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| <u>Rapporteur:</u> | Mr. Charles MALIK | Lebanon |
| <u>Members:</u> | Mr. HOOD | Australia |
| | Mr. STEYAERT | Belgium |
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| | Mr. LOUFTI | Egypt |
| | Mr. CASSIN | France |
| | Mr. GARCIA-BAUER | Guatemala |
| | Mrs. MEHTA | India |
| | Mr. GOUDARZI | Iran |
| | Mr. INGLES |) Philippines |
| | Mr. AQUINO | |

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Members: (continued)

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|---------------|-------------------------------------|
| Mr. KOVALENKO | Ukrainian Soviet Socialist Republic |
| Mr. PAVLOV | Union of Soviet Socialist Republics |
| Miss BOWIE | United Kingdom |
| Mr. MCRA | Uruguay |
| Mr. VILFAN | Yugoslavia |

Representative of a Specialized Agency:

| | |
|-------------|---------------------------------------------------------------------------|
| Mr. ARNALDO | United Nations Educational, Scientific and Cultural Organization (UNESCO) |
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Consultants from Non-Governmental Organizations:

Category A:

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| Miss SENDER | American Federation of Labor (AF of L) |
| Mrs. MEAGHER | World Federation of Trade Unions (WFTU) |

Category B

| | |
|--------------------------|------------------------------------------------------------------------------------|
| Mr. LEWIN | Agudas Israel World Organization |
| Mrs. VERGARA | Catholic International Union for Social Services |
| Mr. NOLDE Mr. STEINER | } Commission of the Churches on International Affairs |
| Mr. MOSKOWITZ | Consultative Council of Jewish Organizations |
| Mr. FRIEDMAN | Co-ordinating Board of Jewish Organizations |
| Miss SCHAEFER | International Union of Catholic Women's Leagues |
| Mr. HALECKI | Pax Romana (International Catholic Movement for Intellectual and Cultural Affairs) |

Secretariat:

| | |
|--------------|-----------------------------------------|
| Mr. HUMPHREY | Representative of the Secretary-General |
| Mr. LAWSON | Secretary of the Commission |

DRAFT INTERNATIONAL COVENANT ON HUMAN RIGHTS (E/CN.4/272 (discussion continued)):

Article 16:

The CHAIRMAN announced that article 16 would be discussed. The Commission had before it document E/CN.4/272 which contained the Drafting Committee's text and the amendments to that text suggested by the delegations of Egypt, the United States of America, France, Lebanon and the Union of Soviet Socialist Republics.

She announced that the representatives of three Non-Governmental Organizations, Category B, had asked to make a statement regarding article 16, namely, the Commission of the Churches on International Affairs, the Agudas Israel World Organization and the International Union of Catholic Women's Leagues. She then invited the representatives of those organizations to take their places at the Commission table.

Mr. NOLDE (Commission of the Churches on International Affairs) stated that his organization represented the World Council of Churches and the International Missionary Council. The members of those bodies greatly appreciated the work done by the Commission on Human Rights in its unbiased defence and protection of the interests of all.

His organization had sent the text of the covenant drawn up by the Drafting Committee to its national committees and correspondents throughout the world; replies had been received from thirty countries. These replies clearly revealed unanimity on one general point; that the text of article 16 in the draft Covenant represented a minimum of safeguards for freedom of thought, conscience and religion which should finally be incorporated in the Covenant.

He cited three of the suggestions which had been made in that connexion.

In the first place, freedom of thought, conscience and religion was meaningless unless everyone was free not only to hold a belief, but also to change his religion or belief and to try to persuade others of the truth of his religion or belief; such provisions should apply equally to those who professed religious beliefs and to those who professed beliefs which could not be termed religious in the traditional sense.

These freedoms were imperative because they had a direct influence on world peace and order, making possible the free exchange of ideas and peaceful competition of ideologies and beliefs.

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Secondly, as regards public or private manifestations, he stated that the Universal Declaration of Human Rights had established an important principle when it proclaimed that manifestations of religion or belief might be in public or private. Whatever form the article of the Covenant took, that provisions should be included; if certain restrictions on public manifestations were deemed to be necessary in the interests of health and public order, they could be included in the general provisions for limitations to be applied to the Covenant as a whole.

Thirdly, he agreed that the question of the rights of parents, was a very complicated one and recalled that an earlier draft of the Covenant had contained a clause providing that, in the case of minors, parents or guardians had the right to determine the form of religious instruction they should receive. Those provisions had been deleted, first because the age at which individuals attained their majority varied in different countries and because those provisions, when stated in an affirmative form, implied that a government would have to enforce the will of the parents on the children if the latter did not wish to receive religious instruction. Nevertheless, the problem was sufficiently important to justify a serious effort being made to secure a satisfactory text. If that was found to be impossible, it was to be hoped that the decision of the Commission would in no way imply a right to interfere in the freedom of parents in determining the religious education of their children who were minors.

In conclusion, Mr. Molde stated that of the two texts before the Commission, the one which reproduced the substance of article 18 of the Universal Declaration and which was a declaration of general principles, had been favourably received by the members of his organization; furthermore, the Drafting Committee's text, particularly if amended along the lines proposed by the Lebanese delegation preserved those general principles and tended to define them more clearly.

Mr. LEWIN (Agudas Israel World Organization) stated that the freedom of religion was based on several fundamental principles.

Reviewing article 16 of the draft International Covenant prepared by the Drafting Committee in 1948 (E/CN.4/AC.1/19), he noted that the following principles had been recognized:

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1. That every person had the right, either alone or in community with other persons of like mind, to hold and to manifest any religious or other belief.
2. That every person had the right to change his belief.
3. That every person had the right to practise any form of religious worship and observance.
4. That no one should be required to do any act which was contrary to religious worship and observance.
5. That every person was free, either alone or in community with other persons of like mind, to give and to receive any form of religious teaching.
6. That, in the case of a minor, the parent or guardian should be free to determine what religious teaching he should receive.
7. That all those rights and freedoms should be subject only to such limitations as were prescribed by law, and as were necessary to protect public order and welfare, morals and the rights and freedoms of others.

Of those seven principles, only six were included in the Report of the Commission on Human Rights to the Economic and Social Council (E/800). The provisions relating to the right of parents to determine the religious teaching given to minors had been omitted. It had been stated, however, that everybody was entitled to endeavour to persuade other persons of the truth of his belief.

With regard to the proposal to replace paragraphs 1, 2 and 3 of the Drafting Committee's text by article 18 of the Declaration of Human Rights, and to retain only paragraph 4 of that text, Mr. Lewin thought that such an amendment would result in only a certain number of the fundamental principles which he had enumerated being protected, and even then only in a very general way.

It was inconceivable that, in so far as freedom of religion was concerned, practical provisions complementing those contained in the Declaration had not been included in the Covenant, while it contained restrictive clauses which actually rendered void the provisions of the Declaration.

Mr. Lewin recalled that the recommendation of the United States delegation, as it appeared in the Drafting Committee's report (E/CN.4/AC.1/19) rightly omitted any mention of restrictions with regard to religious freedom.

The Government of Brazil had also wisely suggested that all the restrictions should appear in a single article, so that they should be applicable to all the rights and freedoms mentioned in the Covenant.

In the name of his organization, Mr. Lewin suggested the following text for article 16:

1) "No one shall be denied freedom of religion, thought, conscience and belief, including the right, either alone or in community with other persons of like mind, to hold and adopt any religious or other belief, to practise any religious worship or observance, and no one shall be required to do any act which is contrary to such worship and observance.

2) No one shall be denied the right to give or receive any form of religious teaching. In the case of a minor, the parents shall be free to choose the religious instruction he shall receive. Children whose parents were killed in a war or other catastrophe shall be brought up in the religion of their parents."

That formula simplified the present drafting, by combining paragraphs 1 and 2. The principal changes regarding religious instruction, were explainable by the fact that it was essential to grant parents the right to choose the religious instruction to be given their children. His organization suggested, however, that such a right should be granted only to parents. That right should not be mentioned in so far as guardians were concerned, since the authority which designated a guardian should, at the same time, define his rights and duties. The rights of parents alone should be protected in the Covenant on Human Rights, since history proved that in numerous cases parents had been refused that right.

It was evident that parents who had been killed in a war or other catastrophe would have raised their children in their own religion; it was logical therefore, that those who were entrusted with the education of orphans, should respect the wishes of the deceased parents.

In that connexion, Mr. Lewin recalled the mass persecution to which the Jewish populations of Europe had been subjected by the Nazis; among the six million innocent Jews who had been assassinated, there were one million children. A certain number of children had, however, escaped the massacres, thanks to the help of sympathetic persons, and had survived the catastrophe by hiding in non-Jewish families. About twenty thousand of those children were at present being raised in a religion

different from that of their deceased parents. Did that not constitute one of the greatest cruelties committed by the free world towards those victims of the Hitlerian gas chambers? Those who were helping to turn those orphans away from the religion of Hitler's victims, were participating in the campaign undertaken by Hitler to exterminate the Jewish people.

The Covenant on Human Rights should take into account those considerations and recognize the right of the weak by adopting a provision stipulating that "children whose parents were killed in a war or other catastrophe shall be raised in the religion of their parents."

Miss SCHAFFER (International Union of Catholic Womens' Leagues) pointed out that, in addition to her organization, she represented two other Catholic organizations with a consultative status: The Catholic International Union for Social Service and Pax Romana.

Article 16 of the Covenant dealt with a question of capital importance, that of religious freedom. The amendment proposed by the Lebanese delegation seemed to her to contain the best guarantees for the free exercise of that right.

She recalled that parents had the primary duty of raising and educating their children, and of preparing them to meet obligations in connexion with which the State could not grant them any help. It followed that parents had the right to ensure that the truths of their religion should be taught to their children. The educator however, exercised a direct influence on the formation of the child's character; consequently, to deprive the parents of their inalienable right of choosing those educators would constitute a violation of human rights and fundamental freedoms.

The Lebanese amendment expressed a principle which should be mentioned in the article of the Covenant relating to religious freedom: that principle was the right of parents to choose the form of religious instruction their children should receive.

Parents should direct their children's education so that it would result not only in their physical well-being and the acquisition of a certain amount of practical knowledge, but also so that it would inculcate in them respect for moral laws. To that end, parents should be free to give their children an appropriate education.

The CHAIRMAN, speaking as United States representative, pointed out that her delegation had used the negative form in the first part of its amendment (E/CN.4/272), because that form had been used when the other articles had been drafted. She pointed out, moreover, that as a whole, the United States amendment incorporated the greater part of the terms of article 18 of the Declaration of Human Rights.

Mr. AQUINO (Philippines) thought that the principal part of article 18 was that which dealt with the right of every person to change his religion or belief; in fact, if that right did not exist, there would no longer be liberty or progress in the world.

On the other hand, Mr. Aquino thought that it was indispensable to mention the right of an individual to manifest his religion or belief "in a public or private place."

He pointed out that democracy was founded upon the right of peoples and individuals to accept and recognize different opinions.

As regards religious education, it was necessary to protect parents against the restriction of their right to choose the form of religious instruction which they wished to give their children.

Finally, if it was necessary to incorporate restrictive provisions in the text, he would like those provisions to be the subject of a separate article relating to the provisions of the Covenant as a whole.

Mr. LOUTFI (Egypt) thought that the Covenant, which was a legal instrument, should be limited to the expression of the essential principle of freedom of thought and religion, and the recognition to everyone of the right to manifest his belief. If the Covenant went further, its ratification would encounter innumerable difficulties, owing to the large number and variety of religions, customs and laws.

The Egyptian delegation would willingly support the text proposed by the United States, on condition however, that the words "to change his religion or belief" were deleted. In Mr. Loutfi's opinion, it was unnecessary to place such emphasis on the right to change one's religion, a right which individuals often invoked for unworthy motives, for instance when they wished to obtain a divorce; moreover, it would not be practical to insert that right in an instrument, the application of which had to be enforced by all countries.

As to paragraph 3 of the Lebanese amendment, concerning the right of parents to choose the form of religious instruction which their children should receive, he was not opposed to it in principle, but thought that the affirmation of that right should not appear in the Covenant on Human Rights.

Mr. Charles MALIK (Lebanon) stressed the fact that the Lebanese amendment differed from the French and United States amendments in that it tended to develop the ideas contained in the Declaration of Human Rights, by giving them a precise legal meaning. Thus, the Lebanese delegation proposed that a phrase should be added to paragraph 3 stipulating that "their parents shall not be denied freedom to determine what form of religious teaching they shall receive". The Lebanese delegation attached great importance to that question, and urged that the Commission should, in any case, take a decision on that part of the Lebanese amendment.

Moreover, the Lebanese delegation proposed changing paragraph 4 in such a way that the restrictions provided for in that paragraph should only apply to the rights and freedoms set forth in paragraphs 2 and 3. In fact, if a restrictive clause was added to article 16, it was essential that it should specify that the principle of freedom of conscience expressed in paragraph 1, was intangible and could not be restricted.

In paragraphs 1, 2 and 3, the Lebanese delegation proposed some amendments of less importance. Paragraph 1, as proposed by Lebanon, was shorter but quite as precise as the Drafting Committee's paragraph 1. The Lebanese delegation would, moreover, withdraw that part of its amendment, if the Commission preferred the Drafting Committee's text. In paragraphs 2 and 3, the Lebanese amendment consisted of the addition, after the words "either alone or in association", of the words "and in public or private", which appeared in article 18 of the Declaration.

Mr. CASSIN (France) was happy to note that the United States and Philippine representatives wished to return to the terms of article 18 of the Declaration, which was a simple, concise and complete article, and which had been adopted unanimously and welcomed by all religious organizations.

He added that his viewpoint differed essentially from that of the Lebanese representative. The Declaration had proclaimed freedom of

/thought and

thought and religion. However, in drawing up a legal convention, one should bear in mind the complications which would arise from the application of a single text in countries differing greatly from one another, some of which were characterized by almost complete religious unity, others by the predominance of one religion, and others again by profound religious division. For example, the principle according to which no one should be required to do any act which was contrary to his religion, was not applicable everywhere. It was evident that in countries where there were several religions, all public life necessarily conflicted with the convictions of some of the citizens. He therefore warned the Commission against the difficulties which too much goodwill might cause.

With regard to the rights of parents mentioned in the Lebanese amendment, Mr. Cassin recalled that freedom of instruction was recognized in article 18 of the Declaration of Human Rights. Not only the freedom of parents, but also the freedom of children had to be protected; it was difficult, however, to define where the one ended and the other began. The Lebanese amendment might perhaps be more acceptable if, instead of establishing freedom "to determine what form of religious instruction" should be received, it simply mentioned freedom to direct children towards a certain religion. In its present form, the Lebanese amendment might impose considerable burdens on States, by obliging them to separate primary schools according to religious denominations. Since the Declaration had proclaimed a unanimous recognition of the principle of religious freedom, he thought that States should be left to put that principle into practice in accordance with their customs and the means at their disposal.

Comparing the United States and French amendments, Mr. Cassin pointed out that the affirmative form was in that case preferable to the negative form. The French and United States delegations could perhaps submit a joint amendment, incorporating the terms of article 18 of the Declaration.

Finally, addressing the representative of Egypt, he stated that in certain countries, those who dared to change their religion were liable to meet with general disapproval and to bring disgrace upon

/themselves.

themselves. It was perhaps useful therefore, that the Covenant should guarantee the freedom to change one's religion, a freedom, moreover, which was already recognized in the Declaration.

Miss BOWIE (United Kingdom) shared the opinion of the Lebanese representative: she was convinced that it was necessary to develop the ideas contained in the Declaration.

As regards paragraph 1, it would perhaps be preferable to maintain the Drafting Committee's text, but as far as the other paragraphs were concerned, she supported the amendments submitted by the Lebanese representative, particularly, that which established the freedom of parents to choose the type of religious education to be given their children. In her opinion, it was not a question of protecting religions by maintaining the number of their followers, but of defending the children themselves, who needed to find in their families security and stability, which were always seriously endangered when children did not adopt the religion of their parents.

She felt that Mr. Lewin's suggestion concerning children whose parents had been killed in war, was unacceptable. Were persons who had taken in and cared for Jewish children during the war, sometimes at the risk of their lives, going to see those children taken away from them on the pretext that they should be raised in the Jewish faith?

As regards the Egyptian representative's amendment, she considered that, although religions were changed for reasons which were not always very laudable, it was none the less essential that the right of individuals to change their religion should be recognized.

Mr. CHA (China), replying to remarks made by previous speakers, stressed that the Drafting Committee's text (E/800) had been drafted prior to article 18 of the Declaration and could not, in any case, be considered as a more detailed version of that article. If the Commission wished to spell out the terms of article 18 before including it in the Covenant, it should proceed on the basis of the article itself.

The Chinese delegation was, however, convinced that it would be preferable to reintroduce article 18 in a positive form. It therefore supported the French proposal to that effect.

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At the same time, it was not in favour of maintaining paragraph 4 of the Drafting Committee's text, as the other articles of the Covenant relating to other freedoms contained no specific restrictions. In his opinion it would be more advisable to introduce a single restrictive clause of a general character, which would apply to all the rights and freedoms guaranteed by the Covenant. The solution proposed by Lebanon, whereby paragraph 4 would apply only to the rights and freedoms recognized in paragraphs 2 and 3 of the Drafting Committee's text, hardly seemed realistic, since it was very difficult in practice to differentiate between a religion or belief and its external manifestations.

The CHAIRMAN, speaking as representative of the United States of America, said that her delegation thought it would be preferable not to introduce in article 16 any restrictive provisions such as those in paragraph 4, but to draft a single restrictive clause for the Covenant as a whole. If, however, the Commission preferred to retain paragraph 4, the United States delegation would suggest that the words "prescribed by law" should be replaced by "pursuant to law", so that the clause might also apply to administrative orders and decrees; that the word "reasonably" should be inserted before the word "necessary" in the English text, the French text being modified accordingly; that the words "public security" should be inserted after "order" and, lastly, that the word "and" in the list of restrictions should be replaced by "or".

Furthermore, the United States delegation did not favour the Lebanese amendment (E/CN.4/226) on the rights of parents regarding the religious instruction of their children. It believed that the inclusion of such a provision in the Covenant might raise serious difficulties, to which the representative of France had rightly drawn the Commission's attention. The United States delegation believed that it would be dangerous to try to frame article 16 in an unduly detailed form.

Lastly, the United States delegation would vote against the Egyptian proposal because it considered that every one's right to change his belief should be guaranteed by the Covenant as well as by the Declaration.

/Mr. MCRA

Mr. MORA (Uruguay) was in favour of using the text of article 18 of the Declaration, which had been drawn up later than the Drafting Committee's text (E/800) and which, moreover, had the merit of reconciling the various viewpoints. He added that he preferred the text proposed by the United States to that of the French delegation, as the negative form gave a more categorical character to the article.

As regards the Lebanese amendment (E/CN.4/226) relating to the right of parents to determine the form of religious teaching to be received by their children, Mr. Mora observed that his country, the Constitution of which recognized the right of parents to give to their children the religious and cultural education of their choice, was not in favour of making a distinction in respect of religious teaching.

Mr. PAVLOV (Union of Soviet Socialist Republics) pointed out that article 16 dealt with two separate freedoms: freedom of thought or conviction, and freedom of conscience or religion. He stressed that religion, and particularly Roman Catholicism, had for a long time practised intolerance, had tried to gain power by force and violence, and appeared as an enemy of human thought and an obstacle to the progress of mankind. Those times were fortunately past, although religious fanaticism had not disappeared and occasionally gave rise to bitter struggles.

Referring to the Lebanese amendment (E/CN.4/226), which provided that "in case of children, their parents shall not be denied freedom to determine what form of religious teaching they shall receive", he remarked that a serious fault of that proposal was that it made no reference whatever to the right of free thinkers to give to their children a purely secular education unaccompanied by any form of religious teaching. The Lebanese proposal was, therefore, incompatible with the concept of freedom of thought and conscience, and could not be accepted by countries which genuinely respected that freedom.

Turning to the Drafting Committee's text (E/800), Mr. Pavlov stressed that it had many defects. Paragraph 2 stated that "no one shall be denied freedom, either alone or in association, to manifest his belief", which seemed to indicate that, for instance, an English fascist might manifest his anti-semitic beliefs by exterminating Israelites. It was therefore to be feared that such a provision, even if an attempt were made later to improve it by a restrictive clause, might give rise to highly regrettable abuses. Furthermore, paragraph 3

of the Drafting Committee's text had a shortcoming similar to that of the Lobanese amendment: it made no mention of teaching other than religious teaching, and did not guarantee the right of free thinkers to teach their philosophy freely. It therefore constituted a threat to the concept of freedom of thought, recognized in paragraph 1 of the same text.

The United States amendment (E/CN.4/170/Add.4), in its turn, weakened the text of article 18 of the Declaration by putting it in the negative form. Even in its original form, article 18 of the Declaration was not as satisfactory as the text submitted by the Union of Soviet Socialist Republics.

The USSR, which had ensured freedom of conscience and of thought for all its citizens by separating the Church from the State, secularizing education and authorizing all form of worship as well as anti-religious propaganda, believed that the principle of freedom of religion and thought should be set forth in the Covenant in as general and as simple a form as possible. It had endeavoured, therefore, to omit all provisions of limited scope and all superfluous details likely to cause difficulties to States signatories, and had prepared a text (E/800) which had the advantage of clarity and conciseness. The first part of that text had a concrete and categorical character. The second part contained essential restrictions concerning the public manifestation of religions and beliefs. Those restrictions were perfectly justified; in order to be convinced of that fact one need only call to mind certain oriental religions which were accompanied by extremely brutal and bloody ritual, self-mutilation, collective suicides and so forth. It was proper that such manifestations, which might have extremely dangerous effects on the spectators, should be prohibited by law.

The meeting rose at 1.10 p.m.