

SUMMARY RECORD OF THE ONE HUNDRED AND ELEVENTH MEETING

Held on Thursday, 17 August 1972, at 3.25 p.m.

Chairman:

Mr. VALENCIA RODRIGUEZ

later,

Mr. ANCEL

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CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (continued):

(c) INITIAL REPORTS OF STATES PARTIES WHICH ARE DUE IN 1972 (CERD/C/R.33/Add.3, CERD/R.33/Add.1) (continued)

Malta (CERD/C/R.33/Add.3) (continued)

The CHAIRMAN invited the Committee to continue its consideration of the initial report submitted by Malta (CERD/C/R.33/Add.3).

Sir Herbert MARCHANT said that he had nothing but praise for Malta because racial discrimination did not exist in that country, whose relationship with the United Kingdom dated back 160 years. In general, the situation was highly satisfactory, although further details on many points would be welcome. No anti-discriminatory legislation had thus far been enacted, but that was to be expected in a new State which had not yet had the time to devise laws to combat a problem which did not exist in its territory.

He agreed with Mr. Soler that it was difficult to reconcile the provisions of paragraphs (a) and (b) of article 4 with the introductory paragraph of that article, but that each of those provisions should be viewed in the light of the others.

Mr. MARMARA, representative of Malta, thanked the members of the Committee for their favourable assessment of Malta's first report and assured them that the second report would contain more detailed information and would answer the questions which they had raised. With regard to Mr. Haastруп's question concerning section 46 of the Malta Constitution, paragraph 2 of that section stipulated that "no person shall be treated in a discriminatory manner" and not "no person may be treated in a discriminatory manner", as was stated in the second paragraph of Malta's report. He read out the full text of that section. In conclusion, he wished to reiterate that there was no racial discrimination in Malta but that the Maltese Government would be sure to introduce the necessary legislation if that problem were to arise.

The CHAIRMAN thanked the representative of Malta for his statement.

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Morocco (CERD/C/R.33/Add.1)

The CHAIRMAN invited members of the Committee to consider the initial report submitted by the Government of Morocco (CERD/C/R.33/Add.1). On behalf of the Committee, he welcomed the Moroccan representative, Mr. Ahmed Kettani.

Mr. MACDONALD said that the long and detailed report submitted by Morocco was extremely useful and interesting and evidenced a concern for accuracy on the part of those who had drafted it. He noted that measures to give effect to articles 3 seq. of the Convention were embodied in the Moroccan Constitution itself. Article 9 of the Constitution gave effect to article 5 of the Convention, and article 225 of the Penal Code was in conformity with article 2, paragraph 1 (a) of the Convention. Article 10 of the Constitution dealt with arrest and detention procedures in a general context and did not relate directly to racial discrimination. Article 11 of the Constitution was of a general nature. Article 12 related to article 2 of the Convention, and articles 13, 14 and 15 to article 5 of the Convention.

With regard to the Dahir of 21 November 1957 (p. 5), which penalized racial discrimination in public services, in particular public transport, he asked whether the perpetrator of an offence against those provisions was obliged to make good any damage under article 77 of the Dahir of 13 August 1913; he also wished to know whether acts of racial discrimination, for example in housing, also came within the scope of that legislation. With regard to section 3, paragraph (c) (p. 7), where it was stated that Morocco was taking all necessary steps to avoid racial segregation, as required by the Convention, he wished to know what procedures had been applied to that end, since that information might be useful for his own country. He asked whether the provisions of article 38 of the Dahir of 15 November 1958 also covered incitement to racial discrimination.

All in all, he felt that the report of Morocco gave a very full picture of the body of laws and regulations aimed at preventing racial discrimination.

Mr. TOMKO noted that the Moroccan Constitution, which had entered into force after the Convention, reflected the provisions of the latter instrument. The Moroccan report covered all the rights which were recognized for Moroccans. The provisions of the Convention were reflected not only in the Constitution but also in the Civil Code, the Penal Code and the Press Code; they were also given effect by administrative and judicial measures. He therefore believed that the first report of Morocco was complete and that the Moroccan Government had taken seriously its obligations under article 9 of the Convention.

There were, however, several questions which he wished to ask. Firstly, article 5 of the Constitution stipulated that "All Moroccans are equal before the law"; in that connexion, he wondered whether there was any distinction between Moroccans and citizens of Morocco and what was the legal status of aliens living in Morocco. He also wished to know what minorities and ethnic groups could be found in Morocco. Moreover, some information would be in order regarding the way in which Morocco was implementing the various United Nations resolutions, in particular those which concerned relations with the countries of southern Africa.

Despite the few gaps which he had mentioned, the Committee could regard the contents of the report of Morocco as basically satisfactory.

More generally speaking, he noted that the penal codes of a large number of States prescribed penalties designed to combat racial discrimination more or less directly. In his opinion, a comparative study of such penal provisions would be useful to the Committee, States Parties and States Members of the United Nations. That would entail extra work for the Secretariat, but perhaps the Rapporteur would assist it in that task.

Mr. CALOVSKI said that in his opinion the report of Morocco was highly satisfactory. Like several of the reports which had already been considered, it dealt for the most part with the legislative measures which gave effect to the provisions of the Convention. It was gratifying to note that racial discrimination was not practised in Morocco and that all necessary measures were taken to keep that evil in check. Obviously there was no apartheid in Morocco since Morocco was in the forefront of the struggle against that particularly serious form of

(Mr. Calovski)

discrimination. The text of the preamble to the Moroccan Constitution demonstrated Morocco's concern to conform to international principles.

With regard to sections 2 and 3 of the report, he observed that some of the provisions of the Convention were not self-implementing and had to be put into effect by the enactment of special legislative measures. He asked whether the expression "all Moroccans" used in Moroccan legislation should be understood to mean all the inhabitants of Morocco. He felt that the report did not contain sufficient information on administrative and judicial measures or sufficient social and population data. He expressed the hope that fuller information would be provided in those areas in future reports. In conclusion, he congratulated Morocco upon the satisfactory report which it had submitted.

Mr. ANCEL said he found the report of Morocco excellent: it conformed to the guidelines laid down and showed clearly that Morocco was carrying out and was determined to carry out a policy of non-discrimination in racial matters. With regard to constitutional and legislative provisions, it was clear from the seventh paragraph on page 7 of the report that Morocco had already assumed, in advance, the undertakings imposed by articles 2 and 4 of the Convention. However, he wished to point out that article 4 required the adoption of special legislation. Thus, with regard to the repression of demonstrations contrary to public order dealt with in the Dahir of 29 June 1935, he wondered whether that concept itself did not embrace the concept of racial discrimination. The acts of violence referred to in articles 38 and 39 of the Dahir of 15 November 1958 were not expressly linked to racial discrimination, and he wondered whether those provisions adequately met the obligation imposed on States Parties by article 4 of the Convention to bring their penal legislation into line with that instrument by declaring acts of racial discrimination to be punishable offences. In conclusion, he wished to emphasize that Morocco had submitted a full and highly satisfactory report which evidenced a respect for the principles of human rights.

Mr. DEHLAVI recalled that Pakistan and Morocco had close ties of friendship and were united in respecting the principle of equality, which was a natural guarantee against racial discrimination. He felt that the report of

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(Mr. Dehlavi)

Morocco was comprehensive and well-documented; it went beyond the requirements of the Committee and was very satisfactory in every respect.

Mr. SOLER said that he considered the report of Morocco to be entirely satisfactory. There were, however, two details on which he would like to have some clarification. In the first place, he wondered whether the term "Moroccan" included all Moroccan nationals and what the position was for foreigners residing in Morocco. Secondly, the texts submitted concerning criminal legislation were of a very general nature and similar to those which had previously been examined for other countries. They were designed to ensure the maintenance of public order and the repression of violence but since they made no mention of racial discrimination, further explanation would be necessary. It would be extremely interesting if the Committee could carry out a comparative study of various provisions of penal law, as proposed by Mr. Tomko.

Mr. INGLES said that the report submitted by Morocco was excellent, but noted that under article 9 of the Convention States Parties were required to report not only on legislative measures but also on judicial and administrative measures. Perhaps Morocco could give more information on those measures in its second report.

With regard to article 4 of the Convention, the question was whether acts of racial discrimination could be prosecuted under such general legislation as the Dahirs of 29 June 1935 and 15 November 1958. He supported Mr. Tomko's proposal for a comparative study of measures taken by States Parties in fulfilment of their obligations under article 4 of the Convention either by adopting legislation concerning offences against an individual in general or offences of a racially discriminatory nature in particular.

Mrs. OWUSU-ADDO, noting that the first paragraph of page 2 of the report of Morocco mentioned "various categories of citizens", said she would like to have some particulars on those categories. Articles 8, 9 and 12 of the Moroccan Constitution protected the interests and rights of "citizens", but no mention

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(Mrs. Owusu-Addo)

was made of non-Moroccans; she wondered whether in their case there were restrictions on the exercise of those rights. Finally, articles 10, 11, 12 and 18 of the Constitution were general in scope and did not relate directly to racial discrimination. Nevertheless, on the whole the report of Morocco was satisfactory.

Mr. SAYEGH supported Mr. Ingles' comments as to whether general legislation was adequate to give effect to article 4 of the Convention. With regard to the questions raised on the rights guaranteed to Moroccan citizens and to non-citizens, he recalled that under article 1 (2) of the Convention no State Party had undertaken to ensure equality between its citizens and non-citizens. If a State wished to take measures going beyond the provisions of the Convention it should certainly be congratulated by the Committee, but if the State preferred to adhere strictly to the terms of the Convention the Committee was not entitled to ask any questions about it. However, in the spirit of article 1 (3) of the Convention, the Committee might be entitled to inquire whether there was any racial discrimination towards any particular nationality among non-citizens.

Mr. ABOUL-NASR said that he endorsed the general comments made on the report of Morocco and hoped that it would be considered satisfactory, as had most of the reports which had been previously considered. However, he would have liked to find more information on administrative and judicial measures and on the foreign policy of Morocco towards South Africa. The latter point did not cause him great concern, since Morocco was a member of OAU and the way in which it had voted on the various United Nations resolutions on the question was well known. Furthermore Morocco had no relations with the racist régimes of southern Africa. He endorsed Mr. Sayegh's interpretation of the Convention with regard to the rights of citizens and non-citizens.

Mr. SAFRONCHUK said he was entirely satisfied with the report before the Committee, which contained all the relevant information requested from States Parties under article 9 of the Convention. His country had friendly relations with Morocco which played an active part both as an African country and as a member of the OAU the struggle against imperialism, colonialism and

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(Mr. Safronchuk)

all forms of racial discrimination, including apartheid. That policy was reflected in the report, particularly in the explicit condemnation of "all forms of racial discrimination". As the Moroccan Constitution had been adopted after the entry into force of the Convention, it had been possible to include in it all provisions necessary for the implementation of the Convention.

Articles 10, 11, 12 and 18 guaranteed that all citizens enjoyed all civil rights; in other words there was no distinction as to race, colour or creed. He noted an interesting section that was an innovation compared with the other reports submitted to the Committee: articles 16, 17 and 18 of the Constitution, which aimed at ensuring equality among citizens, also provided that citizens had equal obligations; that went beyond the provisions of the Convention and certainly proved the absence of discrimination.

With regard to the implementation of article 4 (a) and (b) of the Convention, the information given in section 3 (d) and (e) of the report showed that Morocco had laws enabling it to fulfil its obligations under the Convention.

Mr. DAYAL said that, like Mr. Safronchuk, he had noted that the report not only gave a detailed account of the manner in which the various rights were guaranteed, but also specified certain obligations which were incumbent on all citizens. He would like clarification on a few points: with regard to the application of article 4 of the Convention, he wondered whether the provisions of article 38 of the Dahir of 15 November 1958 applied to a person guilty of incitement to racial hatred only if such incitement was followed by an overt act or by an attempt to commit a crime. He thought that under article 4 of the Convention any incitement to racial discrimination, even if it was not followed by an overt act or even by an attempt to commit a crime should be punishable by law. He hoped that the second report of Morocco would contain more information on the administrative and judicial measures adopted to give effect to the provisions of the Convention.

The CHAIRMAN, speaking as a member of the Committee, said that the report of Morocco was very detailed; it stressed an essential point, which was that the Moroccan Constitution condemned all forms of racial discrimination and pledged

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(The Chairman)

adherence to the principles of the charters of the international organizations of which Morocco was a member. Furthermore, article 5 of the Constitution established the general principle of the equality of all Moroccans. Articles 10 to 18 of the Constitution contained very important provisions guaranteeing the exercise of the civil, political, economic, social and cultural rights listed in article 5 of the Convention. One provision of the Penal Code provided for specific punishment of officials guilty of discriminatory acts threatening personal freedom or civic rights. Another extremely important provision should be stressed - article 6 of the Dahir of 21 November 1957; it provided for penalties in case of refusal to satisfy requests for the provision of services. However, the article contained a subjective element, since the request must be in no way abnormal and must be made in good faith. In any case that legislation was extremely interesting and could serve as a model for other States Parties who had not specified any criteria of that kind. Furthermore, Moroccan legislation, in articles 77 and 78 of the Dahir of 13 August 1913 provided that persons within Moroccan jurisdiction could obtain reparation for any material or non-material damage which they might have suffered.

The report also quoted the Dahir of 29 June 1935 relating to the repression of demonstrations contrary to order, from which it emerged that Morocco was already fulfilling its obligations under article 4 of the Convention and article 38 of the Dahir of 15 November 1958. It should be pointed out, however, that article 4 (a) of the Convention stipulated that all propaganda which might promote racial discrimination must be condemned, whether or not it was followed by any overt act.

Mr. PARTSCH noted that the Dahir of 1935 relating to the repression of demonstrations contrary to order or tranquillity was too general in its scope in relation to the provisions of article 4 (a) of the Convention. Similarly, article 38 of the Moroccan Constitution was not aimed specifically at repressing incitement to racial hatred, but applied generally to any incitement to crime provided, however, that that provocation was followed by an overt act, a stipulation which did not correspond to the provisions of article 4 (a). Finally, the report was not very clear with regard to the information requested in paragraph 4 of the questionnaire CERD/C/R.12, particularly with regard to

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(Mr. Partsch)

measures relating to teaching. He hoped, however, that the second report from Morocco would fill those gaps.

Mr. Ancel took the Chair.

Mr. INGLES noted that article 38 of the Moroccan Constitution was very general and repressed incitement to acts of violence whatever the victim, and was not therefore based on the concept of racial discrimination. He noted that the repression of acts of incitement to violence not followed by an overt act was provided for in article 39 of the Constitution. However, the report contained no reference to article 4 (b), and it would be desirable to know to what extent the aforementioned Dahirs of 1935 and 1958 gave effect to those provisions of the Convention.

Mr. SAFRONCHUK said that the Russian translation of article 38 of the Moroccan Constitution did not imply that incitement to violence, in order to be punishable, must be followed by an overt act.

Mr. SOLER observed that in every State, there were three categories of persons: citizens, who enjoyed civil rights, ordinary nationals and finally other persons subject to the law. The report submitted by Morocco concerned only Moroccan citizens and left a gap with regard to the other groups of persons. The question was certainly within the competence of the Committee, since paragraphs 2 and 3 of article 1 of the Convention should not be interpreted restrictively and appeared to relate to the conditions specified by each State for the purpose of obtaining nationality and not to measures which it took with regard to non-nationals. As to the repression of incitement to violence, he noted that the provisions of the Moroccan Constitution were of a very general nature and he hoped that the representative of Morocco would give further details with particular reference to incitement to racial hatred.

Mr. Valencia Rodriguez resumed the Chair.

Mr. SAYEGH said, in reply to Mr. Soler, that, under paragraph 1 of article 9 of the Convention, States Parties undertook to submit a report on the measures which they had adopted and which gave effect to the provisions of the Convention. However, paragraph 2 of article 1 provided that the Convention would not apply to distinctions made by a State Party between citizens and non-citizens. It was therefore clear that the Committee was not competent to request information from a State Party on that point.

Mr. PARTSCH noted that, although paragraph 3 of article 1 provided that the Convention would not affect the legal provisions of States Parties concerning nationality, it contained a reservation with regard to discriminatory measures that might be taken with regard to a particular nationality.

Mr. KIETTANI, representative of Morocco, speaking at the invitation of the Chairman, thanked members for their praise of the report submitted by his country and said he was ready to supply any details requested. Morocco was a young country in terms of its independence, but old in terms of its history. It had been a focus of communications and civilizations and, while various races and religions coexisted there, racial discrimination was unknown.

It should be noted that a new Constitution of 10 March 1972 had replaced the one described in the report. The new Constitution dealt with all the provisions of the preceding one, except with regard to the organization of the public authorities. In that connexion, however, article 3 of the new Constitution contained an original provision which directly concerned the struggle against discrimination, since it prohibited the existence of a single party, thus eliminating the distinctions that could be drawn in countries where there was a single party between members and non-members of that party.

Replying to questions, he said that in Morocco there were citizens and ordinary nationals. As to the question of foreigners, it should be remembered that in Morocco there were three regions which in the past had been respectively under French influence, Spanish influence and an international régime. When Morocco had achieved independence, there had been no campaign against foreigners and the Government had respected the rights acquired by foreigners who had settled there. Furthermore, he stressed that all inhabitants of Morocco, without distinction as to nationality, enjoyed the same rights in the economic and social fields and, in particular, they all had the right to damages in respect of harm that might be caused by the public authorities.

As to Morocco's attitude towards South Africa, he pointed out that Morocco was actively participating in the struggle against apartheid within the United Nations and all other international bodies. In particular, Morocco was a member of

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(Mr. Kettani)

of the Commission on Human Rights and the Sub-Commission on Prevention of Discrimination and Protection of Minorities. With regard to concrete measures taken against South Africa, he said that any ship proceeding from that country was specifically prohibited from entering Moroccan ports.

As to the word "may" used in the paragraph beginning with the words "Moreover, incitement to acts of violence..." contained in section 3 of the report, he pointed out that it was contained in a Dahir of 1958, and therefore preceded the Convention. Furthermore, the expression of a mere possibility suggested that discrimination did not exist in Morocco.

With regard to public order, he pointed out that in Morocco, that concept was interpreted very broadly and related to any act that caused damage to another person.

In the population field, there was as yet no real birth control in Morocco, mainly because of the strong religious traditions and the fact that half the population was under 20 years of age. The public authorities were aware of the problem, however, and were attempting to synchronize economic and demographic growth.

Finally, he said that several committees in Morocco were entrusted with the task of studying the laws in order to ascertain how they should be supplemented to take account of the country's international obligations. He expressed the hope that Morocco's second report would fully meet the Committee's wishes.

The meeting rose at 6.05 p.m.