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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Forty-ninth session

SUMMARY RECORD OF THE 1175th MEETING

Held at the Palais des Nations, Geneva,
on Friday, 16 August 1996, at 3 p.m.

Chairman: Mr. BANTON

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GE.96-17886 (E)

The meeting was called to order at 3 p.m.

PREVENTION OF RACIAL DISCRIMINATION, INCLUDING EARLY WARNING AND URGENT PROCEDURES (agenda item 4) (continued)

Situation in Rwanda

1. Mrs. SADIQ ALI (Special Rapporteur) said that the reason why the Committee had received nothing from Rwanda, despite the representative's assurance in March 1994 that a report would be submitted, was that the country's difficulties had continually worsened since then. Referring basically to United Nations documents, but also to reports in the written and oral press and from various NGOs, including Médecins sans frontières and Human Rights Watch, she noted that the Arusha Agreement, which had been signed in August 1993 and provided for the establishment of a transitional Government, the reform of the national army, which was to accept members of the Rwandese Patriotic Front (RPF), and the return of 1 million displaced persons to their region of origin, had not been applied and that the poorly equipped and poorly financed United Nations Assistance Mission for Rwanda (UNAMIR) had been powerless to ensure a peaceful transition, protect the civilians and seize illegal weapons, as provided for in the Agreement. With the death of President Juvenal Habyarimana, the RPF had ended the cease-fire in force since the signing of the Agreement, the peace process had been broken off, the massacre of civilians had begun and the RPF's victory had caused 1 million refugees, principally Hutus, to take to the roads.

2. France had then made a "humanitarian" intervention and launched "Opération turquoise", which neither the RFP nor the OAU had approved and to which the Security Council had consented only reluctantly. France had succeeded in proclaiming an area equivalent to one fifth of the territory a "safe humanitarian zone", but, although it had managed to save a few lives, it had also been accused of protecting the Hutus, who had been responsible for the massacres.

3. The Security Council had chosen to minimize the seriousness of the situation by refusing to view it as genocide and, after the decision by Belgium, supported by the United States, to withdraw its contingent, it had been decided that UNAMIR would be considerably reduced and would attempt to persuade the participants in the "civil war" to respect a cease-fire. The war had continued, however, and no one, not even the OAU, had been willing to acknowledge that genocide was taking place until May 1994.

4. In May 1994, however, on the proposal of the High Commissioner for Human Rights, a special rapporteur for Rwanda had been appointed and had confirmed the existence of genocide. It had been belatedly decided that UNAMIR would be strengthened, but that decision had been implemented too late and it had been impossible for UNAMIR to act effectively. The Security Council had also made unsuccessful efforts to achieve a reconciliation. When the full extent of the genocide had finally been confirmed, in particular by the Commission of Experts on Rwanda, established by the Security Council to assess the situation, the Security Council had established an international tribunal and

the Rwandan authorities had decided to cooperate with it, but without making a distinction among those responsible for atrocities in terms of which side they had taken during the conflict.

5. The groups hardest hit by the hostilities had been Tutsi women or women who had married Tutsis, who had been raped when not massacred; children, of whom 47 per cent of the survivors had seen other children participate in the massacres, in particular child soldiers recruited into the Rwandan armed forces; and members of the Twa ethnic group, who had been caught in the middle and had probably been torturers as well as victims.

6. As an effort towards reconciliation, the Government which had emerged from the RFP victory had announced that citizens' identity cards would no longer carry a reference to ethnic origin, that the victims of the massacres would be compensated and that a genuine national army would be formed. The task was extremely difficult, however, for one Rwandan out of five had taken refuge abroad. Without assistance from the international community, it would be difficult for them to return, if only because of the food shortage and the persisting bitterness against the Hutus. Their return, was nevertheless necessary if the country was to recover economically. In January 1996, a coordination meeting had been held in Geneva to study the human rights situation in the Great Lakes region. The Special Rapporteurs on Burundi, Rwanda and Zaire had spoken of the disgraceful impunity enjoyed by those responsible for the genocide, the resurgence of human rights violations and the refugees' reluctance to return home. Some host countries, such as Zaire, had begun to expel Hutus from their territory. While Rwanda was unable to cope with them the Zairian hills were being invaded by people fleeing. Fortunately, Zaire had finally endorsed a United Nations voluntary repatriation programme.

7. The situation should therefore return to normal, thanks in particular to international aid. With the lifting of the Security Council embargo, however, weapons, primarily from France, South Africa, Uganda and North America, were again pouring into Rwanda and she feared that the arms traffic, which was one of the main factors in the atrocities committed, would threaten to destabilize the entire region.

8. The CHAIRMAN thanked Mrs. Sadiq Ali. It might have been preferable for her carefully compiled information to be distributed in a written document, but it would then have been difficult for the Committee to reflect the information in its work. That might be a weakness in the Committee's working methods, which it should try to correct.

9. He requested Mr. Wolfrum to introduce the draft resolution on Rwanda.

10. Mr. WOLFRUM, introducing the draft resolution on Rwanda (CERD/C/49/Misc.12/Rev.3, distributed in the meeting room in English only), said that the Working Group on Rwanda had held only one short meeting, following which he had been asked to prepare a draft resolution for the Committee. The text under consideration was a first draft despite the "Rev.3" in its symbol. The changes he had made were the result of discussions he had

held with several members of the Committee, but not in the Working Group. He described the contents of the draft resolution, which consisted of seven preambular paragraphs and nine operative paragraphs.

11. The CHAIRMAN invited the members of the Committee to comment on the draft resolution.

12. Mr. AHMADU and Mr. SHERIFIS said that they would like the consideration of the draft resolution to be postponed, since they had not had time to read it.

13. Mr. SHAHI said that he was generally in favour of Mr. Wolfrum's draft text. He particularly agreed with paragraph 5, which called on neighbouring countries not to tolerate military activities in their territory aimed at destabilizing Rwanda, and paragraph 3, which related to punishment of the guilty and was essential for restoring confidence. He would like Mr. Wolfrum to explain why the draft resolution did not mention the conclusions on the situation in Rwanda which the Committee had adopted at its February-March 1994 session (A/49/18, paras. 61-72).

14. Mr. DIACONU said that the texts being adopted by the Committee were beginning to look more and more like General Assembly resolutions, which obviously carried much more weight than the Committee's resolutions. If it continued to produce such texts, its recommendations would not be taken at all seriously. The Committee should limit itself to issues within its mandate. The text under consideration contained many paragraphs that were unrelated to its sphere of competence - the best example being paragraph 5, to which Mr. Shahi had referred. He himself had preferred the first version of the document.

15. Mr. CHIGOVERA said that he endorsed Mr. Diaconu's statement. When he had agreed to take part in the Committee's Working Group on Rwanda, he had thought that the Committee intended to try a new approach, to put forward new ideas and not repeat what had been said time and time again to no avail.

16. In attempting to resolve a political situation, a choice had to be made between "reconciliation" - he was deliberately choosing that term, which was stronger than the term "compromise" - and justice, or identifying and punishing those responsible. It was not possible to seek both objectives at the same time. If justice was chosen, both parties should be held to the same requirements. There was one thing missing in the draft resolution: it did not mention the recent events in Rwanda.

17. The text to be adopted should be addressed to the General Assembly. If the goal was to bring international pressure to bear on the two parties to the conflict, there would not be much point in addressing it to the Rwandan authorities.

18. Mr. van BOVEN said that he shared the views of some of the preceding speakers. The draft resolution might easily have been adopted by the Sub-Commission on Prevention of Discrimination and Protection of Minorities. The Committee was tending to lose sight of the Convention and to be too ambitious, to its own detriment and that of the cause it defended. The Committee's mandate in the area of early warning and urgent procedures was far from undisputed. It was for the Committee to demonstrate its value by adopting measures from the particular perspective of the Convention. Like Mr. Diaconu, he believed that the draft resolution went beyond the Committee's mandate, while the text it had adopted in March was much closer to the concerns underlying the Convention.

19. Mr. WOLFRUM said that it was not easy to find a new approach that also went further than the one adopted by the Committee at its spring session.

20. Mr. SHAHI said he disagreed with Mr. Diaconu's view that paragraph 5 of the draft resolution was unrelated to the objectives of the Convention and hence the Committee's mandate. What the States bordering Rwanda were being asked to do in that paragraph was to prevent incitement to racial hatred and even racial war, and that was quite obviously within the purview of article 4 of the Convention.

21. Mr. ABOUL-NASR said that he fully endorsed Mr. Diaconu's and Mr. van Boven's views. The text adopted should be in the style not of a resolution, but of a declaration, and contain one brief, descriptive paragraph stating that the Committee had held an exchange of views on the situation in Rwanda in the absence of a representative from the State because the State had refused to send one.

22. The CHAIRMAN said that, if he heard no objection, he would take it that the members of the Committee wished to suspend their consideration of the question.

23. It was so decided.

Situation in Burundi

24. At the invitation of the Chairman, Mr. Mikaza (Burundi) took a place at the Committee table.

25. Mr. de GOUTTES (Country Rapporteur), summarizing the Committee's work on Burundi, said that, in March 1994, the Committee had considered the situation in Burundi in the presence of a delegation from the country. In its conclusions, it had expressed deep concern about the massive ethnically motivated violence in Burundi and the subsequent systematic human rights violations. The Committee had recommended: first, that the military, the police and the public service should be restructured so as to include representation by all ethnic groups; secondly, that the judiciary should be reformed and provided with the means to function under conditions of independence and security; thirdly that proceedings should be instituted to end the impunity enjoyed by the perpetrators of the ethnically motivated massacres and other human rights violations; and, fourthly that particular attention should be paid to the problem of refugees and the restoration of the rights of displaced persons. The Committee had offered its assistance and expertise, which would be useful for legislative and judicial reform, the training of law enforcement officials and the establishment of a national institution for the protection of human rights (A/49/18, paras. 46 to 50).

26. At the beginning of the current session, on 6 August 1996, the Committee had held an exchange of views with the High Commissioner for Human Rights, Mr. Ayala Lasso, on the situation in Burundi. The High Commissioner had referred to the statements of the President of the Security Council and had distributed a report to the members of the Committee on the human rights situation and the activities of the human rights observer mission in Burundi for the period 18 April-15 July 1996, which had been extensively commented on in the press. The members of the Committee had held an exchange of views on the most recent events in Burundi: the massacre of 312 Tutsis on 20 July 1996 at Bugendana, the overthrow of the Government on 25 July and the assumption of power by Mr. Pierre Buyoya and the continuing reports of inter-ethnic violence. The High Commissioner had spoken of his intentions for Burundi: to maintain the presence of the human rights observer mission and ask for the number of observers to be increased to 35.

27. The Committee awaited frank and up-to-date information from the representative of Burundi on the status of the inter-ethnic conflicts taking place in the country.

28. Mr. MIKAZA (Burundi) said that, before replying to questions, he would like briefly to review the considerations underlying the change that had taken place in the country three weeks earlier. The priority goal of the new Government had been to end the disastrous political crisis into which the forces of evil had plunged the country. What had occurred was not a coup d'état by reactionary forces against democracy, but an attempt to save the nation. The Government, the Parliament, the party and society at large had all proved incapable of resolving the country's dilemma. In view of a situation that had become inextricable, the key sectors of the nation had turned to Mr. Pierre Buyoya, a national figure known for his patriotism and undisputed commitment to democracy.

29. The change had not been an end in itself and the Government itself had set the following objectives: First, to end the massacres and genocide, to which end the entire population, including all ethnic groups, had to be protected against the madness of the killers; secondly, permanently to restore peace through an open and honest dialogue, for which the Government had set itself a three-year deadline; thirdly, to organize a national debate to lay the bases for peaceful cohabitation among all the groups comprising the nation; fourthly, to rehabilitate the system of justice and end impunity, all disputes being settled in the courts with complete transparency; and, fifthly, to reintegrate all the refugees and displaced persons. Once the necessary socio-political conditions had been met, efforts would aim at ending the waste, stopping the systematic looting of national resources and revitalizing the economy.

30. It was evident that all the aspects to which Mr. de Gouttes had drawn attention were included in the Government's programme. The restructuring of the administration, the police and the military was also one of the new Government's basic concerns.

31. Mr. de GOUTTES noted that, after an exchange of views with the United Nations High Commissioner for Human Rights and on the basis of the information available to it, the Committee had adopted a resolution on Burundi and provided the representative of the State party with a copy. The goals described by the representative of Burundi were fully in line with the recommendations contained in the resolution. The Committee should monitor their implementation closely.

32. Mr. ABOUL-NASR said that he had taken note of the objectives which the new Government had set, but did not understand why it had not been able to convince the neighbouring States.

33. The basic problem was still the same: since the Tutsis, who were in the minority, were the overwhelming majority within the army which had just taken power, how could the Hutu majority have confidence in the new regime? What measures had the Government taken or did it intend to take to restore the power of the majority, without which there was little chance of settling the conflict?

34. Mr. AHMADU, noting that the Government would have trouble surviving without its neighbours' support, asked what steps it had taken to become reconciled with them. Since the head of State was now performing civilian functions, could he still control the army?

35. Mr. WOLFRUM, referring to article 5 (b) of the Convention, which guaranteed the right of everyone to security of person and protection by the State against violence or bodily harm, said that his attitude towards the new Government would change completely if the representative of the State party could confirm that the massacres had ceased since the new Government had assumed power.

36. Mr. DIACONU said that it would be interesting to know whether the new regime had begun attacking the forces of evil referred to by the representative of the State party, in the military and the police, as well as in the civilian population. Concrete measures were what counted, for the old regime had also had laudable intentions. What steps had been taken to prevent further massacres? The representative of Burundi had spoken of restoring peace through dialogue: what kind of dialogue and how was it to begin? Since the country did not have enough judges and assessors and since the means available to the system of justice were insufficient, what steps had the Government taken or did it intend to take to end impunity?

37. Mr. CHIGOVERA noted that, in paragraph 5 of its resolution on the situation in Burundi, the Committee had mentioned the initiative of former President Nyerere of the United Republic of Tanzania, which the Organization of African Unity had fully endorsed. He would like to know the Government's attitude towards that type of initiative.

38. Mr. MIKAZA (Burundi), referring to Mr. Wolfrum's comment, said that the new Government had to be given time to act. To say that the violence had ceased would be an untruth, for the forces of evil were still there. It was encouraging, however, to note that the acts of violence were decreasing, as many international observers had recognized. Only one incident had been reported in the past three weeks.

39. Replying to Mr. Diaconu, he said that the national debate mentioned earlier had already been announced in the electoral timetable. It should begin in October. All Burundians without distinction would be invited to take part, including the armed groups and militias, provided, naturally, that they gave up the ideology of genocide.

40. Justice was at the heart of the new Government's concerns. The Government that had emerged from the National Convention had asked for assistance from the Centre for Human Rights and other international forums in that area. The new Government would maintain the contacts that had been established, for it knew that the best way of restoring confidence was to end impunity and introduce a sound system of justice in which the entire population had confidence.

41. He had not been provided with the text of the Committee's resolution on Burundi. A ministerial delegation from Burundi had visited Mr. Julius Nyerere only two days earlier. The initiatives should continue, if only to end an embargo that was serving the interests of no one. The contacts had begun to bear fruit, for the Tanzanian and Kenyan Governments had given permission for trucks carrying humanitarian aid to travel through their territory.

42. Replying to a question by Mr. Aboul-Nasr, he said that the events that had led up to the change of Government had taken the neighbouring States by surprise. It was for the Government to convince its counterparts of the seriousness of the crisis in Burundi and help them understand that the embargo was not the solution, since it simply hit the most vulnerable groups harder.

43. Confidence had been established and much remained for the Government to do in that area. It had a number of advantages to do so. First, there was the personality of the President, who had always risen to the occasion when the country had been in need. There was also the fact that the new Government was determined to involve all the population groups in the management of the country's affairs.

44. The question of the Burundian army was extremely complex. Although the Tutsis were dominant among the officers, there were nearly as many Hutus as Tutsis in the rank and file. The Government had already taken measures to encourage more Hutus to join the armed forces.

45. Replying to a question by Mr. Ahmadu, he said that the new Government would convince its neighbours by its actions, for which it would have to gain the people's trust. One of its first measures should be to prosecute the murderers of former President Ndadaye, some of whom were members of the military, and anyone who had committed massacres. No solution was possible for the crisis in Burundi as long as they went unpunished. In reply to another question by Mr. Ahmadu, he said that President Buyoya, although currently performing civilian functions, remained the supreme commander of the armed forces.

46. Mr. de GOUTTES said that the secretariat had made arrangements for the representative of the State party to be provided with a copy of the Committee's resolution on Burundi. Mr. Aboul-Nasr had raised the real problem: it could well be asked whether the Hutu majority could trust the Tutsi minority. That was the crux of the crisis and the Government would be judged on its ability to cope with that problem. The State party should be asked to arrange for a delegation from Burundi to appear at the beginning of the following session to inform the Committee of the progress made in achieving the objectives set by the new regime.

47. Mr. Mikaza (Burundi) withdrew.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 5)(continued)

Draft general recommendation concerning the rights of refugees and persons displaced on the basis of ethnic criteria (continued) (CERD/C/49/Misc.3/Rev.4)

48. The CHAIRMAN invited the Committee to consider the text prepared by Mr. Wolfrum, which had been distributed in English only.

49. Mr. van BOVEN said that the draft text had been revised to take some of his comments into account, especially regarding the connection between the refugee problem and the Committee's mandate. The reference in paragraph 1 to the Committee's General Recommendation XX (48) was, however, not sufficient and paragraph 2 should contain a more explicit reference to the Convention.

50. Mr. WOLFRUM said that the draft text made a clear reference to ethnic criteria from the first preambular paragraph onwards. Mr. van Boven's earlier suggestion that the beginning of paragraph 2 should state that no discrimination should be practised in connection with the rights and obligations mentioned in the rest of the text might have the wrong effect, since refugees belonging to certain ethnic groups might be rejected by their country of origin. That would be contrary to the rules of international law and probably also to the Committee's intentions. It should therefore be possible to find another wording for paragraphs 1 and 2 which would dispel Mr. van Boven's concerns.

51. Mr. ABOUL-NASR said that, as a matter of principle, the Committee should avoid adopting too many general recommendations at every session, at the risk of creating confusion. As to the draft text under consideration, he agreed with Mr. van Boven that the Committee would be well advised to consult the bodies of the United Nations system which dealt with the refugee question. The proposed text referred only to the possibility for the refugees and displaced persons of returning to and resettling in their countries of origin, whereas the international instruments dealing with refugee problems also provided for the possibility of settlement in the host country and resettlement in a third country. Solutions should also be adapted to the specific features of each situation. The question of the Palestinian refugees, for example, was being dealt with in the framework of UNRWA and not in that of the Office of the High Commissioner for Refugees. Care must be taken to avoid oversimplifications or excessive generalizations, which would give the impression that the Committee wished to change existing instruments

on refugees. The Committee must stay within the framework of the Convention and avoid moving onto dangerous ground.

52. Mr. CHIGOVERA said that the current wording of the end of paragraph 2 (b) implied a contrario that the refoulement and expulsion of refugees might take place on a discriminatory basis, and that was certainly not the Committee's intention. It would therefore be better to say that States parties were bound to ensure that there were no expulsions on a discriminatory basis.

53. Mr. AHMADU said that, when he had first considered the draft text, he had been thinking primarily of the problem of African refugees - with which he was familiar, as the administrator of an organization for African refugees in his own country, Nigeria - but he had not considered the issue of refugees in the context of UNRWA, for example. As it now stood, the text was acceptable, even if it might be preferable to qualify the reference to the right to compensation in paragraph 2 (c). It was often very difficult to know who should be responsible for compensation.

54. Mr. de GOUTTES said that the Committee would do well to seek the opinion of the Office of the High Commissioner for Refugees on the ambitious text under consideration, as Mr. van Boven had originally suggested.

55. Mr. WOLFRUM pointed out that Mr. Sherifis had consulted a representative of the Office of the High Commissioner for Refugees, who had expressed interest in the draft text and simply suggested that a reference should be made to the 1951 Convention relating to the Status of Refugees and that the principle of non-refoulement should be included. To provide a better link between paragraphs 1 and 2, as Mr. van Boven wished, the beginning of paragraph 2 might state that the Committee emphasized in that connection, etc. To meet Mr. Chigovera's concerns, paragraph 2 (b) should end after the reference to the principle of non-refoulement and non-expulsion of refugees and the reference to discrimination would be deleted. With regard to Mr. Ahmadu's suggestion that the reference to compensation in paragraph 2 (c) should be qualified, he pointed out that the proposed text replicated the terms of the Dayton Peace Agreements.

56. Mr. YUTZIS commended Mr. Wolfrum, who excelled at the art of drafting texts that reinterpreted and updated the Convention in both letter and spirit. With regard to paragraph 2 (b), he shared Mr. Chigovera's views. The text was ambiguous since it tended to set conditions for expulsion that would appear to legitimize some forms of discrimination, and should be redrafted.

57. Mr. GARVALOV said that he was particularly interested in the refugee problem which his own country, Bulgaria, had experienced a few years earlier and whose consequences were still affecting it. The Committee could perfectly well make a general recommendation on the subject and draw up a text that connected the problem of refugees and displaced persons to that of racial discrimination, since mention was being made of ethnic criteria.

58. Mr. van BOVEN expressed appreciation for the fact that the representative of the High Commissioner for Refugees had endorsed the draft text, which allayed some of his misgivings. In paragraph 2 (b), the reference to the fundamental principle of non-refoulement should probably be maintained, as the Office of the High Commissioner wished. On the other hand, the reference to article 1 of the Convention at the end of the subparagraph should be deleted, since, as Mr. Wolfrum had pointed out, the text was based on the Convention as a whole. He would prefer to speak of appropriate compensation in paragraph 2 (c), as that would weaken the text less than the amendment proposed by Mr. Ahmadu and still allow for some flexibility.

59. Mr. DIACONU said that the wording of paragraph 1 should be revised to avoid any confusion between the 1951 Convention relating to the Status of

Refugees and the International Convention on the Elimination of All Forms of Racial Discrimination. The reference to non-military conflicts in the first preambular paragraph was unnecessary.

60. Mr. CHIGOVERA said that he was reluctant to accept the wording of paragraph 2 (b), for he still did not understand what was meant by the principle of non-refoulement and non-expulsion without discrimination.

61. Mr. WOLFRUM said that the necessary drafting changes would be made.

62. Mr. SHERIFIS said that he hoped that the Committee would be able to adopt the draft without a vote.

63. The draft general recommendation concerning the rights of refugees and persons displaced on the basis of ethnic criteria, as orally amended, was adopted.

The meeting rose at 6.05 p.m.