

188th meeting

Thursday, 4 April 1974,
at 3.20 p.m.

Chairman: Mr. HAASTRUP

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

(c) INITIAL REPORTS OF STATES PARTIES DUE IN 1973 (continued)

Austria (CERD/C/R.50/Add.6) (continued)

The CHAIRMAN, referring to the comments made at the preceding meeting by Mr. Calovski on Austria's report, said that neither Mr. Calovski nor the representative of Austria regarded those remarks as an "accusation". Mr. Calovski had said that he had been expressing his views as an expert and did not want his statement to be given any special treatment in the summary records or in the Committee's report to the General Assembly.

Mrs. WARZAZI said she was pleased to learn from the statement by the representative of Austria of the promulgation of the constitutional act of 3 July 1973 and of the new Criminal Code relating, inter alia, to certain obligations under article 4 of the Convention.

Referring to Austria's initial report, she pointed out that the constitutional provision guaranteeing the equality of all before the law prohibited discrimination on a number of grounds but did not mention race. She was also surprised to read in the report that "on the basis of this rule, the Austrian Constitutional Court has evolved its extensive case law, the fundamental idea of which is that unequal treatment of citizens is only justified where objectively justifiable reasons exist for such treatment". How could any such justification for unequal treatment be accepted when article 5 of the Convention provided for equality before the law, notably in the enjoyment of the right to equal treatment before the tribunals and other organs administering justice? The question was particularly important because the report admitted that "a decision issued by an authority may be based on a law or decree containing provisions which lead to unequal treatment of individuals on lines not objectively justified". She would like to have some clarification on the subject. The report did state that any discrimination might be taken to the Constitutional Court, but such action would be practical only if the individual was as fully aware of the clauses providing for unequal treatment as was the authority

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which took a decision against him. It would also be useful in that context for the Committee to see the text of article 144 of the Federal Constitution.

Her second comment had to do with the treatment of aliens, which was also dealt with in the constitutional act promulgated in July 1973. The report stated: "Under present law, there are no safeguards to ensure the equal treatment of aliens in relation to one another". While Austria could invoke article 1, paragraph 2, in that connexion, such a provision did not seem to be in conformity with article 1, paragraph 3.

Thirdly, she noted that, where Austrian nationality was to be conferred upon a person by virtue of the Nationality Act, the constitutional principle of equality had to be observed in so doing. Recalling her first comment, she asked whether that meant that inequality of access to Austrian nationality could be justified if objectively justifiable reasons existed for such inequality.

She noted in passing that there was no provision in Austrian law for a right to equal participation in cultural activities. She also noted that a right of access to any place or service intended for use by the general public was not specifically enacted in Austrian law. It was true that that omission was explained by the fact that the rights in question were taken for granted as part of the normal legal order, but in view of the growing need for foreign workers in Europe, she felt that legislation specifically providing for equality in those areas would be welcome.

Article 7, paragraph 5, of the State Treaty referred to "minority ... rights"; she wondered whether that definition was now compatible with that of the Convention.

She would like to know what measures Austria had taken to implement article 7 and what its position was on article 3 and on general recommendation III of the Committee concerning the relations of States parties with racist régimes.

In conclusion, she said that she found Austria's initial report to be complete and very satisfactory; she would greatly appreciate a reply, in a subsequent report, to all the questions which had been raised.

Mr. ORTIZ-MARTIN said that he wished to commend Austria for the comprehensiveness of its excellent report. He was very pleased to note the constitutional status given by Austria to the Convention on the Elimination of All Forms of Racial Discrimination and the European Convention on Human Rights, since it was not sufficient to give the Convention merely legislative status.

He agreed with Mrs. Warzazi that allowing unequal treatment of citizens for

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objectively justifiable reasons, as mentioned in the first paragraph of Austria's report, was a type of discrimination. However, article 66 of the Treaty of St. Germain, which was incorporated into the Federal Constitution, seemed to him to be extremely forceful, since it stipulated that all Austrian nationals, regardless of race, language or religion, should be equal before the law and should enjoy the same civil and political rights.

He had been struck by the fact that, as to political rights to be enjoyed without any discrimination, the general fact was that only Austrian citizens were entitled to those rights, on the lines of article 1, paragraph 2, of the Convention on Racial Discrimination. Political rights ought to be the privilege of citizens only. Everywhere else in the report the expressions "nationals" and "any person" were used. That distinction did not imply any racial discrimination.

Since he did not wish to repeat comments already made by other members, he would conclude by saying that Austria's report seemed to him to be satisfactory and very well presented.

The CHAIRMAN said that the representative of Austria had asked to be allowed to reply on the following day to the questions raised regarding his country's report. If there was no objection, he would take it that the Committee agreed to grant that request.

It was so decided.

(d) SECOND PERIODIC REPORTS OF STATES PARTIES DUE IN 1973 (concluded)
Canada (CERD/C/R.53/Add.6)

At the invitation of the Chairman, Mr. Leblanc (Canada) took a place at the Committee table.

The CHAIRMAN said that he found Canada's report frank, straightforward and instructive. He invited the representative of Canada to make some preliminary comments, if he so desired.

Mr. LEBLANC (Canada) introduced the three members of his team. He congratulated the Committee on its work and expressed the conviction that the kind

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of dialogue in which it engaged contributed to a better understanding among peoples and a better knowledge of one another.

The authors of the Canadian report, at the federal level, had held extensive consultations with the provincial authorities during its preparation.

There had been some further developments in Canada since the preparation of the report. For instance, on 10 December 1973, the Canadian Government had announced the establishment of a federal Human Rights Commission which would play an important role in that field and would be responsible, inter alia, for promoting information and research on racial discrimination. It would also seek to improve race relations and to prevent conflicts. More provinces had set up Human Rights Commissions or appointed Ombudsmen, and during April British Columbia would be acting as host to a conference on human rights.

Canada welcomed the fact that its report was being considered precisely at the beginning of the Decade for Action to Combat Racism and Racial Discrimination, the proclamation of which it has supported. Canada had intensified its usual activities in the field of human rights on the occasion of the Decade and of the twenty-fifth anniversary of the Declaration of Human Rights. A federal ministry was organizing seminars and working groups which brought together human rights specialists from all over Canada.

He looked forward to hearing the Committee's comments, and assured members that they would be duly noted and brought to the attention of the competent authorities of his country. He would do his best to reply to questions immediately; any answers which he himself could not give would be provided subsequently.

Mr. SOLER felt that the report was complete and objective and did not give rise to many questions. However, he would like a legislative and constitutional clarification regarding the jurisdiction of the provincial, local and federal authorities. In particular, he would like to know what effect the signing of the Convention by the federal Government of Canada had on provincial legislation and how functions would be apportioned among the various authorities.

Mr. VALENCIA RODRIGUEZ said that the excellent report before the Committee confirmed the impression given by Canada's initial report, namely, that

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(Mr. Valencia Rodriguez)

Canada was making a serious attempt to implement the provisions of the Convention and the recommendations of the Committee. He particularly welcomed the condemnation of racial segregation and apartheid. He also welcomed the new legislation which had been enacted. With regard to the exception concerning qualifications for membership in a non-profit organization, provided for in the Individual's Rights Protection Act, he wondered whether the Canadian Government was considering abolishing that exception in the future.

He would like to know what decision had been rendered by the Supreme Court of Canada in the case of the two Indian-born women who had petitioned against the loss, by marriage to white men, of their status as Indian women, in accord with the Indian Act.

He noted with interest the information on the provision and operation of effective tribunals to assure protection against racial discrimination, and also the existence of Ombudsmen. However, he would like further details on those matters, particularly regarding the measures adopted to remedy situations referred to in accusations based on racial questions. He also noted the information provided in section IV (a) concerning positive measures to encourage mutual respect and co-operation among racial groups in Canada. Those were in implementation of article 7 of the Convention. The requirements of article 4 (a) of the Convention seemed to have been partly met by the new provisions of the Criminal Code. However, he would like to see the exact text of those provisions and of other pertinent legislation. He would also like to know what domestic measures had been taken to give effect to article 4 (b) of the Convention concerning racist organizations.

He thought that the implementation of article 6 of the Convention could be effected through the Human Rights Commissions and wondered whether those Commissions could award damages to possible victims of discrimination and what procedures they followed.

He noted with interest the annex containing information on the demographic composition of the Canadian population. Although there was a British and French majority, many other groups were represented. It was therefore very important that Canada should fully implement the Convention, especially since in its initial report it had admitted that some vestiges of racial discrimination remained in the country. Furthermore, he pointed out that certain questions raised when the initial

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report had been considered remained unanswered. In particular, he would like to know whether the exceptions under the Fair Employment Practices Act had been maintained.

Mr. TOMKO said he would like more information on the activities and the results of the work of the Alberta Human Rights Commission referred to in the section concerning legislation passed by the provincial Legislatures. Secondly, he would like information on the de jure and de facto situation of the native people, mostly Indians. How many of them were there? What was the extent of the jurisdiction of the Canadian Association of Statutory Human Rights Agencies? It was admirable of the Canadian Government to admit the difficulties encountered in protecting the interests of the Indians in accordance with their wishes. He would like to know what those difficulties were.

In the case of the two Indian-born women who claimed that the Indian Act discriminated against them, he did not see how the defence could have contended that equality before the law did not mean uniform laws for all Canadians.

On the whole, however, he found the report very detailed and satisfactory.

Mr. DAYAL said that the report submitted by Canada was very comprehensive. The problem of integration of the population was particularly interesting in Canada and was dealt with at the federal, provincial and local levels. Each province took measures which were largely based on the spirit of the Convention, and the co-ordination of those measures was ensured by the Canadian Association of Statutory Human Rights Agencies. He noted in particular the establishment of eight provincial Human Rights Commissions and the appointment of an anti-discrimination branch within the federal public service. Ombudsmen had been appointed in six provinces whose functions, inter alia, were to deal with complaints by individuals against the public authority. It was also worthy of note that a Minister of State for Multiculturalism had been appointed with a view to developing the cultures of the various ethnic communities. The Canadian Government had taken various legislative measures to protect the land claims of native groups and had undertaken special educational programmes for them, particularly of a vocational training nature. There was a native senator in the Senate and there were two native members of the House of Commons. He would like to know whether the Canadian Government's

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(Mr. Dayal)

immigration policy was based on the quota system or on the point system based on the occupational skills and qualifications of prospective immigrants. He found the second report of Canada both interesting and satisfactory.

Mr. KAPTEYN said that he had been very impressed by all the information provided by Canada on the measures adopted at the federal, provincial and local levels with a view to implementing the Convention. He would like some clarification as to the meaning of the phrase in the Alberta Bill of Rights reading: "unless it is expressly declared by an Act of the Legislature that it operate notwithstanding the Alberta Bill of Rights" (CERD/C/R.53/Add.6, p. 7). He would also like to know what was meant in Canada by "a non-status Indian" (CERD/C/R.53/Add.6, p. 11).

Mr. ABOUL-NASR felt that the report under consideration was extremely satisfactory and gave a clear picture of Canada's efforts to implement the Convention.

He had three questions to put to the representative of Canada. Firstly, he would like to know whether all the provinces of Canada had a similar attitude towards implementation of the Convention or whether each province took a different view. Secondly, he would like to know, with regard to minorities, whether in Canada there were special laws for the Indians and, if so, whether they were subjected to restrictions as a result. Lastly, he welcomed the statistical information included in the report and would like to know what percentage of Indians and blacks managed to obtain university degrees.

Mrs. WARZAZI said that she was most impressed by the quality of the report and the forcefulness displayed by Canada, with regard to both action by the public authorities and private initiatives, to bring about racial harmonization.

However, she would like to ask the representative of Canada to give some additional explanations.

Firstly, with regard to the petitions of the two Indian women before the Canadian Supreme Court as mentioned on page 5 of the report, she would like to know whether there was, in Canada, in addition to the laws applicable to all Canadians, an act relating exclusively to Indians, and if so, how such an act could embody discriminatory measures against Indian women on the ground of race? If the Supreme Court found in favour of the Indian women and against the Indian Act, how would it be able to assure the coexistence of the two laws?

Concerning the Government's efforts to overcome the disadvantaged position of some groups in society as discussed in the third paragraph on page 8 of the report,

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she also wondered how those efforts could have "strained relationships among groups".

The negotiations with native people mentioned in section IV (b) (i) on page 9 of the report also raised the question of what the federal government's attitude would be if it felt itself obliged to expropriate land belonging to native groups which opposed such a measure.

Like Mr. Dayal, she wondered what the distinction was between status and non-status Indians mentioned in section IV (b) (iv) on page 10 of the report. It would also be interesting to know whether the limited representation of the indigenous peoples in the political field - for according to the information given in section IV (b) (vi) on page 11 of the report there were only two native members of the House of Commons and only one Indian Senator - was due to a disinclination on the part of the Indians to take an active part in the affairs of the country or rather to particular difficulties encountered by indigenous candidates.

She was pleased to note the happy outcome of the land negotiations carried out by the Nova Scotia Human Rights Commission that was mentioned in section IV (b) (xv) on page 12 of the report, for it was always better to resort to peaceful means to settle disputes, but she wondered what would have happened if the commission had not managed to achieve an agreement and if sanctions had not been provided for in such a case.

Mr. CALOVSKI said that he found the Canadian report extremely interesting and warmly congratulated its authors. He had only a few comments to make. He first stressed the importance of the statement in the last paragraph on page 2 of the report, concerning "the need to give every humanitarian assistance" to the indigenous people of the territories of South Africa. With regard to what was said in section I (b) (i) in the last paragraph on page 3 of the report concerning non-profit organizations, he wondered what the position was for profit-making organizations. It would also be interesting to have additional explanations concerning the third paragraph on page 5 relating to cases before the Canadian Supreme Court, and on the 153 complaints of discrimination on the basis of race mentioned in the second paragraph on page 6. Lastly, he wondered what was meant by the terms "YUGOSLAV, N.O.S. - YUGOSLAVE, N.D.A." in table 2 on page 5 of the annex to the report and asked why other peoples of Yugoslavia like Macedonians, for example, were not specifically mentioned.

Mr. PARTSCH said that he would like to know what were the exact powers of the "ombudsmen" in Canada, and whether they were inter alia competent to deal with cases already before the courts, as was the case in Sweden.

With regard to the composition of the population, he thought that many inhabitants of European extraction would finally become integrated into one of the two predominant linguistic groups in the country, and he wondered whether there was any local policy in the various provinces to promote integration into one or other of the two groups, by, for example, encouraging children to go either to English or to French schools.

Mr. ORTIZ-MARTIN thought that the report under consideration was an excellent document which honoured the Committee, and he warmly congratulated the representative of Canada on it.

He would like to have further explanations regarding the petitions of the two Indian women mentioned in the third paragraph on page 5 of the report. It would be interesting to know whether the Indian Act was established by the Indians themselves, as was the case in various South American countries where the Governments were striving to respect indigenous traditions, or whether it was a piece of Canadian legislation drawn up for the benefit of the Indians. It might also be asked whether the situation of a white woman marrying an Indian would be different from that of an Indian woman marrying a white man, and whether that would mean that there were in Canada two different kinds of legal status that were not equal.

Mr. ANCEL expressed his deep satisfaction regarding the Canadian report, the authors of which should be congratulated. He had been impressed by the very full information provided by the report and he had, moreover, been very much alive to the deeply human approach of Canada to the problems of racial integration. It was particularly striking to note the multiplicity of mechanisms and bodies providing protection and assistance, and it would be interesting to know how they were interrelated and what exactly were their respective areas of competence. It would be useful to know whether the "ombudsmen" all had the same powers or whether their powers varied from one province to another.

In conclusion, he stressed the importance of the preventive action undertaken by Canada in the field of racial discrimination.

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Mr. MACDONALD found the information provided in the report under consideration to be very satisfactory.

In terms of the report's presentation, however, he wondered whether it would not have been better for the report to refer expressly to the provisions of the Convention, which would, for example, have made it possible to point out that Canada had scrupulously complied with it in its policy toward the indigenous population. Conversely, that method would have shown that the Criminal Code did not perhaps entirely meet the provisions of article 4 of the Convention.

The authors of the report might have undertaken a comparative analysis of the many bodies competent in the field of racial discrimination in order to show how they were interrelated. It would have been interesting, in particular, to point out that the "ombudsmen" in the various provinces did not all have the same powers.

It would also be very useful to have available the texts of the laws mentioned in the report, although it would doubtless take considerable time to gather them together.

Additional information could be distributed as addenda to the report concerning the cases mentioned as being before the courts at the time when the report was being drafted, and that had now been decided.

The CHAIRMAN invited the Canadian representative to comment.

Mr. LEBLANC (Canada) thanked the members of the Committee for the way in which they had received his country's report. As to the great many questions which had been put to him, it would probably be possible for him to reply only to those to which members had seemed to attach particular importance. With regard to the request for additional information, he had brought copies of two reference papers drawn up by the Department of Indian and Northern Affairs, concerning the Canadian Eskimos and Indians respectively, that he would make available to the Committee. Furthermore, his Government, at the request of the Secretary-General, would submit to the United Nations a comprehensive study on the indigenous peoples of Canada. The Committee could also usefully refer to the 1972 Canadian annual report to the Commission on Human Rights which had already been communicated to the United Nations, as well as to the 1973 report, which would soon be completed.

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(Mr. Leblanc, Canada)

The question of human rights fell within the competence of both the federal Government and the provincial governments. The Convention had been ratified by the federal Government following its approval by the provincial governments, and both the federal Government and the provincial governments were responsible for its implementation.

With regard to the question of indigenous affairs, it should be pointed out that the Indian Act was a federal law which was an instrument of positive discrimination in favour of the persons concerned, and that it was now planned to amend it in the light of discussions with those peoples.

Indian status was a legal concept defined by the Indian Act and involving specific advantages for those concerned.

The Canadian Association of Statutory Human Rights Agencies had the task of co-ordinating the activities of governmental bodies in the field of human rights.

It should be explained that the Government was currently reviewing the immigration laws.

It could be said that the powers of the "Ombudsmen" were similar to those of the ombudsman of New Zealand. The Human Rights Commissions had competence only after decisions had been taken and they were unable to intervene during the proceedings which gave rise to those decisions.

With regard to assistance by Canada to the victims of racial discrimination in southern Africa, it was planned, subject to parliamentary approval, to grant \$175,000 to the United Nations Educational and Training Programme for Southern Africa and \$100,000 to the United Nations Trust Fund for South Africa.

Finally, in connexion with the case of the two Indian women mentioned in the third paragraph of page 5 of the report, the Supreme Court of Canada had decided that since the Indian Act was a federal law, Parliament alone was empowered to review it after consultations with the populations concerned. The case, which was of considerable legal interest, was dealt with in detail in the study on the indigenous populations which would be transmitted to the Secretariat.

Mr. TOMKO said that he felt the term "positive discrimination" used by the Canadian representative was unsatisfactory and he would prefer the word "discrimination" not to be used in that sense by the Committee.

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The CHAIRMAN asked the Canadian representative whether the fact that the courts declined to give a ruling in cases involving a conflict of laws and referred such matters to Parliament for a decision was peculiar to Canada.

Mr. LEBLANC (Canada) said that it had not been his intention to give offence to anyone by using the term "positive discrimination" and he was prepared to withdraw it. Since he was not a jurist, he was unable to reply to the question asked by the Chairman.

Mr. PARTSCH said that it might be of assistance to the Canadian representative to know that in all countries with a federal constitution, with the exception of Germany, the constitutional courts could not, in general, consider federal laws.

Mr. MACDONALD said that the point at issue was actually whether the Canadian Bill of Rights took precedence over the Indian Act in case of conflict, thus raising the question of parliamentary supremacy.

The CHAIRMAN congratulated Canada on its co-operation with the Committee. If he heard no objection, he would take it that the report of that country was considered satisfactory by the Committee.

It was so decided.

Mr. Leblanc withdrew.

(g) SECOND PERIODIC REPORTS OF STATES PARTIES DUE IN 1974
Morocco (CERD/C/R.65/Add.1)

At the invitation of the Chairman, Mr. Lalou (Morocco) took a place at the Committee table.

The CHAIRMAN noted that the Moroccan report should be considered in conjunction with the excerpts from the Constitution of Morocco of 10 March 1972 which had been distributed to members of the Committee.

Mr. LALOU (Morocco) recalled that Morocco had always sided with those who were struggling to eliminate racial discrimination. The attitude of his country in that regard both at home and abroad had never belied that position. The brevity of the second periodic report by Morocco was due to the fact that problems of racial discrimination were unknown in that country. The Constitution

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of 10 March 1972 represented the consecration of the principle of equality of all inhabitants, irrespective of their sex, language, race or religion. His Government regretted that it had been unable to send a special representative to participate in the work of the Committee, but he wished to assure the Committee that he would take note of all the questions which might be asked and transmit them to his Government.

Mr. ANCEL said that since the report was the second one from Morocco, it was natural that it should be brief. Since 10 March 1972, Morocco had had a new Constitution whose basic provisions gave full effect to the Convention. The third paragraph of the report stated that there were in Morocco other legislative provisions pursuant to the obligations resulting from Morocco's accession to the International Convention on the Elimination of All Forms of Racial Discrimination. He would like to be informed of those provisions and to have copies of them.

Mr. Soler took the chair.

Mr. VALENCIA-RODRIGUEZ recalled that Morocco's initial report had been judged satisfactory. Although the 1972 Constitution of Morocco had confirmed the earlier provisions of human rights, it was necessary to be informed of other legislative provisions in case they were different or amended those submitted in the initial report, particularly with regard to the implementation of article 4 of the Convention. He agreed with Mr. Ancel that it would be useful to be informed of the other legislative provisions mentioned in the third paragraph of the report. It should also be known how article 7 of the Convention had been implemented.

Mr. PARTSCH, referring to the initial report of Morocco (CERD/C/R.33/Add.1), requested additional information about the Administrative Chamber of the Supreme Court mentioned in the third paragraph of article 80. He would also like to know whether there had been cases of annulment of administrative decisions by that Chamber. With regard to the information on the legislative and judicial methods adopted by Morocco to give effect to the provisions of the Convention, which appeared on page 7 of document CERD/C/R.33/Add.1, he felt that the Dahir of 29 June 1935 relating to the repression of demonstrations contrary to order and the Dahir of 15 November 1958 establishing the Moroccan Press Code quoted in subparagraph (d) under that heading did not entirely cover the provisions of article 4 of the Convention. Finally, he would like to know whether the Dahir of 15 November 1958 governing the right of association also laid down penalties for the members of associations.

Mrs. WARZAZI said that she hoped that the next report by Morocco would, in accordance with article 7 of the Convention, give information on the legislative and administrative measures taken in the fields of teaching, education, culture and information in order to eliminate racial prejudice and promote awareness of the evils of discrimination in the countries where it was exercised. It would also be useful if the next report could provide information on the demographic composition of the Moroccan population as well as on the results of the judicial reform currently in progress.

Mr. SAYEGH said that although the initial report of Morocco had been considered satisfactory, it had given rise to questions to which the second report did not reply. Consequently, he hoped that the next report of Morocco would provide the information awaited.

Mr. Haastrup resumed the chair.

Mr. CALOVSKI said that although the report of Morocco contained little information, the Committee could form an idea of the efforts made by the Moroccan Government to give effect to the provisions of the Convention from the excerpts of the Constitution which had been submitted. He felt that the second periodic report was satisfactory, but hoped that the third periodic report would provide more detailed information, particularly on the administrative measures adopted by Morocco to apply the Convention.

Mr. DAYAL agreed with Mr. Sayegh that the report did not reply to all the questions which had been raised when the initial report had been considered. He hoped that future reports from Morocco would be more detailed, so that a continuing dialogue could be established between the States parties and the Committee on relevant aspects of the International Convention on the Elimination of All Forms of Racial Discrimination.

Mr. LALOU (Morocco) thanked the members of the Committee for the interest they had taken in the report from his country. He would transmit all questions which had been raised to his Government and hoped that it would reply to them in its next report.

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The CHAIRMAN said that if there were no objections he would take it that the members of the Committee considered the second periodic report of Morocco to be satisfactory.

It was so decided.

The meeting rose at 5.55 p.m.