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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Fifty-first session

SUMMARY RECORD OF THE 1231st MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 14 August 1997, at 10 a.m.

Chairman: Mr. BANTON

CONTENTS

GE.97-17891 (E)

CONTENTS (continued)

The meeting was called to order at 10.05 a.m.

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

Draft concluding observations concerning the eleventh to thirteenth periodic reports of Iraq (CERD/C/51/Misc.12/Rev.1, future CERD/C/304/Add.28) (continued)

Paragraph 14 (continued)

1. The CHAIRMAN invited members to resume consideration of paragraph 14 of the draft concluding observations and read out the text of a proposed amendment thereto, as follows:

> "The Committee recommends that Iraq comply with the relevant Security Council resolutions calling for the release of all Kuwaiti nationals and nationals of other States who might still be held in detention and to provide all information available on missing individuals of such States."

2. Mr. DIACONU said he saw no improvement over the original draft. To what article of the Convention did that paragraph pertain?

3. Mr. ABOUL-NASR agreed with Mr. Diaconu; his preference was to do without the paragraph.

4. Mr. WOLFRUM said the justification for the amendment lay in the preamble to the Convention, in which it was quite clear that the Convention did not stand on its own but must be seen within the broader framework of other human rights conventions. The paragraph was, moreover, relevant to article 2 of the Convention. It should be voted on if necessary.

5. Mr. RECHETOV said the language had no bearing on the Convention and should be deleted altogether.

6. Mr. YUTZIS agreed with Mr. Wolfrum; the proposed text maintained a reasonable balance.

7. Mr. SHAHI said that at times the Committee seemed to favour a reference to the Convention alone and at others a reference to all the other human rights instruments, as in paragraph 13 of the draft concluding observations concerning Iraq. He would go along with either position, but was concerned about the inconsistency.

8. Mr. GARVALOV said the Committee might avoid taking a formal vote by allowing members to state how they would have voted had a vote been taken.

Explanations of position

9. Mr. ABOUL-NASR said that he would have abstained from voting because he considered the text to be out of the context of the Convention.

10. Mr. DIACONU suggested that a consensus could perhaps be reached if the text referred to non-discriminatory treatment by Iraq of all persons under detention, whether Kuwaitis or nationals of other States.

11. Mr. RECHETOV said the proposal was unacceptable because the Committee did not have any information about the basis on which the persons in question were being detained. In any event, the issue pertained to matters of international humanitarian law that were outside the Committee's purview. Mr. Garvalov's proposal was also unsatisfactory. He would not participate in a vote.

12. Mr. GARVALOV said that if the Security Council resolutions had some bearing on the Convention, he could go along with the wording.

13. Mr. LECHUGA HEVIA said he would have voted to delete the paragraph.

14. Mr. YUTZIS said the issue was an important one; he disagreed with the manner in which the remarks that should have been made about the situation in Iraq had been whittled down. It was not the purpose of the Committee to please States; the present case was a special situation, and it could not be subsumed into a common denominator on the situation of all States. He would therefore have voted to retain the text.

15. Mr. VALENCIA RODRIGUEZ said he would have abstained because there was no basis in the Convention for issues of the sort under discussion to appear in the present context.

16. Mr. de GOUTTES said he would have voted in favour of the paragraph, and if necessary, of the amendment proposed by Mr. Diaconu.

17. Mr. SHAHI said he would have abstained.

18. Mr. WOLFRUM said he would have voted in favour.

19. Mr. DIACONU said it would reflect poorly on the Committee were it to adopt a text with only three votes in favour and many abstentions. He would not participate.

20. Mrs. ZOU Deci said she would have abstained, because the paragraph did not fall under the terms of reference of the Convention. While she was not opposed to the overall content of the paragraph, putting it in the Committee's recommendations was inappropriate.

21. After a discussion, the CHAIRMAN suggested that a vote be taken on the paragraph.

22. A vote was taken by show of hands.

23. Paragraph 14 was adopted, as orally amended, by 3 votes to 1, with 5 abstentions, and 4 members not participating.

24. Mr. GARVALOV said that, according to rule 48 of the rules of procedure, a two thirds majority of its members present and voting was required for the Committee to reconsider a proposal already adopted or rejected, which was the case with paragraph 14. An amendment should be sought as a solution.

25. Mr. DIACONU proposed the following language as a compromise: "The Committee recommends that Iraq comply with the norms of international law and Security Council resolutions in treating all Kuwaiti nationals and nationals of other States still held in detention in a non-discriminatory manner." Such language would be in accordance with the Convention, calling on States not to discriminate between people.

26. Mr. ABOUL-NASR said that Mr. Diaconu's proposal amounted to an accusation; moreover, the Committee having just voted no proposal should be allowed unless a decision had been taken by a two thirds majority to reconsider it.

27. Mr. SHAHI seconded Mr. Garvalov's proposal to reconsider the decision.

28. Mr. GARVALOV said that according to rule 50 of the rules of procedure, "members present and voting" meant members casting an affirmative or negative vote; members abstaining were considered as not voting.

29. A vote was taken by show of hands.

30. The motion to reconsider the decision, was rejected by 7 votes to 6.

31. The draft concluding observations of the Committee concerning the eleventh to thirteenth periodic reports of Iraq, as a whole, as orally amended, were adopted.

32. Mr. GARVALOV said he had gone along with the adoption of the concluding observations, as orally amended, but wanted his own views on record that the Committee would have done better to have found a way out of a difficult situation, either by adopting the text without a vote or by merely allowing members to express their opinions on how they would have voted.

33. Mr. DIACONU said he would accept the concluding observations, but, as the vote had shown, paragraph 14 concerned an issue that did not fall within the purview of the Committee.

34. Mr. SHAHI said he had gone along with the concluding observations but must express reservations about a text that presented certain internal inconsistencies in referring in some paragraphs to the implementation of all the human rights instruments and in others to only the provisions of the Convention. The fundamental human rights covered by article 5 of the Convention did not cover the full range of the rights enshrined in the Universal Declaration of Human Rights. To be consistent, the Committee should have confined itself to the Convention and not referred to any other instruments.

35. Mr. ABOUL-NASR said he had gone along with the text, which was the result of compromise.

36. Mr. WOLFRUM said he encouraged more dialogue between the Committee and Iraq in the future. On the basis of the concluding observations, the Convention could be of help in improving the situation in Iraq as far as the application of the Convention was concerned.

Draft concluding observations concerning the eleventh periodic report of Mexico (future CERD/C/304/Add.30)

Paragraph 2

37. Mr. ABOUL-NASR said that the last two sentences of the paragraph, beginning: "However, it [the Committee] regrets the existence of divergencies in the interpretation of the Convention ..." did not belong in the introductory part of the concluding observations, but should be moved to section D "Principal subjects of concern", as a new paragraph 8.

38. Mr. de GOUTTES (Country Rapporteur) said that the phrasing of concluding observations should be consistent. He suggested that the wording used in the concluding observations of Iraq should be used, namely to leave the two sentences where they were and to delete any reference to regret on the part of the Committee.

39. Mr. WOLFRUM supported Mr. Aboul-Nasr's proposal.

40. Mr. SHAHI said that it would indicate undue concern on the part of the Committee to move the statements to section D. He suggested that the statements should be left in paragraph 2, and all references to "regret" deleted, to read: "Divergencies exist in the interpretation ... The data on the composition of the States parties' population is imprecise."

41. Mr. WOLFRUM pointed out that, in the case of Mexico, it was a question of interpretation of the Convention, which was a fundamental issue which surely belonged in the introduction. In the case of Iraq, the matter in question had merely been the Committee's reporting guidelines.

42. Mr. de GOUTTES agreed with Mr. Wolfrum.

43. Mr. SHAHI pointed out that under the current proposal, the sentence about imprecise population data would also be moved to section D. Was that issue a "principal subject of concern" for the Committee? In some concluding observations, the Committee seemed to condemn States for not providing accurate population data, and in others it seemed to let the matter drop. A consistent policy was needed.

44. The CHAIRMAN suggested that the Committee should adopt the first three sentences as paragraph 2. The last two sentences should be moved to section D, to form a new paragraph 8. He suggested that the exact wording should be discussed in the debate on section D.

45. It was so decided.

Paragraph 3

46. Mr. ABOUL-NASR, supported by Mr. SHERIFIS, said that, for the sake of consistency, the paragraph, which referred to the declaration provided for in article 14 of the Convention, should be moved to section E "Suggestions and recommendations".

47. Mr. de GOUTTES suggested that the same formula as that used for the concluding observations of Iraq should be used. He preferred paragraph 3 to remain in section A.

48. Mr. GARVALOV pointed out that the reference to article 14 had appeared in the section on suggestions and recommendations in past concluding observations, but it had been moved to the introduction because some members had not wished to make too strong a recommendation to States parties.

49. The CHAIRMAN said that the consensus seemed to be to keep paragraph 3 in its present position in section A, and amend the first words to read: "It is noted that the State party ...".

50. It was so decided.

Paragraph 4

51. The CHAIRMAN said that the first sentence should be amended to read: "... a large number (56) of ethnic and indigenous groups ...".

52. In response to points raised by Mr. ABOUL-NASR and Mr. de GOUTTES, he suggested that the first sentence should be amended to read: "It is noted that Mexico is ...".

53. It was so decided.

54. Mr. ABOUL-NASR questioned the reference in all paragraphs to the situation of indigenous populations, as if the Committee had discussed no other issues.

55. Mr. YUTZIS said that it was a fact that most of the ethnic problems in Mexico concerned the indigenous peoples. He suggested the following amendment to the second sentence: "... large segments of the population, mostly indigenous people, particularly in the province of Chiapas ...".

56. Mr. SHERIFIS suggested that the phrase: "The Mexican authorities have not succeeded in eliminating endemic poverty" should be amended, since surely no Government could be expected to eliminate poverty entirely.

57. Mr. AHMADU expressed misgivings about the words "extreme poverty" in the second sentence.

58. The CHAIRMAN suggested that, since members clearly had many comments to make on the draft concluding observations, the discussion should be suspended for the time being. Members should submit their proposed amendments to Mr. de Gouttes.

59. It was so decided.

Draft concluding observations concerning the eleventh to fourteenth periodic reports of the Philippines (CERD/C/51/Misc.16, future CERD/C/304/Add.34)

Paragraph 2

60. Mr. GARVALOV (Country Rapporteur) said that the word “somewhat” in the last sentence should be deleted.

Paragraph 3

61. The CHAIRMAN said that, for consistency, the paragraph should be amended to read: “It is noted that the State party ...”.

62. Mr. van BOVEN suggested that that paragraph, which dealt with the declaration provided for in article 14 of the Convention, should be moved to the section on suggestions and recommendations, as Mr. Aboul-Nasr had suggested in the case of Mexico.

63. The CHAIRMAN said that the paragraph had deliberately been moved from the section on recommendations to its current position for the reasons just given in the discussion on Mexico. Naturally, the Committee was at liberty to move it back if it so wished.

64. Mr. SHERIFIS said that the paragraph should be moved.

65. It was so decided.

Paragraph 4

66. Mr. GARVALOV (Country Rapporteur) said that the last line of the paragraph should be amended to read: “... including the indigenous cultural communities and Muslim Filipinos”, in order to reflect the terms used by the State party.

67. Mr. ABOUL-NASR asked whether the term “Muslim Filipinos” referred to the people's ethnic origin, or their religion.

68. Mr. GARVALOV (Country Rapporteur) said that, in his opinion, the Muslim Filipinos were a distinct ethnic group. He had put the question to the State party, but had not received a reply.

69. Mr. WOLFRUM agreed that the Muslim Filipinos were a distinct ethnic group, and they were certainly treated differently from other groups.

70. Mr. YUTZIS preferred the original wording.

71. The CHAIRMAN said he took it that most members preferred Mr. Garvalov's amendment.

72. It was so decided.

Paragraph 7

73. In response to a question by Mr. ABOUL-NASR, Mr. GARVALOV confirmed that the peace agreement referred to in the paragraph was indeed the so-called "Tripoli Agreement".

Paragraph 8

74. Mr. ABOUL-NASR asked for an explanation of the phrase "certificates of ancestral land and domain claims".

75. Mr. GARVALOV (Country Rapporteur) explained that the Philippine authorities had issued certificates for the return of ancestral land to indigenous peoples as a temporary measure pending the adoption of the necessary legislation by Congress. When the legislation was adopted, the certificates would be exchanged for the proper land deeds.

76. Mr. ABOUL-NASR suggested that a reference should be included in the section on suggestions and recommendations, calling for the speedy restitution of lands to the indigenous peoples.

Paragraph 11

77. The CHAIRMAN, in order to meet to Mr. GARVALOV's concern for clarity, suggested that the word "It" at the beginning of the penultimate sentence be replaced by "The article". In response to a suggestion by Mr. DIACONU he further suggested that in the phrase immediately following the quotation in the previous sentence, the words "it is underlined" should be replaced by "the Committee emphasizes".

78. It was so decided.

Paragraph 12

79. Mr. ABOUL-NASR said that once a country had acceded to the Convention, provided that it respected the Convention, there was no reason why it should include in its Constitution a definition of racial discrimination as it appeared in article 1.1. The Committee should therefore refrain from insisting on such a requirement and calling on countries to amend their Constitutions accordingly, as it had in the past.

80. Mr. DIACONU endorsed that view. The Committee might instead request the State party to include in its legislation a condemnation and prohibition of racial discrimination.

81. Mr. SHAHI agreed with those views. As Country Rapporteur for Poland, he had refrained from asking the State party, during the discussion of its report, to include a definition of racial discrimination in its Constitution or other legislation. If a State was in substantial compliance the Committee should consider the State's legislation on its merits.

82. Mr. SHERIFIS endorsed the views of the three previous speakers.

83. Mr. WOLFRUM said that Mr. Diaconu's suggestion was unacceptable. He endorsed the views of Mr. Shahi. The real issue was in the second part of the sentence and the first part should be deleted.

84. Mr. GARVALOV (Country Rapporteur) suggested that in the light of those views the first sentence should read:

> "It is noted with concern that there is no specific legislation prohibiting racial discrimination."

85. It was so decided.

86. At the suggestion of Mr. AHMADU it was further decided that the word "quite" should be deleted from the second sentence.

Paragraph 13

87. Mr. ABOUL-NASR observed that it could not be said that no information had been provided, when the representative of the Philippines had provided information orally.

88. The CHAIRMAN suggested that it would be more accurate to say that there had been insufficient information.

89. Mr. SHERIFIS said that the paragraph as it stood was too negative and should be balanced by some positive expression, such as welcoming the establishment of the Commission on Human Rights and the Ombudsman. It might even be more appropriate to move the paragraph to section C.

90. The CHAIRMAN, following a brief discussion between himself, Mr. SHERIFIS and Mr. GARVALOV proposed that a paragraph should be inserted at the end of section C to read:

> "The Committee welcomes the establishment of the Commission on Human Rights and of the Ombudsman."

91. It was so decided.

92. Mr. ABOUL-NASR, supported by Mr. SHERIFIS, suggested that a paragraph requesting further information on the powers and functions of those institutions should be transferred to Section E.

93. The CHAIRMAN said that as that request was already covered by paragraph 23, paragraph 13 could be deleted in its entirety.

94. It was so decided.

Paragraph 14

95. Mr. GARVALOV (Country Rapporteur) suggested that the words "these require" be replaced by "the provisions require" and that the last sentence of the paragraph be deleted.

96. It was so decided.

Paragraph 16

97. Mr. GARVALOV (Country Rapporteur) pointed out that the word “cultural” should be inserted after “indigenous” in line with the earlier amendments.

Paragraph 17

98. Mr. SHERIFIS urged caution in dealing with such sensitive issues as disappearances in order to avoid making a political statement. He therefore suggested that if the intention was to comment on the situation of ethnic groups, the words “which affected mostly” should be replaced by “including”.

99. After a brief discussion between Mr. GARVALOV, Mr. YUTZIS, Mr. SHAHI and Mrs. ZOU Deci on the question of disappearances and the evidence available, Mr. GARVALOV (Country Rapporteur) suggested that the paragraph should read:

> “With respect to article 5, paragraphs (a) and (b), of the Convention, there is concern that many reported cases of disappearances, including members of indigenous peoples and Muslim Filipinos, have not yet been fully investigated and brought before the courts.”

100. It was so decided.

Paragraph 20

101. Mr. GARVALOV (Country Rapporteur) said that the word “cultural” should be inserted after “indigenous” in line with previous amendments.

Paragraph 24

102. Mr. SHERIFIS said that the words “irrespective of their religion” were unnecessary and should be deleted.

103. It was so decided.

104. The draft concluding observations of the Committee concerning the eleventh to fourteenth periodic reports of the Philippines, as a whole, as orally amended, were adopted.

Draft concluding observations concerning the eleventh and twelfth periodic reports of Algeria (CERD/C/51/Misc.15, future CERD/C/304/Add.33)

Paragraph 3

105. The CHAIRMAN suggested that in the light of Mr. ABOUL-NASR's submission that the reference to a market economy placed the observation outside the scope of the Convention, the sentence should be amended to read: “It is recognized that Algeria has to face economic, social and political challenges and is experiencing economic and social problems which might have a negative impact ...”.

106. It was so decided.

107. The CHAIRMAN suggested that the Committee should resume consideration of the remaining paragraphs of the draft concluding observations concerning Algeria at a subsequent meeting.

ORGANIZATIONAL AND OTHER MATTERS (agenda item 3) (continued)

108. The CHAIRMAN invited the Committee to consider a review of the timetable including postponement, as the Bureau had recommended, of its consideration of the situation in Rwanda and, for consistency's sake, the Democratic Republic of the Congo, in view of the fact that the situation in the two countries were similar. Mr. Chigovera would be unavoidably absent on the day scheduled for consideration of the latter situation, for reasons explained previously.

109. Replying to Mr. ABOUL NASR's request for more details on the reasons for the proposed deferments, he recalled the final and somewhat different view of the Committee when the matter had last been discussed that Rwanda should be kept on the list in case there were further developments in the interim but without informing the Rwandan Government of its decision to do so because it was thought that the State party might not have anything to add to its previous statements.

110. The Bureau's recommendation concerning the Democratic Republic of the Congo was that, in view of the uncertainty surrounding the current situation there, there was doubt whether the Committee's view of the situation would have any practical effect on events. It would be better if the Committee waited until the report of the investigating mission had been submitted before expressing its views. It was to be remembered that Mr. Chigovera, who was very involved in his capacity as a member of the joint mission appointed by the Secretary-General to investigate human rights issues in the eastern part of the Democratic Republic of the Congo, had been party to the Committee's discussions and would be absent on the scheduled date at the current session.

111. Mr. WOLFRUM said that there was some merit to the proposal to postpone discussion of Rwanda because it had been kept open only in case there were any further developments. As far as the Democratic Republic of the Congo was concerned he disagreed to the extent that the Committee did have information available in the report of the joint mission. Although he had already expressed the view that under the present circumstances the Committee should not take any action, the Committee should at least be briefed on events in the country and on the mandate of the investigating team, with a view to taking up the issue at the next opportunity.

112. The CHAIRMAN said that he took Mr. Wolfrum's point and was prepared to keep the situation in the Democratic Republic of the Congo on the agenda for the following week.

113. Mr. SHERIFIS agreed with the recommendation concerning Rwanda and shared Mr. Wolfrum's view that the Committee should to informed but refrain from making any recommendations pending the information that Mr. Chigovera would have to share at the March 1998 session.

114. Mr. SHAHI agreed that the Committee should wait until it had up-to-date information on the situation in Rwanda and the Democratic Republic of the Congo, particularly with respect to whether the repatriated Rwandan refugees were being provided with adequate security, free from the threat of revenge killings. Pending the findings of the investigating mission, the situation should be kept under close scrutiny by the Committee to prevent the occurrence of any further victimization. Given the Committee's mandate, the situation in both countries was more relevant to CERD than to any other committee. There was no justification for the Committee to neglect to give its close attention to the unfolding situation merely because another United Nations organ, the Security Council, was actively seized of the situation.

115. The CHAIRMAN assured Mr. Shahi that the Committee's wishes were clear.

116. Mr. de GOUTTES suggested that the Committee might at least request that a representative of the Secretary-General provide it with the latest information on the situations in Rwanda and the Democratic Republic of the Congo, and also Burundi.

117. The CHAIRMAN said that he would oppose Mr. de Gouttes' suggestion because of the pressure on the timetable.

118. Mr. ABOUL-NASR, expressing full agreement with Mr. de Gouttes' proposal, which he saw as an imperative, said that the information that Mr. Wolfrum had suggested as a basis for discussion was insufficient. The Committee should not act hastily in considering items of information provided by members of the Committee; it should adopt a serious approach and study all the information at its disposal in Geneva provided by the many United Nations bodies and missions investigating the situation, while considering the implications that such an approach might have for its schedule as an entirely separate issue. As to whether the State party should be informed, the Committee should proceed as it had done with Israel and treat all countries equally, informing the State party of the date and the details concerning the discussion.

119. The CHAIRMAN said that the Democratic Republic of the Congo had been duly informed that it was scheduled for consideration the following week, Rwanda was off the agenda and a delegation from Burundi was expected. In the light of the past expressions of the gravest disquiet at the Committee's failure to adopt concluding observations on two States, he warned of the risk that the Committee might have to conclude its session without being able to present agreed concluding observations on all the reports considered if the discussions continued as at present.

120. Mr. SHERIFIS, supported by Mr. AHMADU, said that it was the responsibility of the Chairman and the rest of the Committee to give first priority to adopting a report with agreed concluding observations on all reports considered. Adoption of recommendations could therefore not be postponed and the Chairman should be assisted in his bid to achieve that goal.

121. Mr. WOLFRUM suggested that discussion of the report of Mr. Alston be restricted to one hour and had misgivings about devoting one half of a meeting to discussing the Third Decade to Combat Racism and Racial Discrimination.

Could the Chairman look into the possibility of holding meetings beyond 6 p.m. in order to complete the Committee's main task of examining States' parties reports?

122. Mr. van BOVEN urged members to exercise self-restraint in examining concluding observations. They should present their observations to the country rapporteurs when required and refrain from raising issues out of context.

123. Mr. GARVALOV endorsed the proposal for late meetings. It was up to the entire Committee to ensure that the concluding observations were adopted.

124. The CHAIRMAN said that he would look into the possibility of making arrangements for late meetings and report back to the Committee.

125. Mr. SHERIFIS, supported by Mr. de GOUTTES, said that it was essential for interpretation and precis-writing services to be provided for late meetings.

The meeting rose at 1 p.m.