



**International Convention on
the Elimination of All Forms
of Racial Discrimination**

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Summary record of the first part (public)* of the 1678th meeting

Held at the Palais Wilson, Geneva, on Thursday, 24 February 2005, at 10 a.m.

Chairperson: Mr. Yutzis

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* The summary record of the second part (closed) of the meeting appears as document CERD/C/SR.1678/Add.1.

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The first part (public) of the meeting was called to order at 10.15 a.m.

Statement by the United Nations High Commissioner for Human Rights

1. **Ms. Arbour** (United Nations High Commissioner for Human Rights) welcomed the opportunity to address the Committee on the Elimination of Racial Discrimination.
2. She had noted in particular two important issues on the Committee's busy programme of work, firstly, the consideration of the preliminary draft general recommendation on the prevention of racial discrimination in the administration and functioning of the system of justice and, secondly, the thematic discussion on the prevention of genocide, in which the Special Adviser to the Secretary-General on the Prevention of Genocide, Mr. Juan Méndez, would be participating.
3. Recalling the conclusions of the Durban Declaration, she said that racial discrimination persisted in the functioning of the penal system and in the application of the law, as well as within institutions and in the attitudes of individuals responsible for law enforcement. It included racial profiling, the mistreatment of persons belonging to ethnic groups by the police and the imposition of harsher sentences on those persons. Statistics demonstrated that members of ethnic minorities and indigenous people were over-represented among those arrested or imprisoned and those who died in custody. Of particular concern was the lack of prompt action by the police, the prosecutors and the judiciary to investigate and punish acts of racial discrimination, which often led to total or partial impunity for the perpetrators.
4. Racial discrimination in the administration of justice subverted the rule of law, undermined faith in the legal system, and resulted in the victimization of individuals and groups by the very institutions responsible for their protection. That had to be denounced and eradicated, given the importance of ensuring that the judicial system played an adequate role in preventing racial discrimination and ensuring protection and reparation for victims.
5. Citing article 5 of the Convention, which required States parties to guarantee the right of everyone, without distinction as to race, colour or national or ethnic origin, to equality before the law, especially the right to equal treatment before the tribunals and all other organs administering justice, she said that the Committee was uniquely qualified to offer guidance to States on all measures necessary to ensure the elimination of racial discrimination in the administration of justice. A general recommendation on that issue would undoubtedly be timely and useful.
6. She also expressed interest in the thematic discussion on the prevention of genocide which the Committee planned to hold during its sixty-sixth session; she herself, as Chief Prosecutor of the International Criminal Tribunals for the former Yugoslavia and Rwanda, had been confronted with some of the worst excesses of intolerance and injustice and the grossest abuses of the most basic human rights. No one should ever forget the horrendous massacres in Rwanda in 1994 and in Srebrenica the following year, both driven by racial and ethnic intolerance and hatred. Those events were a reminder that racism, racial discrimination, xenophobia and related intolerance were not vanishing phenomena, and that the need for vigilance could not be exaggerated.
7. Among other efforts to prevent genocide, in 2004 the Secretary-General had launched a Plan of Action which included the nomination of a Special Adviser on the Prevention of Genocide, Mr. Juan Méndez, who would be attending the Committee's thematic discussion on that issue. Close cooperation between the Special Adviser and the Committee, as well as his interaction with other treaty bodies and the special procedures of the Commission on Human Rights, would undoubtedly assist him to develop a proper course of action.

8. She then drew the Committee's attention to a report of the Commission on Human Rights entitled *Views of States parties to the Convention on the Prevention and Punishment of the Crime of Genocide on the Secretary-General's proposal that they consider setting up a Committee on the Prevention of Genocide* (E/CN.4/2005/46); that committee would meet periodically to review reports and make recommendations.

9. Much work remained to be done to ensure that the root-causes of conflicts were addressed, in particular through combating racial discrimination and promoting the principle of equality. In that regard, the decision taken by the Committee in 1993 to establish early warning measures and urgent action procedures as a regular and principal item on its agenda was a crucial one. By so doing the Committee had declared its readiness to take early warning measures to prevent unrest from escalating into conflict, or to initiate urgent action procedures aimed at responding to problems requiring immediate attention to prevent or limit the scale of serious human rights violations.

10. The challenge was to put in place preventive strategies effective at the national level. Thus, every State party should be able to show and explain to the Committee the preventive strategies it had in place, and the institutions it had established to provide special protection to those at risk.

11. She drew the Committee's attention to the report of the International Commission of Inquiry on Darfur, which she had recently presented to the Security Council. Although the Commission of Inquiry had found that the Government of Sudan had not pursued a policy of genocide, its recommendations might contribute usefully to the Committee's forthcoming thematic discussion, in particular regarding the protection of victims and the provision of reparation. After concluding that large-scale war crimes and crimes against humanity had been committed in Darfur, the Commission of Inquiry had not only recommended referral to the International Criminal Court, but had also proposed to establish an International Compensation Commission. She would pay due attention to the Committee's conclusions concerning the prevention of genocide.

12. She concluded by saying that one of her main goals was to contribute to strengthening the rule of law at both international and national levels. That was, she believed, the only way to meet difficult societal challenges, in particular the combat against racial discrimination. International human rights law, one of the cornerstones of which was the principle of equality and non-discrimination, was often said to face the obstacles of weak enforcement mechanisms; however, through various international instruments such as the Convention human rights had been turned from ideals into legal obligations. Their incorporation into the legal and constitutional systems of States parties had permitted victims to assert their rights, as could be seen from a number of judgements by courts around the world. By way of example, the provisions of the Convention, the Committee's concluding observations concerning the report of the United Kingdom and the Committee's general recommendation on non-citizens and racial discrimination had been extensively cited in a judgement of the House of Lords and in its debates.

13. Finally, she expressed her deep appreciation to the Committee for the important work it had been doing in promoting and protecting equality and the elimination of all forms of racial discrimination.

14. **The Chairperson** warmly thanked the High Commissioner for Human Rights for her address and assured her that the Committee would continue to spare no effort in fulfilling its mandate and pursuing its battle against racial discrimination.

Consideration of reports, comments and information submitted by States parties under article 9 of the Convention *(continued)**Tenth to thirteenth periodic reports of Luxembourg (CERD/C/449/Add.1) (continued)*

15. *At the invitation of the Chairperson, the members of the delegation of Luxembourg resumed their places at the Committee table.*

16. **Ms. Martin** (Luxembourg) said that the national Advisory Commission on Human Rights, established in 2000, was an advisory body which issued opinions and conducted investigations on its own initiative or at the request of the Government. It was subdivided into three sub-commissions dealing, respectively, with education, discrimination and institutional problems, and into three ad hoc groups specializing in children's rights, expulsions and house searches. Since its establishment the national commission had formulated opinions on many subjects, including for example human rights education, the promotion of children's rights and the social protection of the child, the establishment of a charter of fundamental rights and the expulsion of illegal aliens. In addition, in 2002 it had organized a conference on the theme of discrimination, as well as various meetings with political leaders at the national and international levels.

17. The Permanent Special Commission against Racial Discrimination, which was a standing subsidiary body of the National Council for Foreigners, met once a month. The Commission had been set up in 1996, not on 1 October 2000 when the Complaints Office responsible for implementing the provisions of article 14, paragraph 2 of the Convention had been established. To publicize the existence and mandate of the Complaints Office, the Chairperson of the Permanent Special Commission against Racial Discrimination, which was the Office's parent body, had given television interviews and had taken the opportunity offered by various public events attended by foreigners, such as the Festival of Migration, Cultures and Citizenship, to hold conferences on that subject.

18. She took due note of the fact that the Commission had decided not to pursue a complaint against a journalist who had used the term "nigger" in one of his articles, and would convey that information to the Complaints Office.

19. The Office of the Ombudsman was the most recent in the panoply of fundamental rights bodies, having been established in August 2003. The Ombudsman was answerable to the Chamber of Deputies. Following a call for applications, the Ombudsman was elected by a majority of the members present in the Chamber, then appointed by the Grand Duke. He or she could be dismissed if one third of the deputies so requested, in which case an inquiry would be conducted. The findings of the inquiry would be submitted to the Chamber, which would then decide, by a simple majority of the deputies, whether or not to transmit the dismissal request to the Grand Duke. The current Ombudsman was Mr. Fischbach. Between 1 May and 30 September 2004, a total of 829 cases had been referred to the Ombudsman's services; of those, 627 had been dealt with and 202 were still under consideration.

20. The advisory commissions for foreigners in the communes had been in operation since 1989 and were generally more effective in major conurbations where there was a particularly high concentration of foreigners. Since the adoption in 2003 of the law allowing foreigners to participate in communal elections, the advisory commissions had been particularly active and had encouraged foreigners to register to vote.

21. Furthermore, Luxembourg was considering the establishment of an independent equal opportunities body and planned to organize a round table to reflect on how to remove any references to "race" from its legislation.

22. **Ms. Schaak** (Luxembourg) said that the Grand Duchy of Luxembourg had not established racial motives as a general aggravating circumstance for offences, as it considered that judges had at their disposal a sufficiently broad range of penalties for trying

all types of offences on a case-by-case basis, irrespective of motivation. On the other hand, article 444 of the Criminal Code provided for a harsher penalty for slander and libel where the defamatory allegations were motivated by unlawful discrimination.

23. She acknowledged that Luxembourg law did not prohibit racist or xenophobic organizations, as required under article 4 of the Convention. Nevertheless, article 18 of the Non-Profit Associations and Foundations Act of 21 April 1928 provided for the possibility of legal dissolution in the event that an association, through its activities, disrupted public law and order. It was not the legislature's intention to provide, under that measure, a special law prohibiting racist organizations per se. In fact, it considered that prohibiting such racist organizations might drive their members underground and make it more difficult for the authorities to monitor them. However it had to be noted that no organizations of that kind were known to exist in Luxembourg. Furthermore, if an individual distributed a racist tract on behalf of an association, it was that individual, not the legal entity, who was held responsible, prosecuted and punished.

24. Luxembourg was about to ratify the European Convention on Cybercrime and would then ratify the Additional Protocol concerning the criminalization of acts of a racist and xenophobic nature committed through computer systems. Following criticism at the European and international levels of article 457, paragraph 5 of the Criminal Code, which stated that "the ban on discrimination does not apply to differential treatment provided by or resulting from another provision of law", that paragraph, which was too vague, would be rewritten.

25. Luxembourg did not have disaggregated statistics on racist crimes, but such crimes were systematically prosecuted. The Public Prosecutor's Office had set up a special section in order to take a more consistent approach to cases of racism and racial discrimination. Under article 24 of the Code of Criminal Procedure, the Government Procurator General could impose criminal mediation on the perpetrator of a criminal offence, which meant that the individual concerned would be summoned by the mediation centre for a recital of the case against him or her and a reminder of the legislation. On average 180 mediations took place each year, and four cases of discrimination and racism had been dealt with in that manner in 2004. Three reception and legal information services had been set up in the Government Procurator General's Department to provide private individuals, regardless of nationality, with general information on the extent of their rights and on ways and means of safeguarding them. In 2004, those services had considered some 8,000 requests for information.

26. The Office of the Inspector-General of Police, established in 1999, was responsible for conducting administrative investigations (96 in 2004) and judicial investigations (26 in 2004). The Government Procurator General could instruct the Office of the Inspector-General to carry out criminal investigations and private individuals could apply to the Office if they felt they had been discriminated against. Police officers who engaged in discriminatory acts were systematically punished by the Police Directorate General. According to recent statistics, 2 or 3 of the 60 disciplinary sanctions imposed related to racism cases.

27. The delegation of Luxembourg acknowledged that the wording in paragraph 75 of the report concerning the justifiability of discrimination founded on nationality was inappropriate as it could be misinterpreted, and that it would be desirable to revise the text of article 457 of the Criminal Code. However, the legislation on nationality did comply with European legislation and, like all member States of the European Union, Luxembourg distinguished between European Union nationals and nationals of other countries with respect to entry, residence and the right to vote. The conditions for obtaining Luxembourg nationality had been relaxed by the Act of 24 July 2001 which had, in particular, reduced the residence requirement for applications to five years. The delegation had no statistics on

applications for, or the granting of, nationality, but invited Committee members to consult the Ministry of Justice website (www.mj.public.lu). The Government was considering the possibility of adopting the principle of dual nationality.

28. **Mr. Berns** (Luxembourg) said that like the other 24 countries of the European Union, Luxembourg was required to offer Community nationals access to public service posts, especially in the areas of health and education. Further, although under no obligation to do so, Luxembourg had decided to open up the lower ranks of its professional army to foreign nationals.

29. The Ministry of Religious Affairs had regular contact with the Assembly of the Muslim Communities of the Grand Duchy, and discussions to establish a “convention” with the Assembly were under way; however, a number of problems relating to the principle of non-discrimination between men and women had yet to be resolved. In any event, the fact that an association did not have a “convention” did not mean that it was not officially recognized. The delegation of Luxembourg wished to stress that freedom of religion was unconditional. As the foreign religious communities were small in size and scattered all over the territory, there were no schools that provided a religious education, although the law did permit them. The major religions of the world were, of course, studied at school. The ritual slaughter of animals posed problems for Luxembourg, because according to the law all animals had to be anaesthetized before slaughter and that was contrary to kosher and halal ritual practices. In general those practices required major investment for public health reasons, and the religious communities concerned were not large enough to justify such investment. Those communities could, however, import halal or kosher meat products from France and Belgium without any difficulty.

30. **Ms. Martin** (Luxembourg) said that the Luxembourg Government had incorporated in its domestic legislation Council of Europe Directive 2000/43 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin and Council of Europe Directive 2000/78 establishing a general framework for equal treatment in employment and occupation.

31. **Ms. Schaak** (Luxembourg) said that to combat clandestine labour, the Labour Inspectorate carried out systematic checks, in collaboration with the Grand Duchy’s police and the anti-fraud service. Illegal employment mainly involved the hotel and restaurant sector, where 95 per cent of employees were cross-border workers or foreigners from some 70 countries. Employers who contravened the labour legislation were systematically punished and the imposition of prohibitive fines seemed to be having a deterrent effect. The Act of 20 December 2002 regulated working hours in the hotel and restaurant sector, but applying it was no easy task.

32. The Ministry of the Family had housing stock which was made available to the most vulnerable members of the foreign communities for a period of three years, at a modest rent. That was to enable them to save up during that period and then acquire subsidized housing. Where the private sector was concerned it was impossible to compel landlords and real-estate professionals to rent apartments to foreigners and immigrants, but the authorities tried to encourage victims of housing discrimination to make a complaint.

33. **Mr. Berns** (Luxembourg) said that the integration of foreign children into Luxembourg schools was facilitated by the existence of reception classes for newly arrived primary and secondary school pupils. From the age of three children learned Luxemburgish, followed by German and French, because Luxembourg was committed to preserving trilingualism and giving children equal employment opportunities. Children with Italian or Portuguese immigrant backgrounds (more than 20 per cent of schoolchildren) could maintain contact with their culture of origin by attending Italian or Portuguese lessons organized by their embassies on premises made available to them by local

government. The main function of the intercultural mediation service was to facilitate dialogue between teachers and parents of foreign origin. Chinese-speaking and Portuguese-speaking mediators in particular had been recruited to inform parents about their children's schooling. Furthermore, all teachers were trained in how to manage heterogeneous classes and in the fundamental principles of respect for diversity and non-discrimination.

34. **Ms. Martin** (Luxembourg) said that under Luxembourg law anyone could be assisted at every stage of the proceedings by a sworn interpreter accredited by the Ministry of Justice. To date, no complaints or claims concerning discrimination against members of the public by the authorities had been referred to the Ombudsman.

35. Under the law, asylum-seekers whose applications had been rejected were asked to leave the country, but could also request a residence permit on humanitarian grounds; such requests were considered on a case-by-case basis. Regarding the right to asylum, a bill recently sent to Parliament would allow asylum-seekers to invoke the European Convention on Human Rights and the international Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Residence permits on humanitarian grounds had been granted to 13 individuals in 2000, 353 in 2001, 23 in 2002, 106 in 2003 and 219 in 2004.

36. Although housing conditions for asylum-seekers were difficult, that was a temporary situation as the special reception centre managed by the State and taken over by the Red Cross was currently being rebuilt.

37. Regarding the conditions under which illegal aliens were held, in August 2004 the Government had undertaken to build a special holding centre which would be separate from the prison where foreigners awaiting deportation were currently accommodated. The new centre would open at the end of 2006. NGOs were entitled to visit persons awaiting deportation.

38. A bill providing for a shift in the burden of proof had recently been sent to Parliament for consideration. Associations entitled to take part in court proceedings had to have legal personality and have as their purpose the fight against racism and racial discrimination. To date only one association had brought criminal indemnification proceedings. The case concerned incitement to racial hatred on the Internet.

39. Furthermore, Luxembourg had launched several projects intended to promote interculturalism at school. A large amount of training material had been developed for that purpose and awareness-raising packs about racism and xenophobia were distributed regularly in schools.

40. **Mr. Berns** (Luxembourg) said that his country had not escaped the international climate of intolerance and the stereotyping of the Muslim community which had followed the 11 September 2001 attacks in the United States. Public opinion and the international media appeared to have been greatly exercised by two incidents in Luxembourg. The first concerned the highly controversial deportation of individuals of the Muslim faith who were very strongly suspected of collusion with terrorist movements. The second concerned an unfortunate association made by a journalist between terrorism and the activities of the Islamic Cultural Centre in Mamer, which was then apparently taken up by several media sources. In reality, a recent survey had shown that most Luxembourg nationals did not fear Islam and that Muslims were well integrated into Luxembourg society.

41. He added that human rights issues were very well publicized in the country, particularly because the press attached very great importance to that matter. For obvious reasons of geographical proximity, the decisions of the Council of Europe were mentioned and discussed more often than those of United Nations bodies. Nevertheless, the observations and comments of the United Nations bodies responsible for the

implementation of international human rights treaties were amply discussed in the country. By way of example, the concluding observations of the Committee on the Rights of the Child concerning Luxembourg's second periodic report, adopted in January 2005, had been widely reported and published in the national press, and a very long report on the subject had been broadcast on Luxembourg television.

42. **Ms. Schaak** (Luxembourg) said that the country had taken several significant measures to promote a culture of tolerance and inter-racial harmony among media professionals and put an end to anti-Semitic and anti-Muslim racist discourse in the press and on the Internet. Thus, the Act of June 2004 on the press, concerning freedom of expression in the media, provided for the establishment of a Complaints Commission to be made up of five independent members. A Press Council had also been set up and tasked, in particular, with developing a press code of ethics which would explicitly prohibit racial discrimination. The Press Council would also have the authority to make recommendations and issue guidelines.

43. **Mr. de Gouttes** (Country Rapporteur) expressed his warm appreciation to the delegation of Luxembourg for the precision and quality of its responses to Committee members during an interaction which had been exemplary in its seriousness and professionalism and was illustrative of the quality of dialogue that the Committee hoped to have with States parties.

44. There were many positive points which should be identified and reflected in the Committee's concluding observations, including the positive policy adopted by the State party to control migratory movements, the considerable efforts made by the Government to strengthen its mechanism for combating racism and the establishment of the appropriate institutions for that purpose, the establishment of a Complaints Office to implement article 14, paragraph 2 of the Convention, and finally the new Act on the press which provided for the development of a code of ethics for media professionals. The Committee should also make reference, in its concluding observations, to the positive measures taken by the State party to facilitate the integration of children in schools and promote interculturalism.

45. However, he considered that certain recommendations should be made concerning the implementation of the various provisions of the Convention. Thus, with regard to article 2 of the Convention, several members of the Committee had requested that Luxembourg consider ratifying the 1961 Convention on the Reduction of Statelessness, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, and the Council of Europe Convention on Cybercrime.

46. Where the implementation of article 4 was concerned, Luxembourg law appeared satisfactory on the whole but, in his view, it should be supplemented by prohibiting or criminalizing organizations that incited discrimination and racial hatred and by defining racist motivation for offences as an aggravating circumstance.

47. With regard to article 5, the State party should further strengthen the rights of particularly vulnerable groups, including refugees, asylum-seekers, non-nationals and Muslims. It should also strengthen the fight against the discrimination that foreigners and immigrants continued to suffer in the areas of work, employment and housing, and make the private sector more aware of the housing problems faced by those groups. Furthermore, the State party should make additional efforts to combat trafficking in persons, particularly women from Eastern Europe, as well as labour trafficking and the illegal employment of foreign workers; it should also promote greater recognition of the Muslim faith.

48. Where the implementation of article 6 of the Convention was concerned, it was his understanding that the next periodic report of Luxembourg would include statistics on complaints lodged, prosecutions brought and judgements rendered in respect of racism.

Concerning article 7, the Committee would probably want to recommend that the State party strengthen the arrangements for combating the dissemination of racist messages in the media. Similarly, the Committee might envisage recommending that Luxembourg ratify the European Convention on Cybercrime and combat the xenophobic stereotypes still encountered in public opinion, the media and the administrative authorities, and that particular attention be paid to State employees in that respect.

49. **The Chairperson** expressed his appreciation to the delegation of Luxembourg for the quality of its replies and the thoroughness with which it had endeavoured to respond as precisely as possible to the questions posed by Committee members, as well as for kindly allowing some of its allotted time to be given over to the statement by the United Nations High Commissioner for Human Rights.

50. **Mr. Berns** thanked the Committee for the very constructive spirit in which the report of Luxembourg had been considered and assured it that his delegation would not take what he perceived to be a favourable judgement by its members as a reward, but rather as encouragement to continue along the path that the country was striving to follow every day.

51. **The Chairperson** declared that the Committee had thus concluded its consideration of the tenth to thirteenth periodic reports of Luxembourg.

52. *The delegation of Luxembourg withdrew.*

The first part (public) of the meeting rose at 12.20 p.m.