



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

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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Sixty-sixth session

SUMMARY RECORD OF THE 1701st MEETING

Held at the Palais Wilson, Geneva,
on Friday, 11 March 2005, at 3 p.m.

Chairman: Mr. YUTZIS

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The meeting was called to order at 3.20 p.m.

ORGANIZATIONAL AND OTHER MATTERS (agenda item 2) (continued)

Draft Declaration on Prevention of Genocide (CERD/C/66/Misc.15)

1. The CHAIRMAN invited the members of the Committee to resume their discussion of the draft Declaration on Prevention of Genocide (CERD/C/66/Misc.15).

Paragraph 11

2. Mr. AVTONOMOV explained that since the Committee had considered paragraph 11 on the situation in Darfur to be too specific for inclusion in the Declaration, some members of the Committee had prepared a text, based on the wording of paragraph 11, which could be adopted as a separate decision 2 (66), thus allowing paragraph 11 to be deleted.

3. Paragraph 11 was deleted.

Paragraph 12

4. Mr. THORNBERRY said that the words “at an early stage of indications” could be confusing, and that a clearer wording was required.
5. Mr. SHAHI said that he had drafted the paragraph strictly in accordance with the wording used in the report of the International Commission of Inquiry on Darfur to the United Nations Secretary-General. The perpetrators of genocide had not been referred to the International Criminal Court for prosecution, since the United States had requested that they be brought before an independent ad hoc tribunal. He would, however, welcome any improvements that could be made by Mr. Thornberry.
6. Mr. THORNBERRY proposed replacing the word “hospitable” by the word “conducive”, and replacing the word “referral” by the word “referring”. Moreover, the word “alleged” should be inserted before “perpetrators” and the words “at an early stage of indications of genocide” should be replaced by “as soon as practicable”, or “promptly”.
7. Mr. PILLAI said that the words “at an early stage of indications of genocide” might be deleted, since the essence of the paragraph was that all perpetrators of genocide should be brought to justice quickly and effectively.
8. Mr. LINDGREN ALVES noted that paragraph 11 referring specifically to Darfur had been deleted. Paragraph 12 might therefore be redrafted in more general terms to read: “Considers it imperative to dispel the climate of impunity that is conducive to war crimes, genocide and other crimes against humanity by referring all alleged perpetrators of these crimes to the International Criminal Court.”

9. Mr. de GOUTTES endorsed the proposal made by Mr. Lindgren Alves. He further suggested that the crimes mentioned should be listed in order of gravity: “genocide, crimes against humanity and war crimes”.

10. The CHAIRMAN said he took it that the proposal made by Mr. Lindgren Alves, as modified by Mr. de Gouttes, could be adopted.

11. Paragraph 12, as amended, was adopted.

Paragraph 13

12. Mr. de GOUTTES said that the words “indigenous and disadvantaged communities” should be replaced by the words “disadvantaged communities, in particular indigenous communities”, in order to remain consistent with the amended wording of the preamble.

13. Mr. AVTONOMOV proposed replacing the expression “indigenous communities” by “indigenous peoples”.

14. Mr. THORNBERRY said that the word “including” should be inserted before the words “in the context of”.

15. Paragraph 13, as amended, was adopted.

16. The draft Declaration on Prevention of Genocide (CERD/C/66/Misc.15) as a whole, as amended, was adopted.

Draft decision 2 (66) on the situation in Darfur (document distributed in the meeting room in English only)

17. Mr. de GOUTTES suggested the text should contain a reference to the Committee’s previous decision on Darfur, decision 1 (65).

18. Mr. VALENCIA RODRÍGUEZ said that, in his view, paragraph 11 of the Declaration on Prevention of Genocide should have been retained. He had been supported in that opinion by certain Committee members and in particular by a number of NGOs which considered the situation in Darfur to be one of genocide. He maintained that the risk of genocide had still not disappeared, and he hoped the Committee would not find itself discussing the matter ad infinitum, as had happened with the situation in Rwanda, 10 years previously.

19. Given that it was the Committee’s decision to adopt the paragraph in question as a separate text, however, he wished, in the interests of consistency, to propose an amendment to bring the text into line with paragraph 12 of the Declaration, namely rewording the last part of the final sentence to read “... returning to their homes in Darfur, against genocide, crimes against humanity and war crimes”.

20. Ms. DAH said it was regrettable that there had not been time to take account of all the elements required to substantiate the text of the draft decision, most notably the report of the International Commission of Inquiry.
21. She agreed that reference should be made to the Committee's previous decision on Darfur, and in her view there should also be a reference to paragraph 12 of the Declaration just adopted.
22. Mr. SHAHI agreed that reference should be made to the Committee's previous decision.
23. With regard to the operative paragraph of the draft decision, he pointed out that the Committee's prevention procedure required that a matter be referred, not to the General Assembly, but to the Security Council through the Secretary-General. He suggested the text should be amended accordingly.
24. Mr. AMIR said that the International Commission of Inquiry had spent some considerable time in the Sudan conducting its investigation before arriving at the finding that there was no firm proof of genocide in the Darfur conflict. He understood the concerns of some members who were not entirely satisfied with that finding, but the Committee must nevertheless presume the innocence of the parties concerned until there was sufficient evidence to the contrary. He therefore urged the Committee to adopt a suitably cautious approach in its draft decision.
25. Mr. KJAERUM endorsed Mr. Valencia Rodríguez' remarks concerning paragraph 12 of the Declaration on Prevention of Genocide and suggested the insertion of a further preambular paragraph in the draft decision recalling that Declaration and reproducing the text of paragraph 12 thereof concerning the question of impunity.
26. Referring to the operative part of the draft decision, he suggested that the phrase "including camps" should read "including those in camps" since it referred to the situation of the civilian population.
27. Mr. HERNDL said that he was in favour of the draft decision on the situation in Darfur, but that the text before the Committee required some redrafting. For instance, in the preambular paragraph, the words "regular work" should be replaced by "practices". A reference should also be included to the Committee's decision 1 (65) of 18 August 2004.
28. Referring to the operative paragraph, he noted the Committee should make its recommendations to the Security Council through the Secretary-General, rather than through the General Assembly. Also, the insertion of the word "possible" before the last phrase "war crimes and crimes against humanity" would allow for inclusion of a reference to genocide. Although there was no confirmation of genocide in the Darfur conflict, it was possible that it existed, and that should be reflected in the draft decision in line with the Committee's duty to inform the Security Council under its early warning and urgent action procedures.

29. Mr. THORNBERRY, referring to the preambular paragraph, questioned the appropriateness of the phrase “regular work”. He also suggested that the word “warning” should be inserted before “signals”. With regard to the operative paragraph, he agreed that the Committee should make its recommendations through the Secretary-General. He also suggested that the phrase “the possibility to deploy” should read “the possibility of deploying”. However, he was not in favour of including a reference to genocide. That matter was already dealt with separately in the Declaration on Prevention of Genocide; in any event, the Commission of Inquiry had not substantiated any of the allegations of genocide and the Committee should respect its findings.

30. Mr. TANG Chengyuan said that the findings of the Commission of Inquiry were well known: there was no evidence of genocide, and therefore no reference to it was appropriate. In keeping with its mandate under its early warning and urgent action procedures, the Committee might request the Government of the Sudan to provide information on the situation in Darfur, but he seriously questioned the need to adopt a special decision on the matter.

31. Mr. LINDGREN ALVES said that the conflict in Darfur had been a subject of concern to the United Nations for some considerable time, and that various resolutions and decisions had been adopted, including by the Commission on Human Rights, to no avail. The Committee had also issued its own decision on the matter in 2004. More recently, the conflict had attracted greater attention in connection with the findings of the Commission of Inquiry and Security Council resolution 1585 (2005). However, in view of the difficulty the Committee was having in reaching agreement, he suggested that it should defer consideration of the draft decision until its sixty-seventh session. That would give it more time to assess whether a further decision was really warranted, in the light of recent developments and a possible deterioration in the situation, and to draft a suitable text on the basis of all the suggestions made during the current discussion.

32. Mr. de GOUTTES said he disagreed. The Committee should continue discussion until it reached agreement on a suitable text. He endorsed the suggestions of Mr. Herndl and Mr. Thornberry concerning the preambular paragraph. He also agreed on the need to refer to the Committee’s previous decision on the subject. He suggested that the words “and the risk of genocide” should be added at the end of the last part of the operative paragraph, which should meet the concerns expressed about the findings of the Commission of Inquiry.

33. Mr. KJAERUM said it was important for the Committee to adopt a decision during the current session. If it delayed any longer it would miss the opportunity of addressing the issue when it was relevant and when there was a possibility of bringing some influence to bear on the international community. He hoped that account would be taken of his suggestion to add a paragraph referring to the question of impunity, but he would not press the matter.

34. Mr. SHAHI endorsed most of the amendments suggested by members, who now seemed to be drawing closer to consensus. Nonetheless, one further amendment was necessary: the deletion of the word “possibility” with reference to the deployment of the African Union force.

That term would make the text of the draft decision weaker than the decision issued the previous year, which had referred quite simply to “deployment”, yet the need to deploy an enlarged force was now more urgent than ever.

35. The CHAIRMAN invited the members who had suggested amendments to hold consultations with Mr. Shahi with a view to elaborating a final version of the draft decision.

The meeting was suspended at 5 p.m. and resumed at 5.20 p.m.

36. Mr. SHAHI said that, following consultations, the following text for the draft decision was put forward for the Committee’s consideration:

“The Committee on the Elimination of Racial Discrimination,

Taking into consideration its practices as well as its obligation to inform, under its early warning and urgent action procedure, of any warning signals that a situation may deteriorate still further,

Referring to its decision 1 (65) adopted on 18 August 2004,

Recalling its Declaration on Prevention of Genocide,

Considers it imperative to dispel the climate of impunity that is conducive to war crimes and crimes against humanity by referring the perpetrators to the International Criminal Court at an early stage of indications of genocide,

Recommends to the Secretary-General, and through him, the Security Council, the deployment, without further delay, of a sufficiently enlarged African Union force in Darfur with a Security Council mandate to protect the civilian population, including those in camps, displaced persons and refugees returning to their homes in Darfur, against war crimes, crimes against humanity and the risk of genocide.”

37. Mr. THORNBERRY suggested the insertion of the word “regular” before “practices” in the first preambular paragraph. He also suggested that it might be appropriate to include the date of adoption of the Declaration on Prevention of Genocide in the third preambular paragraph.

38. Ms. DAH endorsed Mr. Thornberry’s suggestion concerning the date but said that there seemed to be no need to reproduce the text of paragraph 12 of the Declaration. The second preambular paragraph should therefore read simply: “Recalling its Declaration on Prevention of Genocide of 11 March 2005,”.

39. The CHAIRMAN said he took it that the Committee wished to adopt the revised text of the draft decision, as read out by Mr. Shahi and amended by Mr. Thornberry and Ms. Dah.

40. It was so decided.

Debate on multiculturalism (continued)

41. Mr. LINDGREN ALVES said that the debate on multiculturalism showed that several members of the Committee had not read his working paper. Rather than holding a further debate on the understanding of multiculturalism during the following session of the Committee, it would be preferable to hold a discussion on the substance of the Committee's recommendations to States parties on education, minority rights, languages and promotion of tolerance and the integration of immigrants into local society, as part of a review of the Committee's working methods. It was imperative for the Committee to take into consideration the different circumstances of each State party when it made recommendations. The discussion should be held in closed session, and should be related exclusively to recommendations for the effective implementation of the Convention. Time should not be wasted by further talk about the different understandings of the term "multiculturalism".

42. The CHAIRMAN said that discussions, of the kind proposed by Mr. Lindgren Alves were particularly important and appreciated, notably in the United Nations context. He agreed that enough time had been spent on discussing the understanding of the term "multiculturalism". A compilation of texts on multiculturalism had been prepared by the secretariat for use during the discussion, which demonstrated how the Committee's previous texts had been worded in order to address the issue. Such a debate in the Committee would be an effective means of considering past approaches and assessing developments and progress in working methods.

43. Mr. LINDGREN ALVES said that the Chairman's remarks were positive. However, the proposed discussion would not be a worthwhile exercise if all members of the Committee did not read the necessary documents beforehand.

44. Mr. PILLAI said that, as countries' populations became more diverse, further debate on the emerging issue of multiculturalism was essential, particularly as the concept meant different things to different people. The issue of affirmative action, or positive discrimination, was a case in point: some developing countries applied such measures to promote multiculturalism and disadvantaged or marginalized communities, whereas certain developed countries tended to regard those measures as "anti-equality". There was a basic difference of approach in that regard which required detailed debate.

45. Mr. de GOUTTES agreed that a compilation of the Committee's concluding observations by the secretariat was very useful. The discussion should be reopened as soon as possible: many of the ideas raised during the current session's discussion would fuel the next debate.

46. Mr. THORNBERRY said it had been suggested that the debate could be integrated into the debate on working methods, and indeed there was a normative aspect to the Committee's working methods that raised important substantive issues regarding, for example, the scope of its recommendations to States parties and whether States parties were treated equally.

47. Mr. CALI TZAY said he wished to request the Bureau to ensure that in future all relevant documents were translated into the working languages of the Committee. Mr. Lindgren Alves's paper, for example, had been available only in English.

48. Ms. DAH said that, when Mr. Lindgren Alves had first raised the issue, she had thought he merely wanted to ensure that Committee members were all on the same wavelength. She had been very surprised, therefore, to find the Committee embarking upon a conceptual discussion. While she personally found that discussion very enriching, she was no longer clear about the Committee's objectives. She would appreciate clarification as to whether Mr. Lindgren Alves was to be asked to draft a general recommendation on multiculturalism for adoption by the Committee or to look into the Committee's approach to multiculturalism in its case law to date.

49. She agreed with Mr. Thornberry that Mr. Lindgren Alves's proposal had a bearing on working methods. It was important to rationalize the concepts used by the Committee.

50. The CHAIRMAN said there were several concepts that had at one time or another required special discussion by the Committee, once members had realized that they were repeatedly covering the same ground in the course of their deliberations, in particular when formulating their concluding observations. Multiculturalism now needed discussing in the same way.

51. That discussion was not simply theoretical, but clearly also had a bearing on working methods, insofar as it would allow the Committee to be more specific when considering the application of the provisions of the Convention: Committee members needed to be clear what they were talking about. The Bureau's suggestion was to obtain a snapshot of the Committee's working methods by analysing its approach to multiculturalism between 2002 and 2005. That analysis, together with a list of the expressions and terms used in the papers submitted by members in the course of their general discussions, would form the basic input to an in-depth analysis of multiculturalism.

52. Mr. HERNDL said a debate on multiculturalism would be of great importance, since it would allow the Committee to come to grips with the notion of the universality of human rights, which was one of the most important principles in any worldwide structure of human rights. According too much respect to individual cultures, allowing them to define for themselves the extent of their obligations, undermined that universality.

53. He agreed that the debate would also have a bearing on the Committee's working methods, or at least on how Committee members perceived the aims of their work. The point was not the term "multiculturalism" itself but the building of a shared philosophy within the Committee that would provide a common starting point for its consideration of States parties' implementation of the Convention.

54. The CHAIRMAN said it would be a mistake to downplay the importance of terminology, particularly considering the significance of language in human behaviour. It was vital to take the time needed to reach agreement on the content of terms and concepts in order to be able to interpret the actions of States parties.

55. Mr. LINDGREN ALVES, replying first to Ms. Dah, said it was true that he had offered to prepare a draft statement on multiculturalism. However, it made no sense to do so yet as it was clear from the initial discussions that such a statement could not be adopted by consensus.

56. The secretariat would be providing key input to the discussion. He requested the Chairman to advise the secretariat that it should focus on recommendations relating to minorities, the teaching of languages and the treatment of different religions.

57. The CHAIRMAN, summing up, said there seemed to be agreement on the holding of a general debate on the basis of input prepared in advance; and on the general scope of that discussion. It would also be a good idea to prepare a list of the terms that were used in connection with multiculturalism. He suggested that one full meeting should be devoted to the debate.

CLOSURE OF THE SESSION

58. After an exchange of courtesies, the CHAIRMAN declared the sixty-sixth session closed.

The meeting rose at 5.35 p.m.