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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

SUMMARY RECORD OF THE 1395th MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 22 March 2000, at 3 p.m.

Chairman: Mr. SHERIFIS
later: Mr. RECHETOV (Vice-Chairman)
later: Mr. SHERIFIS

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GE.00-41174 (E)

The meeting was called to order at 3.05 p.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 7) (continued)

Tenth, eleventh and twelfth periodic reports of Australia (continued) (CERD/C/335/Add.2 and HRI/CORE/1/Add.44)

1. At the invitation of the Chairman, the members of the delegation of Australia resumed their places at the Committee table.

2. The CHAIRMAN invited the members of the delegation to respond to the comments made by Committee members at the previous meeting.

3. Ms. HORNER (Australia) said that she would provide members of the Committee with a written copy of her remarks concerning native title questions. In reaction to a question from Ms. McDougall regarding Australia's understanding of its obligations under the Convention and the need for formal or substantive equality, and a question from Ms. January-Bardill on whether Australia deemed formal equality to be sufficient for the purposes of the Convention, she noted that equality under the Convention could be achieved in many ways. Differential treatment did not necessarily mean discrimination. The Native Title Amendment Act 1998 contained at least 50 measures (both formal and substantive) dealing with native title issues and provided for the recognition and maintenance of special native property interests. Those rights were more far-reaching than those granted to all other property holders under common law. The catalyst for the Native Title Act 1993, which, in 1994, the Committee had deemed not to be in breach of the Convention, had been the 1992 Mabo court decision recognizing native title. The Government had been faced with a situation where 200 years of white settlement could not be undone, yet the rights which had been granted to non-indigenous peoples might have dispossessed indigenous peoples of their property. With reference to those historical acts, compensation had been proposed where they had been carried out on an invalid basis.

4. In other words, the Native Title Acts of 1993 and 1998 enshrined greater protection of native land rights than that provided for generally under common law. For example, mining grants no longer extinguished native title but merely suspended such title for the duration of the lease and, whereas the 1993 Act had provided no basis for undoing the historical extinguishing of native land rights, the 1998 Act contained provisions recognizing the rights of Aboriginals occupying the land, including Crown land, in relation to any extinguishing actions undertaken under common law. The latter, therefore, could be ignored by the courts in recognizing native title, as had been done in two recent cases. Such restitution of native title rights would not have been possible under common law or even under the Native Title Act 1993.

5. Discussions were continuing between the authorities and representatives of indigenous groups and, although she agreed with Ms. McDougall that it was too early to judge the impact of the Native Title Amendment Act 1998, there was to date no evidence that the confirmation proceedings or validation process were contributing to the extinguishment of native title. The registration test was operating successfully and more than 90 per cent of native title applicants had thus far satisfied the requirements of the test, with many applicants having consolidated their

requests so that the courts could deal with them in a more efficient manner. The Government would of course continue to monitor application of the Native Title Amendment Act 1998.

6. Mr. de GOUTTES raised two points. First, he reiterated that the fact that there were only civil measures to punish acts and organizations based on racial discrimination was a violation of article 4, which required that they be criminalized. Although he recognized that it was Parliament, and not the Government, which had refused to criminalize such acts and organizations, he wondered whether the delegation intended to communicate to Parliament that that situation was a violation of article 4 of the Convention. Second, although he recognized that the Government could not suspend application of the Native Title Amendment Act 1998, since it was an act of Parliament, he wondered whether there had been any constitutional challenges to the provisions of that Act before the courts.

7. Mr. YUTZIS noted that during his oral presentation Mr. Ruddock had said that in taking steps to protect minorities, the Government had to be careful not to institutionalize differences between its Aboriginal population and the population as a whole. However, he believed that on the contrary, taking such measures to protect the most vulnerable members of society served to empower them and integrate them into society rather than to institutionalize their differences. Mr. Ruddock's presentation had also raised concerns about the State party's position regarding international bodies and treaties and there should be a far-reaching dialogue between the Committee and the State party on that subject.

8. Mr. FALL, while recognizing the complexity of the federal nature of the State party's structures and institutions, said that the latitude enjoyed by the various levels of government had to be seen as a matter of some concern. Human rights issues were a priority for the United Nations and for the international community as a whole and that fact should be taken into account in the laws of the country, especially with regard to implementation of article 4.

9. Ms. McDOUGALL, responding to Ms. Horner, said that as she understood it, in 1994 the Committee had deemed the Native Title Act 1993 acceptable because there seemed to be sufficient evidence that it was the product of genuine negotiations with the indigenous population, and not because it was not discriminatory or because the Committee accepted 200 years of white settlement as a fait accompli. Indeed, the question of negotiations with indigenous peoples was an essential one since any deviation from the rights prescribed by the Convention in the area of land rights for indigenous peoples must be arrived at by informed consent.

10. The delegation was correct in saying that it was impossible to right all the wrongs of the past, but there could be no progress without acknowledgement of those wrongs. Although there had been a great deal of progress and indigenous peoples had full title to some 15 per cent of the land mass of the Australian continent, that nevertheless left 85 per cent of the land mass under some other title, which had probably not been the case 200 years before. She agreed with Mr. Ruddock that no mere document could achieve reconciliation but stressed that there were benchmarks on the road to reconciliation. The final test of reconciliation was whether it was the result of a process involving genuine negotiations, at the end of which all parties, especially the aggrieved party, agreed that they had achieved a satisfactory outcome, including recognition of native land title.

11. Ms. HORNER (Australia), responding to the question from Mr. de Gouttes, pointed out that under Australian law any interested party, including the indigenous peoples, had the right to challenge the constitutional validity of the Native Title Amendment Act 1998. Although the Native Title Act 1993 had been challenged before the courts almost immediately, since the entry into force of the Native Title Amendment Act 1998 in September 1998, there had been no constitutional challenges.

12. Mr. RUDDOCK (Australia) stressed his Government's commitment to implementation of the Convention. He had taken note of the Committee's comments and questions, and said his Government was endeavouring to implement the Convention in a tangible and meaningful way. He looked forward to maintaining the dialogue with the Committee and to the presentation of Australia's next report later that year.

13. The CHAIRMAN thanked the delegation for its continued dialogue with the Committee and said that the Committee had thus concluded its consideration of the tenth, eleventh and twelfth periodic reports of Australia.

14. The delegation of Australia withdrew.

Draft concluding observations concerning the second, third and fourth periodic reports of Zimbabwe (CERD/C/56/Misc.31/Rev.2)

15. The CHAIRMAN invited the Committee to consider the draft concluding observations concerning the second to fourth periodic reports of Zimbabwe.

Paragraphs 1 to 3

16. Paragraphs 1 to 3 were adopted.

Paragraph 4

17. Mr. ABOUL-NASR said that as the term "carrier subjects" was incomprehensible to most readers, he suggested ending paragraph 4 after the word "curricula" and deleting the rest.

18. Mr. FALL said that the Committee should delete the words "with appreciation" in the first line, which were too strong. During consideration of Zimbabwe's report, the Committee had voiced concern that there was a great disparity between private schools and others with limited means, a point which it made later in paragraph 9.

19. Mr. RECHETOV endorsed Mr. Fall's proposal to delete the words "with appreciation". On Mr. Aboul-Nasr's point, he suggested rephrasing the end of paragraph 4 to read: "to incorporate human rights education into the curricula in schools". He agreed that the word "carrier" was not clear.

20. Mr. NOBEL (Country Rapporteur) said that he had no objection to deleting the words "with appreciation". Concerning Mr. Aboul-Nasr's proposal, he could see that the term "carrier" was not clear, but still wished to encourage the innovations made in Zimbabwe's education

system. Bearing in mind also Mr. Rechetov's proposal, he suggested rewording the end of paragraph 4 to read: "and to incorporate human rights education into the curricula in schools through new and innovative methods".

21. Mr. BRYDE agreed with Mr. Nobel's proposal on including a reference to innovative methods in schools.

22. Mr. PILLAI said that the Committee should show appreciation for the efforts made by the State party. He therefore suggested splitting paragraph 4 into two sentences, the second part being moved to the beginning: the Committee might note with appreciation the efforts made by the State party to incorporate human rights into the school curricula, and then it could note the effort made by the State party within the educational system to reduce racial segregation.

23. Mr. NOBEL (Country Rapporteur) disagreed with Mr. Pillai. It was important to distinguish between two different matters: one was the positive aspect of introducing human rights in the school curricula, and the other was what came further on in paragraph 9, where the Committee expressed concern about the difficulties involved in making education less segregated. He proposed the following wording for paragraph 4: "The Committee notes the efforts made by the State party within the educational system to reduce racial segregation; to introduce the use of minority languages; and to incorporate human rights education into the curricula in school through innovative methods".

24. Paragraph 4, as amended, was adopted.

Paragraph 5

25. Mr. ABOUL-NASR said that paragraph 5 should be limited to the question of racial discrimination. The references to political opinion and gender, subjects which had nothing to do with the Convention, should be deleted. If the word "racial" were introduced in the second line before "discrimination", that might cover everything.

26. The CHAIRMAN wondered whether "place of origin" should be retained.

27. Mr. NOBEL (Country Rapporteur) said that "place of origin" might sometimes be important in the African context, because nationality, the nation-State and national borders did not have the same importance and meaning as elsewhere. The term "place of origin" could be found in many African human rights instruments drafted by the Organization of African Unity (OAU). He therefore thought it should be retained. On the other hand, he had no objection to Mr. Aboul-Nasr's proposal.

28. Ms. JANUARY-BARDILL said that she was in favour of keeping the words "place of origin"; only recently, the Zambian President's own place of origin had been called into question in respect of whether he had been born outside Zambia. Similarly, in the light of the recommendation adopted several days earlier on gender-related aspects of racial discrimination, she thought that the reference to gender should remain. For example, it was often black women who suffered the effects of inheritance and marriage laws.

29. Mr. FALL said that, in his region at any rate, the words “place of origin” raised problems and were not used. He preferred the phrase “national or ethnic origins”, which was in line with the wording in the Convention.

30. Mr. de GOUTTES, supported by Mr. FALL, suggested that it would be sufficient to delete the words “political opinion”; the text could then be adopted.

31. Mr. RECHETOV was not against deleting the words “political opinion”, but the text was a full enumeration, and he was therefore in favour of adopting it as it stood.

32. Mr. BOSSUYT said that the enumeration was not the Committee’s invention, but had been taken from a Zimbabwean law. He therefore did not think that part of the law could be deleted. To make that distinction clear, he proposed placing the enumeration in inverted commas between the words “race” and “gender”.

33. Mr. SHAHI said that Mr. Bossuyt’s point was well taken. The Committee was quoting Zimbabwean legislation and should therefore place the phrase in inverted commas.

34. Mr. NOBEL (Country Rapporteur), replying to Mr. Aboul-Nasr’s suggestion to insert the word “racial” before “discrimination”, said that that was not logical, because the ensuing enumeration contained elements which had nothing to do with racial discrimination. Either paragraph 5 should remain as it stood, or else everything unrelated to racial discrimination should be deleted, in which case the insertion of the word “racial” was superfluous.

35. Mr. RECHETOV said that if one of the grounds for discrimination was deleted, it would give the impression that discrimination was permitted on that ground, which would be misleading. Paragraph 5 should either be kept in full or deleted entirely.

36. Mr. BRYDE said that he was in favour of leaving paragraph 5 as it stood. As a compromise, he suggested recasting the paragraph to read: “prohibits racial discrimination by comprehensively outlawing discrimination on the grounds of race, tribe, place of origin” and so on. That would place the emphasis on racial discrimination, but also indicate that the law covered other forms of discrimination as well.

37. Mr. Rechetov took the Chair.

38. Mr. de GOUTTES endorsed Mr. Bossuyt’s suggestion. However, the Committee would need to check whether the phrase really was an exact quotation from Zimbabwean law.

39. Ms. ZOU Deci agreed with the previous speaker. If the text was not a direct quotation, the Committee could change it as it wished.

40. Mr. ABOUL-NASR said that he could assure the members of the Committee that the phrase could not possibly be a quotation from Zimbabwean law. For example, it was inconceivable that the word “gender” was a word used in the legislation of that country.

41. Mr. FALL said that he had the text of the Zimbabwean law, and the phrase in paragraph 5 was in fact an exact quotation from that text.

42. Mr. BOSSUYT confirmed that the phrase in paragraph 5 was an exact quotation from Zimbabwean law. There were only two slight drafting corrections to be made: the word "grounds" should be in the singular, and the word "opinion" in the plural.

43. The CHAIRMAN said that if he heard no objection, he would take it that the Committee wished to adopt paragraph 5 with minor drafting changes.

44. Paragraph 5 was adopted with minor drafting changes.

Paragraph 6

45. Mr. ABOUL-NASR said that in his opinion, there was no such thing as "African Customary Law". There were different customs in each country. It was very difficult to generalize.

46. Mr. NOBEL (Country Rapporteur) said that Mr. Aboul-Nasr's point was well taken. He therefore proposed deleting the word "African".

47. The CHAIRMAN thought that the words "customary laws" should be in the singular and in the lower case.

48. Paragraph 6, as amended, was adopted.

Paragraph 7

49. Paragraph 7 was adopted.

Paragraph 8

50. Ms. JANUARY-BARDILL, referring to the last sentence of the paragraph, expressed concern about the phrase "to investigate the use of powers by public officials". Since the term "to investigate" was normally used in connection with abuses or violations, she proposed that it should be replaced by "to monitor".

51. Mr. PILLAI expressed support for that proposal.

52. Mr. ABOUL-NASR asked the reason for the reference to "her powers" in connection with the Ombudsman in the first sentence. Was the Ombudsman in Zimbabwe in fact a lady?

53. Mr. NOBEL (Country Rapporteur) confirmed that the Ombudsman in Zimbabwe was currently a woman and he saw no reason why that should not be made known. He endorsed the

amendment proposed by Ms. January-Bardill, which conveyed the idea of the Ombudsman not only investigating abuses of power, but also monitoring the daily activities of public officials. He suggested, however, deleting the word "fully" in the last sentence.

54. Paragraph 8, as amended, was adopted.

Paragraph 9

55. Mr. ABOUL-NASR said that since the Committee acknowledged the existence of racial segregation in schools, its recommendation for the State party to provide additional information on the matter in its next periodic report hardly seemed sufficient. Surely it should recommend that some remedial action be taken.

56. Mr. BOSSUYT said the point being made was not that there was racial segregation in schools, but rather that there was a disproportionately high ratio of whites to blacks in privately-run institutions.

57. The CHAIRMAN drew attention to the statement in the first sentence of paragraph 4 where the Committee expressed its appreciation of the State party's efforts to reduce racial segregation in the education system.

58. Mr. NOBEL (Country Rapporteur) said that the current wording of paragraph 9 should be retained. It had been considerably shortened and rendered less critical in the drafting process, when it had been realized that the problems stemmed largely from a lack of resources.

59. Paragraph 9 was adopted.

Paragraph 10

60. Mr. NOBEL (Country Rapporteur) proposed that the second part of the last sentence should be reworded to read: "whereas article 4 of the Convention does not limit or place conditions on the prohibition of racist statements".

61. Paragraph 10, as amended, was adopted.

Paragraphs 11 and 12

62. Paragraphs 11 and 12 were adopted.

Paragraph 13

63. Mr. NOBEL (Country Rapporteur) said that prior to the meeting Mr. Bossuyt had expressed concern about two aspects of paragraph 13: the use of the term "black farmers"; and the need to mention the land-grabbing that was reportedly being encouraged by the President of Zimbabwe. He had no strong views about the term "black farmers" except to say that it had been used by the delegation of Zimbabwe during its dialogue with the Committee. To meet

Mr. Bossuyt's other concern, he proposed that the following phrase should be added to the end of the last sentence: "following the due process of law". That would make it quite clear that the Committee wished to distance itself from such unlawful activities.

64. Mr. BOSSUYT proposed deleting the word "black" in the second and third sentences; otherwise the Committee would appear to be stating that certain rights should be conferred on the farmers in question according to the colour of their skin, which ran counter to the provisions of the Convention. He further proposed that before the last sentence a reference should be included to a recent judgement on land reform handed down in the State party, by inserting the following text: "The Committee is concerned about the illegal occupation of private land according to the race of the present owners and the refusal of the police to intervene, despite the order given to that effect by the judiciary". To emphasize the real purpose of land reform, he further proposed expanding the last sentence by adding the phrase: "in a manner that will enhance the economic and social rights of its citizens". The recent press article carrying the aforementioned judgement had also reported that much of the land supposed to be redistributed had been leased to high-ranking civil servants or else left to lie fallow.

65. Mr. FALL considered that the Committee was quite justified in referring to "black farmers" since, according to the State party's report, the issue at stake was the fact that land had remained in the hands of the white minority.

66. Mr. VALENCIA RODRIGUEZ proposed first and foremost that the first two sentences should be merged to read: "While noting the challenges faced by the State party with respect to land redistribution, the Committee regrets that very little progress has been made in this regard since the consideration of the initial report." After endorsing Mr. Fall's remarks about the use of the term "black farmers", he further expressed concern about the recommendation in the last sentence for the State party to study land reform and measures in other countries. He was reluctant to include a reference to the recent judgement as proposed by Mr. Bossuyt; it was not established practice for the Committee to mention in its concluding observations issues that had not been raised during consideration of the State party's report.

67. Mr. ABOUL-NASR also considered that the reference to black farmers should be retained; the point at issue was the injustice of white settlers who had expropriated land from the indigenous population and the need to right that wrong. It would not be advisable to mention the recent judgement, which in any event he disapproved of since it seemed to run counter to the interests of the black majority and government policy in the State party.

68. Ms. JANUARY-BARDILL said that the use of the term "black farmers" was appropriate in the context since they were clearly the group that had been discriminated against in the past and required assistance. While she sympathized with Mr. Bossuyt's proposal regarding the recent judgement, she shared the misgivings expressed by Mr. Valencia Rodriguez.

69. Ms. ZOU Deci expressed support for the drafting amendment proposed by Mr. Valencia Rodriguez and shared the views expressed by previous speakers regarding Mr. Bossuyt's proposals.

70. Mr. NOBEL (Country Rapporteur), after endorsing the drafting amendments proposed by Mr. Valencia Rodriguez, concurred with the general view that the word "black" should be retained and that the recent judgement should not be mentioned, since it had not been discussed during the dialogue with the State party. In the light of the other suggestions made by Mr. Valencia Rodriguez and Mr. Bossuyt, he proposed that the last sentence should be reworded to read: "The State party is encouraged to continue its study of land reform measures with a view to implementing a comprehensive land reform programme in Zimbabwe, in a manner that will enhance the economic and social rights of its citizens."

71. Mr. BOSSUYT reiterated his strong dissent at the use of the term "black farmers". As currently worded the paragraph implied that only black farmers should qualify for land redistribution under the relevant scheme, which was a flagrant violation of article 1 of the Convention. The Committee, as the body which monitored compliance with that instrument, would be seen as recommending that rights should be conferred on some people rather than others because of the colour of their skin.

72. The judgement he wished to refer to had not been discussed with the State party because it was too recent; however, that did not mean it was not relevant to the matter at hand. The Committee must be aware of current tensions in the State party owing to the manipulation of racial issues by political leaders. The President's proposal with regard to land reform had been rejected by a popular referendum. So even if the Committee mentioned such matters in the concluding observations it would not be acting in any way against the interests of the people of Zimbabwe.

73. Mr. BRYDE recalled that in the first proposal put forward by Mr. Nobel, the phrase "following the due process of law" had been included in the sentence containing "in a manner that will enhance the economic and social rights of all its citizens". He felt that the use of that phrase would be appropriate in the current text as well. During the oral presentation, the Attorney-General himself had referred to the "illegal" occupation of farms. The Committee should make it clear that although it supported land reform, it endorsed no specific policies.

74. Mr. NOBEL (Country Rapporteur) said that his first proposal had been intended to meet the concerns of Mr. Bossuyt, who had since made a different proposal. Did Mr. Bryde propose that both amendments should be adopted, and if so, would that not render the text somewhat long and cumbersome?

75. Mr. BRYDE said that the reference to due process would be appropriate in the final sentence, as that subject had been addressed by the State party, while the subjects to which it had related in the original proposal had not. While the sentence might be long, it was not cumbersome.

76. Mr. ABOUL-NASR felt that the text should be adopted as amended, if possible. Otherwise he would suggest that the Committee add a statement of support for the President of Zimbabwe.

77. Mr. DIACONU said that he could accept the text as amended, but that he did not share Mr. Bossuyt's interpretation with regard to the reference to black farmers. The sole reason for that reference was the desire to take special measures in response to the specific needs of the members of that group.

78. The CHAIRMAN took it that paragraph 13 could be adopted with the drafting amendments to the first two sentences. The references to black farmers would remain, and the end of the paragraph would be amended to read: "The State party is encouraged to continue its study of land reform measures with a view to implementing a comprehensive land reform programme in Zimbabwe, following due process of law and in a manner that will enhance the economic and social rights of its citizens".

79. Paragraph 13, as amended, was adopted.

Paragraph 14

80. Mr. ABOUL-NASR felt that the Committee should not express its concern about the fact that it had received insufficient information, and that it would suffice to request further data.

81. Mr. NOBEL (Country Rapporteur) proposed that the first sentence should be deleted, and that the next sentence should begin: "The Committee requests the State party to include further information with respect to article 6 of the Convention in its next periodic report …".

82. Paragraph 14, as amended, was adopted.

Paragraph 15

83. Ms. JANUARY-BARDILL, noting the use of the word "some", asked whether any Committee members had reservations about the paragraph.

84. Mr. ABOUL-NASR said that he had.

85. Paragraph 15 was adopted.

Paragraph 16

86. Paragraph 16 was adopted.

87. The draft concluding observations concerning the second, third and fourth periodic reports of Zimbabwe as a whole, as amended, were adopted.

88. Mr. Sherifis, Chairman, resumed the Chair.

89. Mr. de GOUTTES said that before the Committee turned to the consideration of concluding observations for other reports, he would like to make a brief statement. Two days ago, the world's French-speaking communities had celebrated the Journée internationale de la Francophonie. While he did not object to the discussion of concluding observations distributed

exclusively in English when those observations related to English-speaking countries, he wished to place on the record his reservations about the Committee discussing documents submitted exclusively in English when they related to reports which had been written and presented in French by delegations from French-speaking countries.

Draft concluding observations concerning the fourteenth periodic report of Tonga (CERD/C/56/Misc.33/Rev.2; future CERD/C/…)

Paragraphs 1 to 4

90. Paragraphs 1 to 4 were adopted.

Paragraph 5

91. Mr. BOSSUYT felt that the Committee expressed too much concern in the first sentence of paragraph 5. What would the Committee say, for instance, if the State party had repeatedly asserted that there was in fact a great deal of racial discrimination? In that case there would indeed be cause for much concern. He proposed that the wording of the first line should be changed to read "The Committee notes that the State party has repeatedly asserted that there is no racial discrimination ...", and that the second sentence should begin with "The Committee underlines, however, that …".

92. Paragraph 5, as amended, was adopted.

Paragraph 6

93. Mr. BOSSUYT felt that it was inappropriate for the Committee to express its concern that the Convention had not been incorporated into domestic law. He proposed that the phrase in the first sentence "reiterates its concern" should be replaced by "notes", and that in the second sentence the phrase "is also concerned about the assertion of the State party" should be replaced by "notes, however, that the State party asserts".

94. Mr. ABOUL-NASR agreed that it was inappropriate for the Committee to express its concern, and proposed that the paragraph should be deleted altogether.

95. Mr. VALENCIA RODRIGUEZ (Country Rapporteur) pointed out that at least two members of the Committee had expressed concern that the Convention was not incorporated into the domestic law and that it was only implicitly applied. However, if the majority of the Committee believed the paragraph should be deleted, he had no objection.

96. Mr. de GOUTTES said that while he supported Mr. Bossuyt's contention that the expression of concern was inappropriate in paragraph 5, he did not agree as far as paragraph 6 was concerned. One of the most important provisions of the Convention was that it called for the possibility of invoking the Convention before the national courts. Paragraph 6 should not be deleted, but should be maintained with its original wording. The use of the term "concern" was appropriate and consistent with the Committee's prior practice in its concluding observations for other countries.

97. Mr. ABOUL-NASR said that not all countries had incorporated international treaties into their domestic law. If two or three members of the Committee had expressed concern, that did not reflect a consensus among the Committee members. He maintained his proposal to delete the entire paragraph.

98. Mr. DIACONU felt that the first sentence of paragraph 6 should be maintained, and said that the Committee could, without changing the meaning, use the word "notes", as in any event the paragraph appeared under the heading "Concerns and recommendations" and it would thus be clear that the lack of incorporation was a concern. The second sentence was somewhat ambiguous and should be deleted. The fact that the Convention was applied at all, albeit implicitly, was a good thing, and should not be presented as a subject of concern.

99. Mr. BOSSUYT, having heard the views of his colleagues, felt that the first sentence should be maintained, either with the word "notes" or with "reiterates its concern", and that his proposal for the amendment of the second sentence should also stand.

100. Mr. ABOUL-NASR pointed out that the Convention did not stipulate that States must incorporate it into their domestic law. In fact, States could fully apply and implement the Convention without doing so. He asked whether the Committee, by maintaining the first sentence, was formulating a new interpretation of the Convention, and whether the Committee would apply the same criteria to any State which did not incorporate the Convention into its domestic law.

101. Mr. BOSSUYT said that he did not believe that the failure by a State to incorporate the Convention into its domestic law constituted a violation of the Convention. However, it was certainly preferable for States to incorporate the Convention, as by doing so they greatly increased the chances of its implementation. The Committee was in its right to recommend incorporation.

102. Following a discussion in which Mr. VALENCIA RODRIGUEZ (Country Rapporteur), Mr. FALL and Mr. BOSSUYT took part, it was decided that the paragraph should read "The Committee notes that as the Convention has not been incorporated into domestic law, it cannot be invoked before the national courts. It notes, however, that the State party asserts that the Convention is implicitly applied".

103. The CHAIRMAN underlined that the Committee should first decide whether the proposal furthest from the original, i.e., the one put forward by Mr. Aboul-Nasr, should be adopted. He asked whether Mr. Aboul-Nasr maintained his proposal.

104. Mr. ABOUL-NASR, having heard the views of the Committee members, withdrew his proposal. He wished to state for the record, however, that had the paragraph been put to a vote he would have voted against its adoption, as he objected to its inclusion in the concluding observations for Tonga or for any other State party.

105. Paragraph 6, as amended, was adopted.

Paragraphs 7 to 13

106. Paragraphs 7 to 13 were adopted.

107. The draft concluding observations concerning the fourteenth periodic report of Tonga as a whole, as amended, were adopted.

ORGANIZATIONAL AND OTHER MATTERS (agenda item 5) (continued)

108. The CHAIRMAN asked the convenor and the Rapporteur of the working group on the draft resolution concerning the prevention of racial discrimination (item 6 on the agenda) to inform the Committee of the status of the working group's activities.

109. Mr. BANTON (Rapporteur of the working group) said that all the 13 or 14 Committee members who had shared their views with him had, in light of the lack of time available at the current session, favoured suspending consideration of the draft text until the next session.

110. The CHAIRMAN took it that the draft would be taken up under the equivalent of agenda item 6 at the next session.

The meeting rose at 6.05 p.m.