



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

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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Sixty-fifth session

SUMMARY RECORD OF THE SECOND PART (PUBLIC)* OF THE 1649th MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 5 August 2004, at 11.15 a.m.

Chairman: Mr. YUTZIS

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* The summary record of the first part (closed) of the meeting appears as document CERD/C/SR.1649.

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The public part of the meeting was called to order at 11.15 a.m.

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

General Recommendation XXX: Discrimination against non-citizens
(CERD/C/64/Misc.11/Rev.3)

1. The CHAIRMAN drew attention to General Recommendation XXX on discrimination against non-citizens (CERD/C/64/Misc.11/Rev.3), the English language version of which had been adopted during the sixty-fourth session. On that occasion, the Committee had agreed that all the other language versions should be vetted by members and he invited Mr. Kjaerum to comment.
2. Mr. KJAERUM reminded the Committee that, at the previous session, the final adoption of the recommendation had been deferred pending the revision of the other language versions. He thanked the Committee members for their proposals, which had contributed to the overall improvement of the document. No account had been taken of proposals concerning substance, since the English version had already been adopted.
3. The CHAIRMAN invited the Committee to comment on the revised versions.
4. Mr. HERNDL said that, while he supported the recommendation, he was somewhat dissatisfied with the hasty fashion in which the document had been drafted. He expressed the hope that, in the future, the Committee would revert to its previous practice of careful consideration of the subject matter before formally adopting a document.
5. Supported by Mr. de Gouttes and Mr. Thornberry, he suggested replacing the letters used to indicate paragraphs by Arabic numbers. The current version of the draft was inconsistent with the Committee's long-standing practice regarding the listing of paragraphs.
6. The CHAIRMAN assured Mr. Herndl that his concern would be taken into account.
7. Mr. de GOUTTES drew attention to the need to amend the French version of paragraph 1 (a) of the document to ensure consistency with the English version. The second sentence in the French version should read: "Le paragraphe 2 de l'article premier prévoit la possibilité d'établir des distinctions entre les ressortissants et les non-ressortissants." The second part of the paragraph should also be brought into line with the English version.
8. Mr. KJAERUM said that the French version of the document would be amended in accordance with Mr. de Gouttes' proposals.
9. The CHAIRMAN invited the secretariat to clarify the issue of numbering paragraphs.
10. Ms. PROUVEZ (Secretary of the Committee) said that the changes in the numbering system were the result of a decision by the United Nations editorial service. In response to the Committee's concerns, the secretariat would request the editorial service to reconsider the matter. Providing the editorial service gave its agreement, those changes would also be applied to previous recommendations when the next edition of the "Compilation of general comments and general recommendations adopted by human rights treaty bodies" was issued.

11. Mr. ABOUL-NASR stressed that the impossibility of translating (into Arabic) the letters currently used to indicate paragraphs should be brought to the editorial service's attention.
12. Mr. KJAERUM, referring to Mr. Herndl's concern at the hasty drafting and adoption of General Recommendation XXX, proposed that, in future, the Committee should discuss its approach prior to the substantive debate. He agreed with Mr. Herndl that expediting the drafting of such important documents was not always advisable. He also proposed involving local bodies in the drafting of recommendations, as that would increase the Committee's relevance at the local level.
13. The CHAIRMAN agreed that the text had been drafted under considerable time pressure. It was, however, important to recognize that the current period was one of intense activity in the area that fell within the Committee's mandate. The Committee's contributions, such as the drafting of its response to the request by the Intergovernmental Working Group on the effective implementation of the Durban Declaration and Programme of Action (CERD/C/65/Misc.17), were highly relevant and well respected by international human rights bodies.
14. In the absence of further comment, he took it that the Committee wished to adopt Recommendation XXX on discrimination against non-citizens, as amended, in all language versions.
15. Recommendation XXX on discrimination against non-citizens, as a whole, as amended, was adopted.

Response of the Committee to the request by the Intergovernmental Working Group on the effective implementation of the Durban Declaration and Programme of Action (continued) (CERD/C/65/Misc.17)

16. The CHAIRMAN invited the Committee to resume its consideration of the text of its response.

Concluding remarks on article 4

Second paragraph

17. Mr. THORNBERRY proposed that in the third sentence the word "could" should be inserted after the word "instrument". The word "instrument" in the last sentence should be replaced by the word "Convention".
18. The second paragraph, as amended, was adopted.

Third paragraph

19. Mr. ABOUL-NASR, supported by Mr. Sicilianos and Mr. Amir, suggested that the word "urges" (first sentence) should be replaced by either "expects" or "wishes", given that the document was an informal response to the Working Group, not a text that addressed States parties directly.

20. Ms. JANUARY-BARDILL, supported by Mr. Lindgren Alves, said that the word “urges” related to action taken by the Committee in its concluding observations. Each sentence in the paragraph could, in theory, be prefaced by the phrase “In our concluding observations on article 4 to States parties”.
21. Mr. SICILIANOS proposed that the second sentence of the paragraph should be deleted since the message it contained had already been conveyed in the amended text of the first paragraph.
22. Mr. LINDGREN ALVES disagreed. The paragraph introduced the phenomenon of racist material on the Internet, and the recommendation to withdraw reservations to article 4 was one of the most important the Committee made to States parties.
23. Mr. THORNBERRY said that the last sentence could be interpreted as suggesting that racism on the Internet was a positive development. He proposed amending it to read: “Finally, the Committee urges all States parties to sensitize the public to the existence of racism on the Internet through educational programmes.”
24. The CHAIRMAN said he took it that the Committee wished to incorporate the addition proposed by Mr. Thornberry, but not to delete the second sentence or alter the word “urges”.
25. The third paragraph, as amended, was adopted.

Concluding remarks on article 5

26. Mr. SICILIANOS said that a recurrent problem for the Committee was that States parties seldom established whether the rights enshrined in article 5 of the Convention were exercised effectively, without discrimination on grounds of race, colour, descent, or ethnic or national origin. Many periodic reports simply enumerated the provisions in domestic legislation that guaranteed those rights. He proposed that the following text should be added at the end of the paragraph: “Furthermore, the Committee stresses the need to report on article 5 under the perspective of the Convention. The issue at stake is not whether the rights provided for in article 5 are recognized as such in domestic law, but rather whether they are exercised without discrimination based on race, colour, descent, or ethnic or national origin.”
27. Mr. de GOUTTES supported that proposal and suggested including a reference to the Committee’s General Recommendation XX.
28. Mr. PILLAI considered that unnecessary, since reference was made to General Recommendation XX in the last sentence of the paragraph.
29. Ms. JANUARY-BARDILL, supported by Mr. Shahi, questioned the relevance of the third sentence, which seemed purely speculative.
30. Mr. SICILIANOS, supported by Mr. Shahi, proposed that the last sentence of the paragraph should be replaced by the sentences he had proposed previously, followed by a reference to General Recommendation XX.

31. Mr. AMIR suggested that the tone of the paragraph might not encourage States parties to work with the Committee to implement measures that would ensure conformity with the provisions of article 5.
32. Mr. PILLAI, supported by Mr. Shahi, considered that the whole paragraph should be redrafted if the additional text proposed by Mr. Sicilianos was included.
33. Mr. de GOUTTES suggested that in the text proposed by Mr. Sicilianos the words “which is a matter for the Human Rights Committee” should be included after “in domestic law”.
34. Mr. THORNBERRY agreed that the paragraph would require redrafting, since it would include four distinct elements. The first was a reflection on States parties’ failure to comply with article 5 and how that inhibited the work of the Committee. Secondly, there was a reminder of the reporting obligation. The third element was recognition of the fact that some difficulties might have been partly caused by the wording and openness of article 5. Fourthly, the Committee presented its recommendations to remedy the problems.
35. Mr. SHAHI suggested that Mr. Thornberry, Mr. Sicilianos, Ms. January-Bardill and Mr. de Gouttes should meet to agree on a final draft of the paragraph, which could be considered by the Committee at a later date.
36. The CHAIRMAN said he took it that the Committee wished to suspend consideration of that paragraph.
37. It was so agreed.

Concluding remarks on article 6

38. Mr. VALENCIA RODRÍGUEZ said reference should be made in the first paragraph to the fact that potential victims of racial discrimination sometimes lacked confidence in the mechanisms available to them. The procedures involved in making complaints were often costly and time-consuming, and there was corruption among the judiciary and the police in some countries.
39. The CHAIRMAN pointed out that reference to that issue was made in the last two sentences of the third paragraph on page 40 of the draft document.
40. Mr. de GOUTTES said that since the issue was raised during consideration of most State party reports, those sentences should be included in the paragraph currently under consideration. The matter should also be included in the discussion to be held on a general recommendation on racial discrimination and the administration of justice.
41. Mr. KJAERUM said that, while he supported the proposal by Mr. de Gouttes, he would prefer to refer more explicitly to the problem of corruption, which needed to be highlighted. A passing reference to victims’ lack of trust would not get the message across.

42. Mr. LINDGREN ALVES said that the Committee would need to have a more thoroughgoing discussion of the impact of corruption on combating racism than it had had hitherto if it wished to highlight that issue in the text. He was concerned that some members had lost sight of the purpose of the document: the Committee was not drafting a new general recommendation but a response to a request by the Intergovernmental Working Group on the effective implementation of the Durban Declaration and Programme of Action. The Committee had agreed that the secretariat had produced an excellent text, yet members were now proposing an inordinate number of changes.

43. Mr. de GOUTTES suggested that if members wished to insert a reference to corruption, it would be more prudent to speak of possible corruption, since the Committee should avoid giving the impression that all States were corrupt. He was not convinced, however, that corruption was within the Committee's terms of reference. In his view, it would be sufficient to refer to victims' lack of confidence in the police and judicial authorities; the problem of corruption would still be implied.

44. Mr. ABoul-NASR said that the Committee should not waste meeting time by debating contentious issues. The document should be adopted with as few changes as possible and members who wished to propose amendments should keep their statements brief.

45. The CHAIRMAN said that there seemed to be broad support for the proposal by Mr. de Gouttes. As to the proposal by Mr. Kjaerum, if he heard no objection, he would ask him to draft specific language for the Committee to consider.

46. Mr. KJAERUM said that he had not wished to make a sweeping statement about corruption. However, the phrase "lack of confidence" was too vague. The Committee could state that there was a lack of confidence in the police and judicial authorities caused by, among other things, corruption.

47. Mr. LINDGREN ALVES said that when corruption or, for that matter, inadequate governance was evoked in the international sphere, it was always assumed that the speaker was referring to third-world countries. For that reason alone, he could not agree to the inclusion in the document of any explicit reference to corruption.

48. Ms. JANUARY-BARDILL said that members who suggested drafting changes were trying to add value to the text. She proposed that the Committee should refer to discrimination in the administration of justice, rather than to corruption. It was also necessary to mention victims' lack of awareness of procedures.

49. Mr. PILLAI suggested that members should exercise caution in proposing the addition of new language, as an executive summary ought by definition to be concise. He agreed that the Committee should not prolong the discussion unduly. However, he did not consider it appropriate to refer in the first sentence of the third paragraph to the difficulties victims had in winning their cases, as the outcome of any case would depend on the merits. He proposed that the word "winning" should be replaced by "prosecuting". In addition, in the penultimate sentence of the third paragraph, which referred to the responsibility of States parties to ensure

that their legislation provided victims of racial discrimination with effective remedies, the word “remedies” should be replaced by “procedures”, since it was the lack of effective procedures and tools, such as legal assistance, that prevented victims from seeking remedies.

50. Mr. HERNDL agreed that the first sentence of the third paragraph needed to be recast. It was not correct to state that the elements of proof in cases brought by victims of racial discrimination were too demanding. The Committee might prefer to use the terms “procedures concerning proof” or “burden of proof” instead.

51. Mr. THORNBERRY proposed that the Committee should note that victims had had difficulties in taking cases forward because the procedures had been too demanding.

52. Mr. PILLAI said that he could agree to the reformulation of the sentence along those lines.

53. Mr. SICILIANOS agreed in principle that there was no need for extensive discussion of the executive summary. However, it had been proposed that the executive summary should constitute the main document and that the remainder of the text should serve as an addendum to it. If that proposal was accepted, it would be necessary to allude, in the concluding remarks on article 6, to the concept of burden-sharing. The Committee might wish to use the definition contained in paragraph (s) of the General Recommendation on discrimination against non-citizens just adopted. It would also be important to refer to compensation for injury, both moral and material, since a number of States had made reservations to article 6 on the grounds that the requirement to provide reparation or satisfaction to victims of racial discrimination was fulfilled if one or other of those forms of redress was made available.

54. Mr. de GOUTTES expressed support for the proposal made by Mr. Sicilianos.

55. The CHAIRMAN pointed out that the issue of redress was taken up in the main part of the document.

56. Noting that the Committee seemed unable to reach agreement on the concluding remarks on article 6, he suggested that, in order to facilitate the discussion, interested members should draft new language incorporating the various changes proposed and that the Committee revert to the matter at a later date.

57. It was so agreed.

Concluding remarks on article 7

58. The concluding remarks on article 7 were adopted.

Concluding remarks on the implementation and effectiveness of the Committee’s procedures

Reporting procedure

59. Mr. PILLAI said that the paragraph gave the impression that there was an ongoing debate within the United Nations system on the reform of reporting procedure, whereas the debate actually concerned the advisability of introducing an expanded core document.

60. Mr. LINDGREN ALVES suggested that the Committee might not wish to give too much prominence to the expanded core document, since members opposed the idea.

61. Mr. de GOUTTES said he feared that the use, in the fourth sentence, of the adjective “concise” in relation to treaty-specific reports might encourage States parties to produce less comprehensive reports. He proposed that a word such as “targeted” should be used instead.

62. Mr. AMIR said that he had serious reservations about some of the language used in the document. For example, some members wished to include a statement that victims of racial discrimination had little trust in the police and judicial authorities. But to imply that those institutions were corrupt was to imply that States themselves were corrupt, thus tarring all States with the same brush. It was his understanding that the document reflected the conclusions drawn by the Committee on the basis of its consideration of State party reports. He wondered what parts of those reports had led members to conclude that all States were corrupt. The Committee was raising issues without any regard for the consequences. It was also calling on States parties to withdraw their reservations to article 6. He was not convinced, however, that the language of the article was sufficiently unambiguous for the Committee to make such an appeal. If it truly wished to advance the cause of human rights and improve cooperation with States parties and other treaty bodies, the Committee must work with the secretariat to produce a text that was less contentious and less open to misinterpretation.

63. The CHAIRMAN suggested that the Committee should defer consideration of the document to a later date.

The meeting rose at 1.05 p.m.