

INTERNATIONAL
CONVENTION
ON THE ELIMINATION
OF ALL FORMS OF
RACIAL DISCRIMINATION



CERD

PROVISIONAL

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Ninth Session

PROVISIONAL SUMMARY RECORD OF THE ONE HUNDRED AND NINETY-SECOND MEETING

Held at Headquarters, New York,
on Monday, 8 April 1974, at 3.40 p.m.

<u>Chairman:</u>	Mr. HAASTRUP
<u>later:</u>	Mr. MACDONALD
<u>Rapporteur:</u>	Mr. SAYEGH

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CONSIDERATION OF REPORTS AND COMMENTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION

(g) THIRD PERIODIC REPORTS OF STATES PARTIES DUE IN 1974 (CERD/C/R.69/Add.1, R.70/Add.8, R.70/Add.9) (continued)

Mr. MACDONALD said he agreed with many other speakers that the report of Pakistan (CERD/C/R.70/Add.8) was satisfactory and contained very useful supplementary information. He also agreed that the report focused more on what had occurred in the public sector than on developments in the private sector. He expressed appreciation to the Government of Pakistan for the documentation it had forwarded to the Committee, particularly the text of the 1973 Constitution, which had facilitated appraisal of the report itself.

He noted that article 27 of the Pakistan Constitution would allow, for a 10-year period, positive discrimination with the aim of securing proper representation for certain groups. It seemed to him that that had a direct relation to article 1, paragraph 4, and article 2, paragraph 2, of the Convention and, since such measures were acquiring great importance in an ever-increasing number of countries, he asked what Pakistan's practical experience had been in the matter.

Article 33 of the Constitution specified that "the State shall discourage parochial, racial, tribal, sectarian and provincial prejudices among the citizens". That provision was fully in accordance with article 7 of the Convention, and he would therefore like to know what measures had been taken under article 33 of the Constitution, since that information would help the Committee to judge how the State had fulfilled its responsibility. He considered that to be extremely important because, according to the report, general conditions in Pakistan were such that it had not been found necessary to enact laws or administrative measures which dealt specifically with racial discrimination.

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Mr. SAYEGH agreed with the previous speakers that Pakistan's report was satisfactory, as was the documentation submitted by the Government, which supplemented the information already available.

As a general rule, he did not consider reports dealing only with legislative measures to be satisfactory, but in the present case he believed that the Government of Pakistan had not yet had sufficient time to adopt administrative measures under the new Constitution. In any event, it was obvious that Pakistan had joined the ranks of States which had amended their legislation in order to comply with the provision of article 4 of the Convention.

His only reservation was in connexion with the provisions of article 30 of the new Constitution, which stated that the responsibility of deciding whether any action of an organ or authority of the State, or of a person performing functions on behalf of an organ or authority of the State, was in accordance with the principles of policy, was that of the organ or authority of the State, or of the person concerned. Among the principles of policy were those set out in article 33, concerning prejudices to be discouraged, and in article 36, concerning the safeguarding of the legitimate rights of minorities. Perhaps, not being a legal expert, he had not quite grasped the provisions of article 30. In any event, taking into account also the terms of paragraph 2 of article 30, he believed that that article nullified the whole of chapter 2 of the Constitution, in which case there were a number of questions that he would wish to raise.

Mr. KEMAL (Pakistan) said he deemed it an honour that the Committee had considered the report of Pakistan to be satisfactory.

With regard to article 26 of the Constitution, he explained that that provision was meant only to prevent the disruption of religious ceremonies or functions; in other words, the right of access to public places could not be used to deny someone else's religious rights.

The references to classes applied to socio-economic classes and did not involve a strict definition. Where the right to freedom of movement was concerned, the restrictions were imposed only "in the public interest" and never on the basis of race.

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(Mr. Kemal, Pakistan)

It had been said that the report focused on legal provisions, and some members had asked whether any practical measures had been taken. The answer was that they had, and government measures of various kinds were referred to in the report itself. They included, for example, those mentioned in paragraph (iii), which were essentially constitutional; those mentioned in paragraph (iv), concerning restrictions on the authority of the State; and, in particular, the passage of Act IV of 1973, under which racial discrimination was now an offence.

The report had not described in any detail the measures taken in the field of education, information and culture but, since Pakistan was an Islamic Republic, tolerance was something that was taught to children from early infancy. For Pakistanis that was a way of life, since it was impressed upon them from their school-days that all men were brothers.

The report did not mention that United Nations Day and Human Rights Day were celebrated in Pakistan. On those occasions, commemorative stamps were issued and various ceremonies were held. Future reports by his country would include references to those events as an indication of the practical ways in which the principles of the Convention were being implemented.

Another question that had been asked related to the jurisdiction of the High Court, mentioned in paragraph (iii) of the report. Protection and remedies against acts of racial discrimination were an important constitutional question, and under Pakistan law the High Court had jurisdiction to make an order to enforce fundamental rights. There were other remedies, however, and perhaps they were not adequately spelt out in paragraph (iii). For example, a person could report a case of violation of human rights to the police and institute criminal proceedings, or he could inform the District Commissioner or a senior official in case of a violation committed by a subordinate official. The High Court was then the last resort.

One member had asked why it had not been considered necessary to establish a special body to review the laws relating to racial discrimination. That would have been necessary if racial discrimination had existed in Pakistan, but Islamic ideology prohibited racial discrimination and the Government had not thought it necessary to establish such a body.

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(Mr. Kemal, Pakistan)

Another member had asked about the population of Pakistan. The total population was about 64 million or 65 million, but he could not give a breakdown by race because no precise definition existed for the purpose. Each province had a different racial make-up and it was very difficult to give the exact composition.

There had also been two questions concerning article 36 of the Constitution, relating to protection of the rights and interests of minorities. In that connexion, the provisions of article 27 of the Constitution concerning safeguards against discrimination in the public service should be noted. That article included a proviso to the effect that, for a period not exceeding 10 years, posts might be reserved for persons belonging to any class or area to secure their adequate representation in the service of Pakistan. That stipulation would be valid until 1982, and article 27 was a transitional provision. During the last 20 years Pakistan had applied a quota system for senior posts in the public service. That system ensured that the provinces were represented on the basis of the make-up of their population.

Another question had referred to the principles of policy set out in article 29. That article did not conflict with the principle laid down in article 30, paragraph 2, because the principles of policy were a kind of ideal which the Government was attempting to attain. Article 30, paragraph 2, was intended to prevent anyone from suing the Government because the principles of policy had not yet been strictly complied with. Chapter 2 therefore contained an excellent programme of action which the Government hoped to carry out in the future.

The CHAIRMAN said he was pleased that the members of the Committee had found the report satisfactory, and he hoped that the next report of Pakistan would contain more information on administrative measures.

Mr. Kemal (Pakistan) withdrew.

Hungary (CERD/C/R.70/Add.9)

At the invitation of the Chairman, Mr. Varga (Hungary) took a place at the Committee table.

The CHAIRMAN drew attention to the reply received from Hungary concerning its obligations under article 4 of the Convention, contained in document CERD/C/R.69/Add.1.

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Mr. SOLER said that the report from Hungary was informative and satisfactory, although the reference to genocide was not relevant to the Convention on the Elimination of All Forms of Racial Discrimination.

On page 14 of document CERD/C/R.69/Add.1, there was an error in the statement that organizations professing the policy of racial discrimination or racial hatred could not function in the Hungarian People's Republic. According to article 4 of the Convention, organizations and propaganda which promoted and incited racial discrimination should be prohibited by positive law. In connexion with that article, the report of Hungary indicated that an association could function in Hungary only when it was duly authorized. However, in every country there were two kinds of associations, lawful and unlawful. The former always functioned with the authorization and recognition of the State. The latter could not function legally, in Hungary or anywhere else. The question was whether there was a specific provision in the Hungarian Criminal Code covering racial discrimination or racial hatred. He requested a clarification of that point.

He would also like additional information on certain points connected with article 5 of the Convention, particularly subparagraph (d) (ii), or, in other words, on the right of residents or citizens of Hungary to enter or leave the country.

Mr. VALENCIA RODRIGUEZ noted that the Hungarian Government had adopted high-level legislative measures concerning the elimination of racial discrimination. Among them was the entire text of the Hungarian Constitution, and the reaffirmation of Hungary's respect for human rights was worthy of note.

Article 61, paragraph 3, of the Constitution extended the scope of the rights guaranteed to the nationalities in Hungary and provided for the use of the mother tongues of those nationalities.

Article 6, paragraph 2, of the new law on the courts implemented article 6 of the Convention. Information was now needed on whether there were provisions enabling a victim to obtain compensation in the courts.

He also drew attention to section 8 of the Code of Criminal Procedure, which guaranteed the right of nationalities to use their native tongue before the court.

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(Mr. Valencia Rodriguez)

The report showed that Hungary continued to take a particular interest in implementing the Convention in all its aspects, especially with regard to the rights of minorities, who constituted only 1.5 per cent of the total population.

Document CERD/C/R.69/Add.1 reproduced the provisions of Law-Decree No. 28 of 1971 under which incitement to racial hatred was punishable. Thus, Hungary had complied with article 4 (a) of the Convention.

Article 4 (b) of the Convention was implemented by article 1, paragraph 2, of Law-Decree No. 35 of 1970 on associations, to which Hungary referred in the second report it had submitted. As in the case of that report, he found the third report submitted by Hungary satisfactory.

Mr. TOMKO said that the third periodic report of Hungary should be considered in the light of its previous reports, since it had already been stated in the second report that Hungary had taken all necessary measures to eliminate racial discrimination. The third report contained important additional information on the legislative measures adopted in 1972 and 1973 as part of the national legislation for the elimination of all forms of racial discrimination. He drew particular attention to Act I of 1972, amending Act XX of 1949, and the amendment to the Criminal Code (Law-Decree No. 28 of 1971). In connexion with the rights of minorities, reference should be made to Act I of 1973, which guaranteed the right of nationalities to use their native tongue before the court. It should also be noted that Hungary had always demonstrated its opposition to all régimes based on racial discrimination. For all those reasons, he felt that the third periodic report, which was in keeping with the provisions of article 9 of the Convention and the Committee's recommendations, was entirely satisfactory.

Mr. SAYEGH drew the Committee's attention to the fact that legislative and penal provisions on the rights of minorities generally referred to linguistic rather than national minorities. That raised the question whether there were not other kinds of minorities based on a criterion other than language, and also whether linguistic minorities had any other right besides that of using their native tongue. Another point was that the information contained in Hungary's third periodic report did not seem to be directly connected with racial discrimination. For example, paragraph (1) of article 54 of the new Constitution of 1972 referred in general terms to human rights, but paragraphs (2) and (3) really had no direct relation to the

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(Mr. Sayegh)

matters dealt with by the Committee. At best, the report would be only indirectly relevant.

With respect to Hungary's reply concerning its obligations under article 4 of the Convention (CERD/C/R.69/Add.1), he would like to know whether, in addition to the penal provisions concerning incitement to racial hatred, genocide and offences against minority groups, there was any provision making the dissemination of ideas based on racial superiority or racial hatred punishable. Unlike Mr. Soler, he felt that the Committee should welcome information on genocide, since that crime was the ultimate manifestation of racial discrimination.

He did not find the information provided on organizations professing the policy of racial discrimination entirely satisfactory, since there was no indication whether such organizations were declared unlawful and were prohibited. He also drew attention to the fact that, unlike other socialist States, Hungary made no reference to fascist organizations, and he wondered whether that might be due to error or oversight.

Lastly, he was surprised that information was sought only concerning the implementation of article 5 (d) of the Convention. It would be desirable, in any event, to obtain information on the implementation of all the paragraphs of article 5.

Mr. CALOVSKI felt that the report submitted by Hungary fully met the requirements of article 9 of the Convention and showed a spirit of collaboration which was characteristic of the Hungarian Government's determination not to allow any racial discrimination. The references to the new Constitution of 1972 and the Criminal Code were extremely important, particularly with regard to the rights of linguistic minorities in the matters of education, access to the courts and the right to use their native tongue. The information from the population census of 1970 regarding the composition of those minorities was also extremely useful. It was to be hoped that the next report would give details on the implementation of the provisions guaranteeing the rights of minorities and on their situation with regard to article 5 of the Convention. The report of Hungary was satisfactory and constituted a further demonstration of the forthright stand against racial discrimination taken by Hungary at the national and international levels.

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Mr. SAFRONCHUK said that, as on previous occasions, the Committee had the opportunity to note that in Hungary there was a wide range of legislative and administrative measures guaranteeing the rights of all citizens. The socialist system was precisely what prevented the existence of racial discrimination. Article 61 of the Constitution was particularly important, because it not only guaranteed that minorities had the same rights as the rest of the population but also established their right to use, and receive education in, their native tongue. The fact that the legislation referred specifically to linguistic minorities was significant, because it was in that sphere that discrimination was generally most difficult to combat. It was also evident from the report that the rights in question were guaranteed for all minorities, however, small, and despite the fact that they were virtually scattered over the entire area of the country.

Referring to the Hungarian Government's reply concerning the implementation of article 4 of the Convention, he said it was evident that Hungarian law provided for the punishment of any manifestation of racial hatred or propaganda activities which promoted racial discrimination. Consequently, the periodic report of Hungary was satisfactory and met the requirements of the Convention.

Mr. PARTSCH felt that the report was interesting and of a general nature. He felt that the significance of article 54 of the new Constitution of 1972 lay in the fact that civic rights had no intrinsic value, but were determined by the interests of socialist society. It was interesting also because as it transpired from paragraph (3) of that article and from the penultimate paragraph of the report, fundamental rights and duties did not establish a framework within which Parliament should function. But it was Parliament which determined the scope of those rights and duties.

He agreed that the current report did not provide specific information on legislation concerning organizations which promoted racial discrimination. However, he felt that the reference to article 4 (b) in document CERD/C/R.69/Add.1 was adequate, since it indicated that under existing legislative regulations, no organization professing the policy of racial discrimination could function in the country.

Mr. MACDONALD said that he would like to know whether the administrative tribunals had intervened in important questions relating to the provisions of the

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(Mr. Macdonald)

Convention, and in the event that they had, what their rulings or decisions had been. If there had not been cases of that kind, he would like to know what procedure was currently followed to solve cases which arose in the private sector. In other words, what was the situation with regard to article 6 of the Convention?

Furthermore, document CERD/C/R.70/Add.9 indicated that Act I of 1972 stated with general effect that the Hungarian People's Republic respected human rights. In his view, it was important to know the reasons which had given rise to the promulgation of that new act: was it part of a general review of legislation, or of a study of the laws relating to human rights, or of a review of criminal law?

Mr. DAYAL stressed the importance of the laws promulgated in Hungary since that country had submitted its previous report to the Committee. A new Constitution had also been promulgated, but the members of the Committee did not have the text of that document and it was therefore somewhat difficult to know which provisions were new. Accordingly, he wished to request the Hungarian representative to make the text of the new Constitution available to the Committee.

He would like to know whether the constitutional provisions had been amended in order to bring them into line with the Convention. Second, he would like to know whether there was a national committee in Hungary responsible for watching over the interests of minorities. In that regard he pointed out that article 2 (a) of the Convention stated that each State party undertook to engage in no act or practice of racial discrimination against persons, groups of persons or institutions and to ensure that all public authorities and public institutions, national and local, should act in conformity with that obligation. In his opinion, irrespective of whether a society was socialist or not, it should protect persons or groups of persons against possible abuses by governmental authorities and other groups. It was well known that many countries had specific laws relating to that problem and he would be interested to know what protection persons or groups of persons enjoyed in Hungary. In his view, the report did not contain sufficient detail, but despite that, he was confident that the situation continued to be satisfactory.

Mr. INGLES said that, although he welcomed the references in the report to the new Constitution, he, like other speakers, would be pleased to have the

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text of that Constitution. He had been agreeably surprised that the new Constitution of 1972 had stressed the duties and obligations of citizens, as well as their rights. He felt that that was largely due to the provision in the Universal Declaration of Human Rights which indicated that rights were also accompanied by duties.

The new provisions of the Criminal Code provided penalties for incitement to hatred, and were in line with the provisions of article 4 (a) of the Convention.

That provision of the Convention went further than article 20 of the International Covenant on Civil and Political Rights which stated that any advocacy of national, racial or religious hatred that constituted incitement to discrimination, hostility or violence should be prohibited by law, whereas article 4 (a) of the Convention declared punishable all dissemination of ideas based on racial superiority or hatred, without specifying that those ideas resulted in violence.

With regard to article 4 (a) and (b) of the Convention, the report made no reference to a number of aspects of Hungarian legislation, for example, concerning the penalty for participation in organizations or activities which promoted racial discrimination. He himself had some reservations as to whether that provision required a distinction to be made between fascism and racial discrimination. Fascism was, in fact, motivated by political or ideological considerations, whereas article 4 referred only to racist, not fascist, organizations.

Since he believed that the Convention on the Prevention and Punishment of the Crime of Genocide was very relevant to the Committee's work, he wondered whether the ratification of the Convention on the Suppression and Punishment of the Crime of Apartheid would not also merit consideration by the Committee, since both genocide and apartheid constituted the ultimate manifestations of racial discrimination. It would therefore be desirable for the Committee to request information from States parties on the application of the latter Convention.

He agreed with the view expressed by other members of the Committee that the report of Hungary was satisfactory.

Mr. Macdonald took the Chair.

Mr. ABoul-NASr said he had no doubt that there was no racial discrimination in Hungary, a country which was doing its utmost to combat racial discrimination.

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(Mr. Aboul-Nasr)

His misgivings arose over the form, not the content, of the report. Like the previous reports, it was a difficult document to read because it did not comply with the guidelines established by the Committee in document CERD/C/R.12. If it had been prepared in accordance with those guidelines, many of the questions which had been raised could have been avoided.

For the rest, he associated himself with the other members who considered the report satisfactory and expressed the hope that subsequent reports would take due account of the guidelines established in document CERD/C/R.12.

Mr. SAFRONCHUK expressed surprise that one member had drawn special attention to certain provisions in the Hungarian Constitution, in particular those which referred to the rights of citizens. When the Committee had considered the Constitutions of other countries with different political and social systems, the fact that the State protected the bases of those other systems, for example, private ownership, the right to use foreign labour, etc. had not been called into question but had been considered natural and fitting. He therefore wondered why so much stress had been laid on the fact that in Hungary the rights of citizens were associated with the interests of the State and of the whole socialist system.

The rights of citizens could not be separated from their duties, and it was natural that the Constitution should establish that fact. Parliament reflected the will of the people and adopted legislation, including the fundamental law, and that was considered the normal procedure in socialist countries.

Mr. Haastrup resumed the Chair.

Mr. SAYEGH reiterated that, in his view, article 54 of the new Constitution of 1972 made a reference only to human rights in general, in paragraph 1, and to racial discrimination indirectly, in paragraphs 2 and 3. The two latter paragraphs alluded, respectively, only to the exercise of those rights in harmony with the interests of socialist society and to the role of parliament in regulating those rights. Such questions did not fall within the Committee's competence. What was important was that there was no indication of the existence of any distinction motivated by considerations of race or ethnic origin.

With regard to his previous allusion to the apparent lack of a specific

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reference in the legislation to fascist organizations, he wished to emphasize that his attention had been drawn to it by the fact that, unlike other socialist countries, Hungary's legislation contained no specific reference to such organizations.

The CHAIRMAN felt that the members of the Committee had, in general, noted the constitutional and legislative improvements introduced by the Government of Hungary since its previous report had been submitted. In the light of its consideration, if there were no objections, he would take it that the Committee considered the third periodic report of Hungary to be satisfactory.

It was so decided.

Mr. VARGA (Hungary) said that the amendments to the Constitution reflected fundamental changes in the life of Hungary, confirming the results so far attained in the struggle for social progress. The following were among the most important provisions of the new Constitution: article 55, paragraph 1, which guaranteed the right of citizens to work, as well as their remuneration; article 59, paragraph 1, which ensured the right to education for every citizen; article 61, paragraphs 1 and 2, which established that all citizens were equal before the law and provided severe penalties for any prejudicial discrimination on grounds of sex, religious affiliation or nationality; and article 68, paragraph 1, which recognized the right of every citizen to take part in the management of public affairs.

As far as the rights of minorities were concerned, his Government regarded the safeguarding of the full exercise of their rights as an important social issue and, as indicated in the third periodic report, the equal rights of the various nationalities living in Hungary were guaranteed by the Constitution, as well as by other major legislative acts based on it. In that connexion, it should be noted that article 7 of Act IV of 1972, on the courts, guaranteed the right of minorities to use their native tongue in the courts. Act I of 1971, on the councils, empowered the latter to enforce the rights of ethnic groups, and Act III of 1961, on the system of education, laid down that school-age children of different nationalities should be educated in their native tongue. Moreover, the following institutional guarantees had been prescribed to ensure the

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(Mr. Varga, Hungary)

implementation of the rights of national minorities: firstly, a general principle that every institution must satisfy the needs of the national minorities within its jurisdiction; secondly, the right of all four national minorities to elect members to the National Assembly, and to enjoy proportional representation in the local organs of State administration; thirdly, the establishment of committees representing the minorities in the county councils in the areas in which they lived; and fourthly, the practical implementation of the policy towards minorities, carried out mainly by associations representing the Southern Slavs, the Germans, the Romanians and the Slovaks in Hungary.

The enjoyment of economic and social rights was ensured by laws such as Act II of 1972, on public health, which laid down that all citizens were entitled to full medical treatment free of charge. As far as the protection of the individual was concerned, the new Criminal Code enacted by the Parliament under Act I of 1973 was remarkable not only for the way it regulated some fundamental rights of citizens but also for the stronger legal guarantees it provided for suspects or defendants before the verdict was pronounced. In the same area of the legal organization of the State, Act IV of 1972, which laid down the jurisdictional principles that defined the fundamental rights and duties of judges and the conditions of the participation of lay judges, was also important.

With regard to the question of freedom of movement, he drew the attention of members of the Committee to Law-Decree No. 4 of 1970 on passports. Hungary had broadened its international relations, encouraged the expansion of foreign tourist traffic, and facilitated travel abroad for Hungarian nationals. Under the new law, every Hungarian citizen had the right to have a passport, except in cases where the interests of the State were endangered.

Furthermore, Act III of 1970 had been promulgated, amending Act III of 1966 on the election of members of the National Assembly and of the councils, and guaranteeing the right of all citizens to take part in the government of the country, directly or through freely chosen representatives.

He believed that the provisions of the Criminal Code duly provided penalties for those disseminating ideas which incited to racial hatred. However, he wished to emphasize that the elimination of racial discrimination had already been

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(Mr. Varga, Hungary)

adequately ensured by earlier laws. The aim of the new Constitution was to promote still further every citizen's enjoyment of his rights.

In conclusion, he said that the Permanent Mission of the Hungarian People's Republic would distribute copies of the English text of the Constitution to members of the Committee. The remarks made by the members of the Committee would be brought to the attention of his Government and would be taken into consideration during the preparation of his country's next report.

OTHER BUSINESS

The CHAIRMAN drew the attention of the members of the Committee to a note addressed to the Secretary-General by the Permanent Mission of Nigeria, indicating that the report of Nigeria would be available at the following session of the Committee.

He also pointed out that two members of the Committee would probably not be able to remain in New York until the end of the session. In that connexion, he said that Mr. Kapteyn had submitted written remarks on some reports and Mr. Ancel had requested that item 10 should be considered on the morning of Thursday, 11 April, so that he could attend that meeting. If he heard no objection, he would take it that the Committee agreed to that suggestion.

It was so decided.

The meeting rose at 6.10 p.m.