

SUMMARY RECORD OF THE ONE HUNDRED AND TENTH MEETING

Held on Thursday, 17 August 1972, at 10.50 a.m.

Chairman: Mr. VALENCIA RODRIGUEZ
later, Mr. HAASTRUP

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (continued):

(c) INITIAL REPORTS OF STATES PARTIES WHICH ARE DUE IN 1972

Nepal (CERD/C/R.33/Add.2)

The CHAIRMAN informed the Committee that the Secretary-General had received the credentials of a representative of Nepal who would be able to participate in the Committee's consideration of the Nepalese report.

At the invitation of the Chairman, Mr. Bhatt (Nepal) took a seat at the Committee table.

The CHAIRMAN welcomed the representative of Nepal and said that his participation would be of great value in the consideration of the report submitted by his Government.

Mr. HAASTRUP said that the report submitted by Nepal was extremely brief and did not give details on all the points enumerated in the Committee's guidelines to States Parties (A/8027, annex III, A). Although the second sentence of the report stated that the laws and regulations in Nepal conformed strictly to the spirit and the provisions of the Convention, it would have been desirable if the Committee had been provided with the texts of those laws and regulations, particularly the ones relating to the mandatory provisions of the Convention. He also hoped that the representative of Nepal would be able to provide a clarification concerning the last sentence of the report, which might only be a declaration of intent and did not clearly indicate whether any measures had yet been taken.

Mr. MACDONALD said that the report submitted by Nepal was so brief that it did not give the Committee enough material to work on. He would be interested in knowing the content and scope of the Civil Rights Act mentioned in the report and the manner in which it was enforced. The last sentence of the report implied that certain measures had been adopted, but the Committee could not make any useful comments on them unless it knew exactly what they were. In its consideration of other reports in which States Parties had declared that the situations in their countries made it unnecessary for them to take specific

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(Mr. Macdonald)

measures under article 4 of the Convention, the Committee had taken the view that, notwithstanding the circumstances in their particular countries, all States Parties were obligated to adopt special legislation to give effect to that article of the Convention. He hoped that the Committee would receive from the Government of Nepal a much larger body of information relating to the implementation of that article as well as clarification concerning specific questions raised in the guidelines (A/8027, annex III, A).

Mr. TOMKO agreed with previous speakers that the Committee should be provided with more information on the legislation referred to in the report, either orally by the representative of Nepal or in the second regular report to be submitted by that country.

Mr. DAYAL said that he personally had visited Nepal and could say that it was indeed true that there was no racial discrimination there. However, since States Parties were under the obligation to provide the Committee with detailed information as outlined in the Committee's guidelines, he, too, hoped that the Government of Nepal would fill in the gaps in its present report, provide more details about the Constitution and the Civil Rights Act as they related to the elimination of racial discrimination and submit specific data on the various legislative, judicial, administrative and other measures which had been adopted to give effect to the provisions of the Convention. He hoped that data would include the specific measures referred to in articles 2 and 4 which States Parties were obligated to take.

Mr. CALOVSKI said that, although he had been pleased to learn that the Nepalese Government was opposed to all forms or manifestations of racial discrimination, he felt that the report would have been more useful to the Committee if it had been prepared in accordance with the Committee's guidelines. He too felt that more information should be provided and hoped that the representative of Nepal would be able to assist the Committee in that regard.

Mr. INGLES questioned whether rule 64 of the Committee's provisional rules of procedure had been applied in the case of the Nepalese report. Had the

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(Mr. Ingles)

Government of Nepal been provided with a copy of the Committee's guidelines for the preparation of reports (A/8027, annex III, A) and of document CERD/C/R.41, which said that all the States Parties, including those which alleged that no racial discrimination existed in their territories, should provide the Committee with information on measures they had taken to give effect to article 4 (a) and (b) of the Convention? The report submitted by Nepal had certainly not been prepared on the basis of those communications of the Committee. He hoped that the representative of Nepal would be able to provide the information which was lacking. The Committee should be given the text of the provisions of the Constitution and the Civil Rights Act which related to racial discrimination and should also receive detailed information on the various legislative, judicial, administrative, and other measures which had been adopted in order to give effect to the Convention, as required under article 9.

Mr. HAASTRUP said that, on the basis of paragraphs 53 and 54 of the Committee's report on its third and fourth sessions (A/8418), he would assume that the contents of the Committee's guidelines had indeed been brought to the attention of the Government of Nepal. If so, the report should have provided all of the information requested in the guidelines, particularly with regard to articles 2, 4, 5 and 6 of the Convention.

Mr. DAS (Representative of the Secretary-General) explained that, in accordance with the Committee's own decisions at its past sessions, when reminding States Parties of the date on which their initial reports were due, the Secretary-General had sent them a copy of the Committee's guidelines. Document CERD/C/R.41 had been adopted after those decisions of the Committee. However, all States Parties had received that document as a matter of course under rules of procedure of the Committee and it had been sent to them also for their comments in accordance with article 9, paragraph 2, of the Convention.

The CHAIRMAN, speaking as a member of the Committee, felt that, despite its brevity, the report submitted by Nepal contained important statements. There were references to the Government's opposition to all forms or manifestations of racial discrimination, to the Constitution and the Civil Rights Act and to the

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(The Chairman)

Government's policy of adopting various legislative, judicial, administrative and other measures to give effect to the Convention. He agreed with previous speakers that the Committee should be provided with specific texts to support the general statements made in the report and hoped that the information that was lacking could be provided in the second regular report of the Nepalese Government. Without receiving further information on the specific measures which had been adopted, the Committee would be unable to determine whether the provisions of the Convention were being observed in Nepal.

He invited the representative of Nepal to make a statement if he so wished.

Mr. BHATT (Nepal) said that there were two reasons for the brevity of his Government's report. First, his Government had thought it proper to make its first report to the Committee a very brief one explaining the essential philosophy behind its accession to the Convention rather than outlining in detail all the measures it had adopted to give practical effect to its provisions. In that connexion, he pointed out that both the Constitution of Nepal and the Civil Rights Act predated the Convention. The legislation, tradition and basic philosophy of Nepal were opposed to all forms of discrimination and the country's long history was singularly devoid of instances of racial disturbances or communal riots. Secondly, since there was no racial problem in Nepal, the Government had not felt any urgent need to adopt specific legislative, judicial, administrative, or other measures in order to give effect to the provisions of the Convention. Nepal did not need such measures since the concept of racial discrimination was alien to its history, tradition and law. When Nepal had acceded to the Convention, its provisions had become part of the country's internal law. He assured the Committee that both the letter and spirit of the Convention would be observed in his country through the adoption of pertinent legislative, judicial, administrative and other measures, as and when necessary. Moreover, in accordance with its obligation under article 9, paragraph 1, of the Convention, his Government would give account of such measures to the Committee. The next report submitted by his Government would be more detailed than the present one.

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Malta (CERD/C/R.33/Add.3)

At the invitation of the Chairman, Mr. Marmara, representative of Malta, took a seat at the Committee table.

The CHAIRMAN welcomed the representative of Malta on behalf of the Committee and expressed the hope that his presence would help members to clarify their understanding of the information contained in the report submitted by the Government of Malta (CERD/C/R.33/Add.3).

Mr. MACDONALD said that he had found the report intriguing, particularly the statement that the Constitution of Malta, in section 46, expressly provided for protection from discrimination on the grounds of race, place of origin, political opinions, colour or creed and entrenched such protection as a fundamental human right under the Constitution. That statement, taken together with the third paragraph and the last three lines of the fourth paragraph of the report, described a very happy situation. Moreover, the Committee had considered reports from other States Parties, notably Nepal, which also stated that there was no racial discrimination problem in their countries. The question therefore was what should the Committee's policy be in a case where a Government stated that there was no racial discrimination problem in its country and where it was evident that the standards enforced in the country before it had ratified the Convention were equal to or higher than the standards required by the Convention? In previous discussions of a similar nature, it had been decided that the statement that no racial discrimination problem existed in a country and that it therefore had not been necessary to enact special legislation on that subject, although very attractive, did not meet the requirements of article 4 of the Convention. That was the main point he had to make concerning the report of Malta, which he found otherwise stimulating although somewhat brief.

Mr. HAASTRUP said that although the report was brief, it contained valuable information for the Committee. In the second paragraph of the report, the use of the word "may" in the phrase "provides that no person may be treated in a discriminatory manner" suggested that discrimination might be permitted in certain circumstances. He would like clarification as to whether the use of the word "may" was deliberate or inadvertent.

(Mr. Haastrup)

The Committee had settled the question raised by Mr. Macdonald at its previous session and had accordingly adopted document CERD/C/R.41. Therefore, since all States Parties were informed in CERD/C/R.41 of the action they were required to take in respect of article 4 of the Convention, he hoped that Malta's next report would contain the information which was lacking in its initial report. The Convention also contained provisions which made it obligatory for States Parties to take international action condemning racial discrimination and, under the provisions of document CERD/C/R.12, to provide such information to the Committee.

He recalled that it had been stated previously in the Committee that it was obligatory for States Parties to take specific measures to implement the mandatory provisions of the Convention, whether they were needed or not, in order to discourage racial discrimination in the future. Therefore, although the situation with regard to racial discrimination in Malta, as described in the report, was very satisfactory, the Government should take steps to ensure that it remained so.

Mr. INGLES said that, in principle, he was for a liberal rather than a literal interpretation of the Convention. Common sense dicatated that the action called for under article 4 (a) and (b) of the Convention was not so urgently required in countries where there was no racial discrimination. In his view, States Parties representing countries in which no racial discrimination existed could not be considered to have violated the Convention if they had not yet enacted special legislation to fully comply with article 4 (a) and (b). They should be given time to surmount whatever difficulties were encountered.

The last sentence of the report appeared to imply that there were provisions in the Constitution which provided citizens or other parties with recourse to the Constitutional Court to seek remedy for any action committed on the basis of alleged discrimination. The Committee would be interested in further information on the legal provisions governing such cases in Malta. He would also like to know what measures had been adopted by the Maltese Government to implement article 6 of the Convention. Since sections 33 and 46 of the Constitution of Malta had been referred to in the report, he would like to have the text of those sections and information on any legislation regarding access to the Court, and the procedure for obtaining reparations for damage suffered as a result of discrimination.

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Mr. PARTSCH said that he would confine his observations to the points made by Mr. Ingles. The Constitution of Malta, which upheld the fundamental rights and freedoms of the individual, was largely inspired by the European Convention on Human Rights. The structure of the Constitutional Court of Malta was based on that of Cyprus which, in turn, was based on the Constitutional Court of the Federal Republic of Germany. Any person, not only Maltese citizens, whose fundamental rights and freedoms had been affected by measures taken by the Maltese authorities could apply to the Constitutional Court after he had exhausted all other remedies. Where there were no other remedies, individuals had direct access to the Constitutional Court of Malta, which had developed extensive jurisdiction over the private claims of people living in the country. He, personally, had seen cases very thoroughly examined by the Constitutional Court and could confirm that none of them had involved any form of racial discrimination. That was a very important point made in the report. However, the Committee needed more detailed information on measures adopted by the Maltese Government to implement the Convention and he hoped such information would be provided at a later stage.

Mr. CALOVSKI said that the encouraging picture painted in the report indicated that it was the clear policy and determination of Malta not to allow the existence of racial discrimination in any form within its territory. However, under the provisions of document CERD/C/R.12 and in view of the mandatory nature of some of the articles of the Convention, further action was required and should be reported. As other speakers had already said, the same procedure should be applied to all reports. He hoped that the representative of Malta would take note of the Committee's requirements in that respect and that in future his country would provide more detailed information on the measures it had adopted to implement the provisions of the Convention.

Mr. SOLER said that the point raised by Mr. Macdonald had emerged from the discussion of the report submitted by the Government of Uruguay, in which it was stated that the problem of racial discrimination did not exist in the Republic of Uruguay. It was clearly essential to exercise caution in dealing with article 4 of the Convention. It was not the first time that the ratification of international conventions had resulted in unjustified attacks on the criminal law of a State Party; adoption of the Convention on the Prevention and Punishment of the Crime of Genocide had had that effect. The provisions of any convention were open to a

(Mr. Soler)

wide variety of interpretations and the Committee was confronted with a particularly delicate situation in requiring implementation of article 4 (a) of the Convention. Consideration must be given to the fact that the minimum case covered by article 4 (a) was the dissemination of ideas based on racial superiority or hatred, which, under the article, would be punishable by law. Under a democratic system of government, such a law could be said to endanger the civil rights of citizens; it could adversely affect any individual and threaten the exercise of the right to freedom of opinion and expression. Under a repressive political system, legislation making the dissemination of ideas based on racial superiority or hatred punishable could become very dangerous.

It was true that all the States Parties had signed the Convention and were therefore bound by its provisions. However, the Government of Malta had stated in its report that the problem of racial discrimination did not exist in Malta. Was it necessary to be so severe as to state that Maltese legislation was inadequate because it did not prohibit the dissemination of ideas based on racial superiority and hatred? The Committee was dealing with an area in which great caution was required, and although members should not lose sight of the provisions contained in article 4 (a) of the Convention, they should interpret them very broadly.

Mr. MACDONALD said that Mr. Partsch's statement had shown that the information which interested the Committee was in fact contained in the Constitution of Malta. Unfortunately, that information, which would be most useful to the Committee, had not been detailed in the report.

In reply to Mr. Soler's point regarding a broad interpretation of the Convention, he said that if the examination of reports could be foreclosed on the basis of a statement by a State Party to the effect that the problem of racial discrimination did not exist in its territory, the Committee would be failing to discharge its obligations. Therefore an intermediate position must be found between a narrow and a broad interpretation of the Convention.

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Mr. ANCEL agreed that the final clause in the report submitted by the Government of Malta presented certain problems similar to those examined at the previous meeting. Such problems were likely to recur, and he agreed with Mr. Macdonald that the Committee should take a middle-of-the road approach to them. Legally speaking, States which had ratified the Convention had an obligation to take measures to give effect to such provisions as those contained in articles 2, 4, 5 and 6. However, it was difficult to ask States Parties in whose territories there was no real problem of racial discrimination to elaborate a whole body of laws against racial discrimination. As Mr. Ingles had pointed out earlier in the meeting, in such cases the Committee could afford to be less rigid in its requirements. From that point of view, the report submitted by the Government of Malta was satisfactory. On the other hand, the Committee could not be satisfied with a blanket assertion that racial discrimination presented no problem because if it was certain States Parties might be tempted to shirk their obligations under the Convention on the pretext that it was not necessary for them to implement its provisions. Consequently, the Committee should impress upon States Parties the obligations they had assumed by ratifying the Convention. Having said that, he wished to add that in his view Mr. Soler had correctly drawn attention to the delicate problem arising from that part of article 4 (a) which specified that States Parties should declare all dissemination of ideas based on racial superiority or hatred an offence punishable by law. The Committee had to moderate its requirements in that regard so as to avoid encroaching upon the right of free expression.

Mr. ORTIZ-MARTIN said that ever since the Committee's first session he had maintained that the Convention made it obligatory on all States Parties to revise their legislation and introduce the necessary safeguards against racial discrimination. That obligation applied to all States Parties, even those in whose territories racial discrimination had never existed. Even States which, before ratifying the Convention, had had legislation against racial discrimination and where infractions of that legislation were punishable often found it necessary to introduce new legislation in implementation of the Convention. In that connexion he had pointed out that after Costa Rica had ratified the Convention, its Constitution had been amended to bring it into line with the provisions of the Convention, and that the legislation giving effect to constitutional provisions had also been modified accordingly. He still held the views he had expressed during the first session in that regard.

The CHAIRMAN, speaking as a member of the Committee, said he welcomed the statement made in the report submitted by the Government of Malta to the effect that the Constitution of Malta provided for protection against racial discrimination and prohibited legislation of a discriminatory nature. However, he felt compelled to note that nothing had been said in the report about juridical equality although the spirit of section 46 of the Constitution and of other provisions cited in the report might be taken as an indication of juridical equality in cases involving racial discrimination. As for the obligation to take administrative measures, the Government of Malta seemed to feel that because there was no racial discrimination in the country, there was no need for such measures. In that regard, he pointed out that the provisions of articles 4 (b) and 7 were mandatory.

It could be said that the report submitted by the Government of Malta was incomplete from the point of view of its form, which did not follow the guidelines laid down in document CERD/C/R.12. In considering the substance of the report under consideration, the Committee was faced with the problem of the type of report it should expect from a State Party in whose territory racial discrimination did not exist. While States Parties might consider it inappropriate to promulgate laws against political or social evils which were unknown in their territories, the Committee had to maintain the position that all States Parties were obligated under the Convention to take legislative, judicial, administrative and other measures in implementation of some of its provisions. The Government of Malta could not be relieved of that obligation.

Mr. DAYAL said that while the report submitted by the Government of Malta might be criticized for its brevity, it contained some valuable information which would be very useful to the Committee. He had been impressed by the fact that a State which lay at the crossroads of the Mediterranean and in which sea-faring people had intermingled for centuries was free from any form of racial discrimination. He had also been impressed by the fact that as early as 1964 the Government of Malta had adopted a Constitution expressly prohibiting discrimination on grounds of race, place of origin, political opinion, colour or creed. It was certainly gratifying to receive information regarding a Constitution with such far-reaching provisions. He had also been most interested to learn of the existence in Malta of a Constitutional Court charged with the function, among other things, of upholding the fundamental rights and freedoms of the individual,

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(Mr. Dayal)

irrespective of race, place of origin, political opinion, colour, creed or sex. If Malta had been inspired by the examples set by other States in setting up such an institution, so much the better. The information that the Constitutional Court had never had occasion to pronounce on any allegation of racial discrimination was particularly encouraging. Having made those remarks, he wished to say that he shared the hope expressed by other speakers that in future reports the Government of Malta would provide information on the lines indicated by the Committee in the communication contained in document CERD/C/R.12. He was, however, aware that the report contained in document CERD/C/R.33/Add.3 was the first report submitted by the Government of Malta, which might be one reason for its brevity.

In his comments on article 4 (a) of the Convention, Mr. Soler had expressed the view that it might be dangerous for a State Party to adopt legislation making the dissemination of ideas based on racial superiority or hatred an offence punishable by law. He himself felt that article 4 (a) should be read in conjunction with article 7. A State would be acting in a contradictory manner if it adopted the measures envisaged in article 7 while at the same time tolerating the dissemination of ideas based on racial superiority or hatred. Recent world history and the present situation in southern Africa proved that the dissemination of ideas based on racial superiority or hatred could lead to the establishment of repressive régimes. He therefore agreed with those members of the Committee who felt that article 4 (a) was mandatory in all its aspects and that States Parties had the obligation to enact legislation declaring all dissemination of ideas based on racial superiority or hatred an offence punishable by law.

Mr. CALOVSKY said he had no difficulty with regard to the question raised by Mr. Soler and Mr. Macdonald because he took the view that the Committee was not specifically authorized to interpret the Convention and in doing so must be extremely careful, or to question its provisions. The Committee's task was to determine whether the States Parties were implementing the Convention and how they were implementing it. If certain members of the Committee attempted to give a broad interpretation to the Convention, the Committee would eventually find itself seriously divided and would forfeit its unanimity. The Committee should make every effort to maintain a unified position with regard to the provisions of the Convention and should try to influence the States Parties to implement those provisions.

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Mr. PARTSCH pointed out that in considering the question of the obligation of States Parties under article 4 (a) of the Convention, it was important to remember that the preamble to the Convention referred to the Universal Declaration of Human Rights and that one of the principles embodied in the Universal Declaration was the principle of freedom of opinion and thought. When the Convention was being elaborated, the problem of safeguarding freedom of opinion and thought had been discussed intensively, and the question had arisen whether it should be made mandatory on States Parties to declare all dissemination of ideas based on racial superiority or hatred an offence punishable by law. It had been feared that the imposition of such an obligation could put limitations on freedom of thought. It had been to avoid such limitations that the reference to the Universal Declaration of Human Rights had been incorporated in the preamble to the Convention. He himself was inclined to share the view expressed by Mr. Macdonald that even those States where there was no racial discrimination were bound by the provisions of article 4, on the understanding that in interpreting article 4, the preamble should be taken into consideration. It was important for all States Parties to comply with article 4 in its entirety since even in States where racial discrimination did not exist, there was always the possibility that an alien element could attempt to introduce racial discrimination by propagating racist ideas.

Mr. ABOUL-NASR pointed out that all that could be said about the two very brief reports under consideration was that they lacked a great deal of necessary information, which should be supplied in the next reports of the two States Parties concerned.

In his view, the Committee should not apply a double standard in its consideration of reports from States Parties: one standard in dealing with reports from States Parties in whose territories there was no racial discrimination and another standard with regard to reports which indicated that racial discrimination existed. The Committee had established certain guidelines which it expected all States Parties to abide by in transmitting information under article 9. He agreed with Mr. Dayal's interpretation of article 4 (a) because he took the view that many rights were not absolute and that it was sometimes necessary to limit even those rights referred in the Convention and in the Universal Declaration of Human

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(Mr. Aboul-Nasr)

Rights. Thirdly, he took the view that the Committee should not lose time trying to interpret the Convention since no interpretation was needed. Article 4 (a) began with the word "Shall". There could therefore be no doubt that it imposed an obligation on all States Parties to the Convention.

Mrs. OWUSU-ADDO said she agreed that the report under consideration was rather brief and not very informative. It was clear that the Government of Malta had not followed the guidelines laid down by the Committee in document CERD/C/R.12 in preparing it. Those guidelines made it clear that the absence of racial discrimination in the territory of a State Party did not absolve that State Party from the necessity of fulfilling its obligations under the Convention. She hoped that the Government of Malta would supply the Committee with more detailed information in its second report.

Mr. SAFRONCHUK said he agreed that the reports under consideration were very terse; however, in his view, brevity should not be construed as a shortcoming so long as a report succeeded in providing the necessary information. He noted with satisfaction that the report submitted by the Government of Malta clearly indicated that the Constitution introduced in 1964 provided for protection from discrimination on grounds of race, place of origin, political opinion, colour or creed. The sections of the Constitution mentioned in the report ensured the full implementation of the Convention and particularly of articles 4, 5, 6 and 7. He had also been gratified to read that under the Constitution, a highly competent judicial organ had been instituted in Malta, which was empowered to uphold the fundamental rights and freedoms of individuals, irrespective of race, place of origin, political opinion, colour, creed or sex. It could therefore be seen from the report that although there had never been any racial discrimination in Malta, there were constitutional provisions and judicial organs capable of forestalling any possibility that racial discrimination might arise. Nevertheless, despite the commendable aspects of the report, he agreed with those members of the Committee who felt that the Government of Malta should be asked to furnish additional information.

Paragraphs (a) and (b) of article 4 of the Convention clearly required the adoption of certain legislation and punitive measures even by those States Parties

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(Mr. Safronchuk)

in whose territories racial discrimination did not exist. However, the Committee should not lose sight of the fact that the territories of some States Parties were inhabited by hundreds of millions of people of varying races, nationalities and cultures whereas other States Parties were small and ethnically homogeneous. Malta fell into the second category. In view of the different problems faced by the various States Parties, the Committee could hardly expect them all to adopt the same kind of legislation against racial discrimination; however, the basic requirements of the Convention should be reflected in the legislation of all States Parties.

In his opinion, although article 4 (a) of the Convention made it obligatory for States Parties to declare all dissemination of ideas based on racial superiority or hatred an offence punishable by law, that obligation did not curtail the freedom of individuals to express other ideas. If all Governments took the view that by prohibiting the dissemination of ideas harmful to society they encroached upon freedom of expression in general, no State would ever be able to adopt effective legislation against racial discrimination.

The meeting rose at 1.05 p.m.