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the Elimination
of all Forms of
Racial Discrimination**

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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Fifty-second session

SUMMARY RECORD OF THE 1248th MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 3 March 1998, at 3 p.m.

Chairman: Mr. ABOUL-NASR

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The meeting was called to order at 3.10 p.m.

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

Initial report of Switzerland (CERD/C/270/Add.1; HRI/CORE/1/Add.29)

1. At the invitation of the Chairman, Mr. Held, Mr. Rohner, Mr. Dieffenbacher, Mr. Wyss, Mr. von Kessel, Mr. Voeffray, Mrs. Petter, Mrs. Sambuc and Mrs. Angst Yilmaz (Switzerland) took places at the Committee table.

2. Mr. HELD (Switzerland), introducing his country's initial report (CERD/C/270/Add.1), said that two representatives of the Federal Commission against Racism, a body established by the Federal Council following Switzerland's accession to the Convention, had been included in the delegation as evidence of the importance attached by the Swiss Government to its dialogue with the Committee. Given the Commission's independent status, its views did not necessarily coincide with those of the Government.

3. Switzerland's initial report (CERD/C/270/Add.1) had been drafted in French and translated into German and Italian, the country's other two main official languages.

4. In recent years, the Swiss Government, had acceded to the International Covenants on Civil and Political Rights and Economic, Social and Cultural Rights, the Second Optional Protocol to the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Rights of the Child and the Convention on the Elimination of All Forms of Discrimination against Women. Switzerland was also a State party to such regional treaties such as the European Convention for the Protection of Human Rights and Fundamental Freedoms and the European Charter for Regional or Minority Languages, and the Government had proposed to Parliament in 1997 that it should ratify the Framework Convention for the Protection of National Minorities, an instrument drafted by a committee of governmental experts chaired by Switzerland. In the case of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, Switzerland had played a prominent role in developing the system of visits to places of detention. It was also actively supporting current efforts to draft a protocol additional to the European Convention on Human Rights to strengthen the principle of non-discrimination set forth in article 14.

5. In December 1996, Switzerland had accepted the amendment to article 8 of the International Convention on the Elimination of All Forms of Racial Discrimination. Moreover, the adoption three years previously of criminal legislation making various types of incitement to racial discrimination punishable by law had enabled it to withdraw its reservation to article 20, paragraph 2, of the International Covenant on Civil and Political Rights.

6. As Switzerland was a country with a monist tradition, the Convention had been immediately applicable to all legislative, executive and judicial bodies. The Swiss Government and the Federal Tribunal had repeatedly affirmed the

principle of the primacy of international law over federal or cantonal law. As to the question of whether norms of international law were self-executing, according to Swiss jurisprudence and the practice of the Swiss authorities, a treaty provision could only be directly invoked in the courts if it was unconditional and sufficiently clear-cut to be applied as such in particular cases and to serve as the basis for concrete decisions. The courts were the final arbiters of applicability in such cases. In decisions regarding the Convention, the Federal Tribunal had not yet ruled on the direct applicability of its provisions but might well do so in the future.

7. Following accession to the Convention, Swiss criminal legislation had been amended to make acts of racial discrimination punishable by law, under articles 261 bis of the Penal Code and 171 c of the Military Penal Code. The former prohibited public incitement to racial hatred and racist propaganda, attempts to deny, grossly minimize or justify genocide or other crimes against humanity, and refusal of a public service, for example access to a public establishment, on racial, ethnic or religious grounds. Offenders were liable to terms of imprisonment ranging from three days to three years or to payment of a fine of up to 40,000 Swiss francs. Switzerland had gone beyond its obligations under the Convention by including discrimination on religious grounds and refusal of a public service among the punishable acts and by making the new provisions applicable not only to groups but to individuals. Moreover, punishable acts were prosecuted *ex officio* and did not require the filing of a complaint. Although the new provisions had been adopted by a very large majority of the two Chambers of the Federal Parliament, opposition to the legislation, chiefly on the grounds of freedom of expression and information, had necessitated the holding of a referendum. During the campaign, the Federal Government, representatives of the Catholic, Protestant and Jewish communities and various other bodies had engaged in a joint effort to explain the purpose of the legislation and dispel fears of its consequences. The new provisions had been endorsed in September 1994 by 54.7 per cent of the votes cast.

8. There had been some 30 convictions under the legislation to date and a number of cases were pending at the cantonal level. The courts had not hesitated to sentence offenders to terms of imprisonment: in one case a two-month mandatory sentence had been handed down. Suspended sentences had ranged from four days to six months and fines from 200 to 5,000 Swiss francs. Most of the offences had involved racist or anti-Semitic acts, statements or writings. There had been no conviction to date for denial of a public service, partly perhaps owing to the difficulty of proving racist motivation for a verbal refusal. A number of convictions had concerned the prohibition on denial or justification of genocide or other crimes against humanity, in particular the distribution in Switzerland of Roger Garaudy's book Les mythes fondateurs de la politique israélienne (The founding myths of Israeli policy). The main distributor had been given a four-month suspended prison sentence and two bookshops in Geneva had been fined.

9. In a ruling of 5 December 1997, the Federal Tribunal had interpreted key components of the new legislation in a case concerning the mass mailing of letters containing anti-Semitic material. The Tribunal, rejecting an appeal against the prison sentence and fine, had stated that the legislation also covered acts which, while not constituting direct incitement to racial hatred

or discrimination, "stirred up" or "aroused" such feelings. An explicit reference had been made to article 4 of the Convention. The fact that several cases under the new legislation had attracted considerable public and media attention had reinforced its preventive impact.

10. In addition to the Federal Commission against Racism, the Swiss authorities had established a Federal Commission on Foreigners whose mandate was described in paragraph 175 of the report. A number of similar institutions operated at the cantonal and communal level, in particular two commissions in the cantons of Zug and Valais. Advisory bodies for foreigners existed in some - mostly urban - communes and in most cantons. One of the oldest was the Immigrants Advisory Chamber in Lausanne which sought to involve the city's foreign communities in political decision-making. Thirteen of the 42 members were immigrant representatives elected by universal suffrage and the other members, in many cases also of foreign extraction, were delegated by the municipality, the communal council and trade union, employer, social and religious bodies.

11. The Swiss Government was committed to an intensification of measures in support of integration at all levels of the State. Integration was not to be confused with assimilation and did not imply renunciation of cultural identity or nationality. The cities of Berne and Zurich had developed integration policy guidelines. Foreigners in the canton of Neuchâtel had been entitled to vote at communal level for several decades. A movement entitled "Salut l'étranger" had been set up in 1994 with the support of the cantonal authorities to promote interaction between foreign communities and the rest of the population. The movement planned to stage over 60 events during the current year. Two federal committees of experts had recently drawn up proposals to promote integration in the following areas: the labour market, schools and vocational training; integration of foreign women; community activities and leisure; participation and joint responsibility in political life. A proposal currently before the Federal Parliament to include an article on integration in the legislation dealing with residence and settlement rights of foreigners would call for an increase in the Confederation's financial appropriation and would boost the activities of organizations and individuals engaged in the promotion of integration.

12. The "three circle" immigration policy model described in paragraphs 52 to 56 of the report was being reviewed in the light of proposals by a committee of experts. The Government would shortly submit a report on the subject to Parliament. Under the proposed new policy, the "three circle" model would be discarded. Aside from a special regime for nationals of European Union States, no distinction would be made on grounds of country of origin. Emphasis would be placed instead on vocational qualifications, general education, age, language skills and vocational mobility. Decisions on admission of foreigners to Switzerland would be made in the light of the country's international obligations and humanitarian motives. Persons whose application for asylum was pending, those admitted on a provisional basis and foreigners whose departure could not be made effective would be issued with a provisional residence permit. The rules governing different categories of residence would be simplified and the status of seasonal resident would be abolished and replaced by a short-term permit. All persons holding a residence permit would be authorized to bring their families to Switzerland.

13. The foundation for Swiss travellers referred to in paragraph 42 of the report had been established in May 1997. It would seek solutions to such problems as accommodation sites, trading licences and schooling, serve as a forum for consultations between travellers' representatives and the central and local authorities, and generate public awareness of the travellers' situation.

14. The Human Rights Committee and the Committee against Torture had expressed concern at allegations of ill-treatment, chiefly of foreigners, by cantonal police officers. In addition to the requisite punishment of such offences by the appropriate authorities and the courts, preventive action had been taken in recent years in the form of two intercultural awareness programmes for cantonal police officers proposed by the Conference of Heads of Cantonal Justice and Police Departments and implemented by the Swiss Police Academy. The themes of the programmes were "Police, migrants and ethnic minorities" and "Human rights and fundamental freedoms".

15. In December 1994, the Swiss Parliament had adopted a Federal order aimed at promoting cooperation with the International Criminal Tribunals for the former Yugoslavia and for Rwanda. The order committed Switzerland to action on any applications for arrest and transfer of wanted persons by the Tribunals. Several arrests had been made and one accused person had been transferred to Arusha in August 1997. Switzerland also actively supported the establishment of a permanent international criminal court.

16. Mrs. SAMBUC (Switzerland), speaking on behalf of the Federal Commission against Racism, said that, while the Commission had been appointed by the Federal Council, it was not an administrative body. Its members were not civil servants but represented civil society, in particular anti-racist non-governmental organizations (NGOs). The Commission focused on awareness-building and prevention in a spirit of genuine independence. It had, for example, criticized the Government's "three circle" policy. A report on anti-Semitism prepared at the Government's request would shortly be published.

17. The Commission sought in all cases to stimulate public debate and to avoid adopting a judgemental approach. Although there had been disturbing manifestations of rejection of nationals of countries outside the European Union and members of the Jewish minority in Switzerland, she stressed the existence of a tradition of tolerance of minorities and the generally untroubled coexistence of Swiss nationals and foreigners, especially in areas where there was a large foreign community. Of course, racism could also be a problem for Swiss citizens, particularly the travelling community which had difficulties in finding employment and maintaining its way of life. The Commission had full confidence in the process set in motion through Switzerland's ratification of the Convention.

18. One reservation was, however, in order: independent though it was, the Commission nonetheless depended on the authorities for financial support, and those resources were still altogether inadequate, as were those provided to the local NGOs on which it relied. It remained, therefore, to convince the authorities to give it the necessary resources to carry out its task.

19. Mrs. ANGST YILMAZ (Switzerland) said the Commission had a broad mandate, as it dealt with all forms of racial discrimination, whether direct or indirect. It could choose the main areas of its activities. For the first two years, those areas had included the "people of the road" or Jenisch minority, the integration of foreigners, the causes of racism, the situation of Muslims and the resurgence of anti-Semitism as a result of the debate over the Jewish funds in Swiss banks. The Commission had launched a publicity campaign that had received a United Nations award, had begun publishing a newspaper targeting the labour world, was promoting research on racism and xenophobia and distributed its bulletin free of charge to members of Government. It had regular contacts with authorities at the federal, cantonal and local levels in order to make them more aware of the problems of racial discrimination, and had stressed the responsibility of the authorities to institute proceedings *ex officio* under the new article 261 *bis* of the Penal Code. It also played the role of ombudsman, although in that capacity it was limited by the fact that its powers were purely advisory.

20. The CHAIRMAN thanked the delegation for its introduction of the report, noting that it was the first time ever that a State Party's delegation had included members whose views did not represent those of the Government.

21. Mr. van BOVEN (Country Rapporteur) said he considered everything that had been said during the introduction of the report as the voice of the State Party.

22. In addition to the initial report and the core document (HRI/CORE/1/Add.29), he had made use of such other sources of information as the bulletins of the Federal Commission against Racism, a report of the Swiss Forum against Racism and a monograph on racist incidents by Mr. Hans Stutz. While he welcomed Switzerland's recent ratification of a number of international human rights treaties, he noted that the State Party had entered two reservations to the Convention, and one general issue requiring clarification was the status of the Convention within the domestic legal order. The crucial question was the extent to which the provisions of the Convention might, directly or indirectly play, a role in the court practice of Switzerland, although there had as yet been no formal judicial decisions in the matter. Another general issue was that of the specific measures taken to implement the Convention - the creation of the Federal Commission against Racism and the introduction into the Penal Code of article 261 *bis* in order to give effect to articles 4 and 5 (f) of the Convention. Important though they were, were those two measures sufficient to guarantee full effect of the Convention in Switzerland?

23. With reference to the recent Federal Act on Equality between Men and Women, were there not equally valid and pressing grounds for introducing a general federal act on equality, or a federal act on non-discrimination based on race, colour, descent or national or ethnic origin?

24. The report, which by and large followed the Committee's guidelines, contained insufficient information on actual practice, measures taken to afford reparation and satisfaction to victims of racial discrimination and racial violence, and preventive policies. With regard to the substantial foreign population in Switzerland, the extensive system of control over

foreigners, particularly by the police, and the classification of foreigners into different categories, which was in its effect stigmatizing and discriminatory, were matters of serious concern.

25. He was grateful for the information provided on minorities. The Jenisch minority deserved particular attention. The revelations of abuses committed against them in the early 1970s, (paragraph 40 of the report), were a sad illustration, by no means unique to Switzerland, of what could happen to marginalized people with different lifestyles. He therefore noted with interest the delegation's announcement of the creation of a special foundation working on their behalf. The Committee would meanwhile wish to monitor closely what measures of reparation were being and would be taken, and would appreciate more information on steps being taken to ensure the Jenisch unhindered travel beyond cantonal borders. At present they were apparently subjected to 26 different laws restricting their residence and movement. What remedial measures were being taken against the criminalization and discreditation of the Jenisch as well as the Sinti and Roma by the police and other public authorities?

26. The report frankly acknowledged the criticism that naturalization policies and procedures were too long and too selective. While it was the sovereign right of each State to confer its nationality on people, the effect of the classification of foreigners was that, in granting the right to nationality, distinctions, exclusions, restrictions or preferences were being made in Switzerland on the basis of race, colour, descent or national or ethnic origin.

27. With regard to Switzerland's reservation to the Convention in respect of its immigration policy (paragraphs 52-56), by which it reserved the right to apply its legal provisions concerning the admission of foreigners to the Swiss labour market, the report explained that the policy was based on the "three circle" model described in paragraph 54. The policy was quite frank in listing the criteria for classifying a country in the middle or outer circle, one of those criteria being "a culture marked by European ideas ... and with living conditions similar to our own". While he had just been informed that the model might soon be amended, the issue warranted scrutiny. The report itself conceded that it certainly made admission more difficult for persons belonging to other ethnic groups or "races", because of their limited capacity for integration, the Federal Commission against Racism had publicly considered that policy to be contrary to the Convention, as it was ethnocentric, Eurocentric and violated human dignity, and it was his own belief that it should be abandoned. The Government's argument that the policy was not intended to be racially discriminatory overlooked the fact that the definition of "racial discrimination" in the Convention referred not only to purpose but also to effect. Furthermore, while a major school of thought in international law was that each country was sovereign in making reservations, provided such reservations were not incompatible with the object and purpose of the Convention, the "three circle" model, which was covered by the reservation, was indeed contrary to the object and purpose of the Convention. It had a racist effect not only on immigration policies but also on parts of the population already living in Switzerland.

28. The report's discussion of the principle of equal treatment and its application to relations between individuals (paragraphs 57-58) was unconvincing. The interpretation of provisions of private law described in paragraph 57 was somewhat vague in regard to the clear language of article 2, subparagraph 1 (d) of the Convention. His misgivings were deepened by the fact that, in their private contractual relations, so long as no criminal offence was being committed, individuals could conclude employment contracts or rental agreements, for example, with parties of their choosing, notwithstanding the prohibition of racial discrimination. The Government had emphasized that the Convention covered only the area of "public life", and that the sacrosanct Swiss principle of freedom of contract remained unchanged. What was public life and what private life, however? Were not major changes under way in those concepts in both national and international law? Was freedom of contract as inviolable a principle as was sometimes suggested, particularly when one side was very strong and the other vulnerable and disadvantaged? What was the position of Swiss law if a big housing contractor refused to enter into lease agreements on racial or ethnic grounds? Would not a general law on equality or a comprehensive law against racial discrimination serve a better practical and preventive purpose in implementing the Convention than the vague notions referred to in the report?

29. Article 3 of the Convention, on racial segregation and apartheid, was often mistakenly identified as being related to South Africa only. He drew the Swiss Government's attention to the wider meaning and importance of article 3 in the light of the Committee's General Recommendation XIX and invited it to report more fully in the next periodic report. Moreover, having followed Swiss relations with the apartheid regime over several decades, he could only say that paragraphs 61-63 of the report failed to give a full and balanced picture of those relations.

30. Regarding article 4, the criminal law approach was only one aspect of a broader strategy for combating racial discrimination. Two of the Committee's general recommendations explained the scope of article 4. Article 261 bis of the Penal Code largely covered article 4 (a), but he wondered whether there was any reason for its omission of a reference to national origin. He did not understand the statement in paragraph 72 that article 5 (f) did not oblige States to make it illegal to refuse access to places or services intended for use by the general public. Such refusal was certainly illegal under the Convention, even though the Convention did not require it to be made a punishable offence. Article 261 bis was narrower in scope than article 4 (a) of the Convention because the infraction of public peace required a higher threshold of criminality than the violation of human dignity. Was that interpretation correct? More information would be welcome on the interpretation and application of article 261 bis by the judicial authorities. In view of the "due regard clause" in the umbrella provision of article 4 of the Convention itself, the Swiss reservation to that article was, legally speaking, redundant. It appeared that the reasons for that reservation had been mainly political, Switzerland had still not given effect to the last part of article 4 (b), viz., that participation in organizations which were declared illegal and were prohibited must be recognized as an offence punishable by law. He would appreciate the delegation's comments.

31. In connection with article 5, he stressed the importance of combating discriminatory practices in regard to economic, social and cultural rights, especially for racially and ethnically disadvantaged people, and referred with concern to the fact that the Federal Act relating to coercive measures in some cases permitted the administrative detention of foreign nationals without a temporary or permanent residence permit, including asylum seekers and minors over the age of 15, for up to one year, pending expulsion. The prescribed periods of detention were far longer than necessary, and furthermore, the coercive measures led to a general criminalization of asylum seekers.

32. Regarding the right to security of person, ill-treatment had been alleged in the course of arrests or police custody in respect of foreign nationals or Swiss citizens of foreign origin. A case in question was that of the human rights defender Mr. Clement Nwankwo, an African lawyer attending a Commission on Human Rights session who had been arrested, humiliated, ill-treated and sentenced. His case was illustrative of many others in Switzerland but was of special concern because his skin colour had certainly not been without effect in the accusation, brutal arrest and summary sentencing. Such racist incidents must be prevented in future, in keeping with General Recommendation XIII on the training of law enforcement officials in the protection of human rights. Information should be provided on the training programme under way for the police, which should continue and should be given priority.

33. At present, only the cantons of Neuchâtel and Jura accorded the right to vote to foreigners, and in some cantons and communes foreigners could be appointed to sit as members of official committees. What could the federal authorities do to have those commendable practices accepted on a wider scale?

34. With reference to freedom of movement and residence within the State, he noted that the reports invoked article 1, paragraph 2 of the Convention as justification for the limitations imposed on foreigners (paragraphs 105-106). However, that article did not refer to distinctions, exclusions, restrictions or preferences as between different categories of non-citizens, which were sanctioned in the "three circle" model. That therefore raised questions as to its conformity with the Convention.

35. As to freedom of opinion and expression, the 1948 decree concerning political speeches by foreigners (paragraph 135) should be abrogated or amended so as to bring it into conformity with international standards, as recommended by the Human Rights Committee.

36. With regard to economic, social and cultural rights, while foreign workers were purportedly protected against any racially motivated termination of their employment, and lessees were protected against acts of racial discrimination, as stated in paragraphs 153 and 162 of the report, he wished to know how effective those types of protection were and whether they were enforced under labour and civil law. To what extent was financial assistance for the improvement of housing and the promotion of construction and home ownership used for the special benefit of racially and ethnically disadvantaged groups and persons?

37. Regarding article 6 of the Convention, the core document (HRI/CORE/1/Add.29) explained the system of compensation and rehabilitation of victims and paragraph 167 of the report mentioned that article 261 bis of the Penal Code provided victims of racial discrimination with legal remedies. However, information was needed on the number of complaints lodged and proceedings initiated and on cases in which victims had received some form of reparation or satisfaction.

38. He had been informed that the cantonal guidance centres of Geneva and Vaud, and possibly others, did not acknowledge that victims of racial discrimination could also suffer mental harm and thus be entitled to claim compensation and moral damages. He considered that approach to be unduly restrictive and asked what influence the federal authorities could exert to ensure that the Federal Law on Assistance to Victims of Offences was applied correctly so that justice could be done in accordance with article 6 of the Convention.

39. The Swiss authorities had established the Federal Commission against Racism, in accordance with the Committee's General Recommendation XVII (42). However, it seemed that the Commission was seriously understaffed given its volume of work. Since Switzerland had become a party to the Convention, was the Government prepared to give substantive support to the Commission and other Swiss organizations and bodies whose activities related to areas covered by articles 2 (e) and 7 of the Convention?

40. Although the cantons were mainly responsible for the practical implementation of the principles of anti-racist education, the State and hence the federal authorities were required to ensure compliance with Switzerland's international commitments under the Convention.

41. The report did not refer to article 14 of the Convention. It appeared that Switzerland was waiting to decide whether to make a declaration under article 14 until it could assess its experience with reporting procedures under the Convention. Having now gained experience of those procedures, the Federal Council was encouraged to consider recognizing the right of individual petition. Switzerland should be congratulated for ratifying the amendment to article 8, paragraph 6 of the Convention.

42. Switzerland's ratification of the Convention and submission of an initial report were welcome developments. Since becoming a party to the Convention, Switzerland had taken important steps in the fight against racial discrimination. However, the deeply rooted feelings of antagonism towards people of foreign origin in Switzerland, powerful and sometimes brutal police control and an officially declared immigration policy that jeopardized the object and purpose of the Convention meant that a more comprehensive strategy to comply fully with the provisions of the Convention and eliminate racial discrimination was needed.

43. He hailed the statement that the Federal Council was considering publishing the results of the consideration of Swiss reports by human rights treaty monitoring bodies. What concrete measures were envisaged? Finally, information was needed on the situation of Albanians from Kosovo who were

seeking asylum in Switzerland. It seemed that their petitions would be turned down, meaning that they would be forced to return to their country of origin where the situation was increasingly threatening.

44. Mr. VALENCIA RODRIGUEZ applauded the initial report of Switzerland which broadly followed the reporting guidelines laid down by the Committee.

45. The Swiss policy referred to in paragraph 44 of the report, concerning restrictions on the number of new foreign immigrants admitted into the country and quotas for residence permits for engaging in gainful activity, was understandable up to a point. If applied equally, to all foreigners without distinction, then there was no reason for the Committee to be concerned. The danger, however, was that elements of discrimination on the basis of ethnic or national origin could creep into such a policy.

46. He noted that the "integration" policy mentioned in paragraph 46 of the report was not synonymous with assimilation. Foreigners were being accepted into the Swiss community without having to renounce their cultural, national or ethnic background and characteristics.

47. He was pleased to hear that the "three circle" model was to be abandoned. While it was understandable that favourable treatment would be given to individuals from certain groups of countries on the basis of regional agreements, the concern was that other forms of differentiation or discrimination, for instance on grounds of ethnic or racial origin, could come into play in the case of nationals from countries not covered by those agreements. Thus with the end of the "three circle" model, the Government of Switzerland should consider withdrawing its reservation to article 2, paragraph 1 (a) of the Convention.

48. The new article 261 bis of the Penal Code was a welcome development in terms of compliance with article 4 of the Convention. However, it was worrying that mere membership of racist organizations was not punishable by law. The Government of Switzerland should consider withdrawing its reservation to article 4 of the Convention.

49. With regard to article 5, Switzerland restricted certain rights in the case of foreigners. Once again, care should be taken to ensure that those restrictions applied to all foreigners and not just to certain categories.

50. Mr. RECHETOV congratulated the Government of Switzerland on its impressive and well-prepared initial report. He had a deep respect for Switzerland's social system, its institutions and its contribution to stability in Europe as a whole. Objective interaction with the State Party would help improve ethnic relations in Switzerland, improve implementation of the Convention and redound to the good of the Swiss people themselves.

51. On the question of minority languages, he wondered whether the fact that the use of Rhaeto-Romansch at the federal level would be "regulated by statute" would imply any restriction on its use. It was to be hoped that the threat to the existence of Rhaeto-Romansch, mentioned in paragraph 30 of the report, was not the result of restrictive policies.

52. Paragraphs 34 and 50 described Switzerland's obligation to ensure equality before the law. Certain measures, such as police control, including, for example, by keeping records of certain foreigners' movements, were not always palatable but could be seen as valid in specific circumstances, particularly if the individuals posed a threat to the State.

53. It was commendable that Switzerland was considering changing its "three circle" model of immigration policy which made false value judgements as to the contribution nationals of a certain country could make to Swiss society. The reference in paragraph 56 to a criterion of capacity for integration was worrying in that it implied that some ethnic or national groups were better able to integrate than others, an attitude that was contrary to the spirit of the Convention.

54. With reference to paragraph 58 of the report, Switzerland should ensure that all provisions of the Convention were implemented in both the public and private sectors.

55. It was pleasing to note that Switzerland recognized that although freedom of expression was important in a democratic State, if discriminatory speech constituted an attack on human dignity, public interest in the exercise of freedom of expression had to give way before the greater interest of a victim of discrimination.

56. Mr. BANTON, who endorsed the remarks of the previous speakers, referred to the case of Clement Nwankwo, which had also been considered in the Committee against Torture. Quoting a statement attributed to the Geneva Chief of Police, he said that the police officer who had assaulted Mr. Nwankwo had apparently been given one week of unpaid suspension. He was astonished: in the United Kingdom, for example, a police officer who was found by his or her superiors to have assaulted a member of the public could expect to be prosecuted and, if convicted, almost certainly sentenced to imprisonment, which might or might not be suspended, and would surely be dismissed. The statement in question thus raised the question whether Switzerland was discharging its obligations under article 5 (b) of the Convention.

57. The CHAIRMAN, speaking in his capacity as a member of the Committee, said he shared Mr. Banton's astonishment, just as he had been surprised to hear earlier in the meeting that a person had been severely punished, even before France had taken a decision on the subject, merely for selling a book by the French author Roger Garaudy, despite the fact that Switzerland had entered a reservation on the application of article 4 of the Convention. Apparently it was the target of the offence that mattered: for example, in Switzerland no one had thought to indict the distributor of Salman Rushdie's book, which had insulted Islam, the Muslims and the Arabs, whereas Garaudy had merely questioned how many had died in the gas chambers. To cite another example, two years previously a drawing insulting to Arabs and Muslims had appeared on the cover of a telephone book in Switzerland. Yet the person responsible had not been brought to justice; instead, the book had been withdrawn from circulation later on, and the matter had been closed. When a Muslim or an Arab was concerned, everything was allowed.

58. Mr. DIACONU pointed out that the Committee did not confine itself to questions of discrimination against foreigners; racial discrimination could also affect a country's own nationals, either individually or as a group, a fact that was recognized in paragraph 38 of the Swiss report.

59. It was important for the domestic law of every State to contain specific provisions defining and punishing racial discrimination. General references to the equality of citizens were insufficient. Given the high percentage of foreigners residing in the country, Switzerland must comply strictly with all provisions of the Convention, especially as the Swiss delegation had itself acknowledged that rejection and intolerance were on the rise.

60. Concerning article 4, he said that Swiss law contained no definition of the offence of racial discrimination and that such an offence called for more severe punishment; it should therefore be reviewed. It was encouraging to note that under prevailing Swiss doctrine, a peremptory rule of international law (jus cogens) could be a justification for declaring a popular initiative for the adoption of legislation null and void (paragraph 87 of the initial report). He pointed out that the prohibition of racial discrimination was in fact recognized as a peremptory rule of international law by most legal experts and the various United Nations bodies, including the International Court of Justice.

61. In connection with article 5 (d) (ix), he was not very satisfied with the explanations given in paragraph 146 of the report. That it was for the judge to pronounce the dissolution of associations dangerous to the State was the case in all countries. The point was that it must be possible to cite racial discrimination as the reason for disbanding such an association.

62. Regarding the use of language, could foreigners and their children learn and receive schooling in their mother tongues?

63. Mr. NOBEL referred first to the infamous "three circle" policy (paragraphs 54-56) which illustrated the dilemma facing a number of European States as they sought to reconcile the introduction of restrictive immigration policies, particularly directed against non-European immigrants, with fulfilment of their obligations under the Convention. A policy deliberately designed to keep non-European immigrants to an absolute minimum contained the seed of racism. It was therefore of the essence, when formulating immigration policy, to ensure that it was free of any racist element. In retrospect, the former United States quota system for immigrants had been clearly racist. Consequently, while noting that the reference to the three circle model showed the sincerity of the report, he stressed the importance of analysing its underlying philosophy.

64. Concerning paragraphs 57 and 58, there seemed to be some confusion between the concepts of private life and private sector. Needless to say, people could not be forced by law to comply in their private lives with the principles of non-discrimination and must be free to choose their friends and family: that came under the notion of private life. The private sector, on the other hand, had to do with employment, housing, education, credit and financing, leisure activities and culture, at least to the extent that

economic activity was involved. From the point of view of the victims, it was irrelevant whether discrimination was in the public or the private sector. The point was to eliminate discrimination throughout public life.

65. The CHAIRMAN, speaking in his capacity as a member of the Committee, observed that the problem of immigration was not just a European but a global phenomenon. In his own country, there were 4 million Sudanese immigrants. Immigration had caused enormous problems in many African countries.

66. Mr. GARVALOV said that everyone recognized that Switzerland was a democratic society with long-standing traditions. A number of points in the report were, however, debatable. Concerning cultural and religious minorities (paragraphs 27-32), he understood that Switzerland had ratified the Framework Convention for the Protection of National Minorities. How did the State Party define the term "national minority"? In the report, it was stated that Switzerland did not have ethnic minorities and that all minorities listed were either linguistic or religious minorities. Were two persons with the same mother tongue automatically of the same ethnic stock?

67. There were roughly 68,000 speakers of Rhaeto-Romansch. The initial report spoke of 0.6 per cent of the population, whereas the core document (HRI/CORE/1/Add.29) gave a figure of 0.8 per cent. There were sizeable immigrant communities in Switzerland, many of which contained far more speakers of their native tongues than the Rhaeto-Romansch community did, yet nothing was said about those languages.

68. The Committee and the State Party were clearly in disagreement about article 4 of the Convention, and he looked forward to the next periodic report, which he hoped would contain further consideration of that provision.

69. Regarding Switzerland's integration policy (paragraphs 45-46), if successful integration depended on the frequency of social contacts and diversity of social contacts at the workplace and in leisure pursuits, he wondered whether immigrants had any time left to maintain their own language and culture.

70. He was intrigued by the "three circle" model, especially the criterion given in paragraph 54 (b) for classifying a country in the middle or outer circle, namely, a culture marked by European ideas in the broadest sense of the term. Did Bulgaria, for example, which had been founded in Europe in the seventh century and had adopted Christianity in the eighth century fall into that category?

71. With regard to article 7, he asked whether the information contained in paragraphs 181 to 183 referred to initiatives that would be implemented in the Swiss school system in the future. As to paragraph 184, if the Confederation's role in the campaign to combat racism in the education system was limited because of Switzerland's federal structure, then what was the point of ratifying the Convention?

72. Mr. de GOUTTES said that he was pleased to learn that Switzerland was looking into its integration policy and intended to abandon its three circle immigration policy model.

73. His first question concerned the drafting of article 4 of the Swiss Constitution. As he understood it, that provision did not refer expressly to race or skin colour, although according to the report, the case law of the Federal Court interpreted it as including racial and ethnic discrimination, and while it only expressly protected Swiss citizens, once again, case law extended application to foreigners as well. Were there any plans to revise article 4 to make that protection more specific?

74. According to paragraph 58 of the report, the refusal to provide goods or services or to sell or rent lodging for reasons of race or ethnicity was an offence only where the public sector was concerned, and it was difficult to prove such behaviour. Could the Swiss delegation cite concrete examples of such difficulty?

75. Participation in a racist organization did not constitute an offence, Switzerland having made a reservation in connection with article 4. Did the Swiss Government intend to maintain its reservation, and had there been any discussion on the subject?

76. He was pleased that Swiss legislation made it an offence to deny the existence of the crimes committed during the Nazi period. In that context, he disagreed with the Chairman's criticism of the prosecution of the writer Roger Garaudy. In his view, denial of the crimes against humanity committed in the Nazi period must be prosecuted, and he failed to see what the connection was with the Salman Rushdie case, notwithstanding his own concern for the protection of Islamic and other religious values.

77. Given that a revision of the Constitution concerning acquisition of nationality had been rejected by the cantons (paragraph 26 of the initial report), he asked whether there were plans to make a renewed attempt to reform naturalization legislation. That would be an important step, for the reasons acknowledged in the report itself, in paragraphs 112 and 26.

78. Lastly, it would be useful to know whether acts of racism committed by police officers had been prosecuted. According to the non-governmental organization (NGO) Forum contre le racisme, there had been a number of complaints against police officers for racist acts. The same NGO had asserted that certain right-wing extremist groups of Nazis and skinheads were active in Switzerland. He asked whether such groups were prosecuted, as indeed they should be, since such prosecution did not require a prior complaint, but was instituted ex officio by the public prosecutor.

79. He hoped that Switzerland would give serious consideration to signing the declaration under article 14 of the Convention and observed that that provision was not in conflict with the referral of individual petitions to the European Court of Human Rights.

The meeting rose at 6 p.m.