SUMMARY RECORD OF THE SIXTY-THIRD MEETING

Held on Wednesday, 25 August 1971, at 10.55 a.m.

Chairman: Mr. DAYAL

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

(a) INITIAL REPORTS OF STATES PARTIES WHICH WERE DUE IN 1970 (continued)

Tunisia (CERD/C/R.3/Add.50) (continued)

Mr. HAASTRUP disagreed with previous speakers who had felt that the Committee had no right to direct Tunisia to adopt legislative measures to combat racial discrimination. Tunisia had already accepted that obligation when it had acceded to the Convention and the Committee's report to the General Assembly should draw attention to the fact that Tunisia had not complied with that aspect of its obligations under the Convention. In connexion with the reference in the Tunisian report to the Moslem religion, the Committee's report should also point out that the existence of a certain religion or social structure which precluded racial discrimination did not justify the failure of a State Party to adopt legislation prohibiting it.

Mr. VALENCIA RODRIGUEZ said that, under article 9, paragraph 2, of the Convention and rule 67 of the provisional rules of procedure, the Committee was entitled to ask the Government of Tunisia to fulfil its obligations under the Convention. However, if it did so in the case of Tunisia, it would have to take the same action with regard to many other States whose reports had already been considered satisfactory. He therefore considered it preferable for the Committee to make a general recommendation in its report to the General Assembly that all States which, like Tunisia, had no specific legislation to combat racial discrimination should adopt the legislative, judicial, administrative or other measures which they had undertaken to enact in acceding to the Convention.

Sir Herbert MARCHANT said he was still not clear concerning the approach the Committee was taking to the reports. He and some other members felt that the Committee should now be considering the formal aspects of the reports and reserving a critical assessment of their substance for a later date, but other members felt that they had been considering the substance all along. What was clear, however, was that the Committee was not making any progress towards assessing the substance of the reports which had already been considered. At the previous meeting more attention had been paid to substance than ever before. While he was prepared to

(Sir Herbert Marchant)

follow that approach, he did not consider it a happy solution to the fulfilment of the Committee's obligations under article 9 of the Convention.

As pointed out in the report, Tunisia had been active in combating racial discrimination at the international level. Although it was an exaggeration to say that the problem of racial discrimination simply did not arise, Tunisia was a fortunate country which - as he was happy to testify from his own experience - had very little racial discrimination. On the other hand, the report did not provide enough of the information requested in document CERD/C/R.12. He agreed that there was no point in requesting more information on legislative measures where none existed, but he would like Tunisia to give more details of its success in combating racial discrimination in the field of culture and education. The Government of Tunisia was not doing itself justice; it was to be hoped that it would do so by submitting a more detailed report in the future.

The CHAIRMAN said that if there was no objection, the Committee would follow the same procedure as it had in the case of Hungary and request that the next regular report should contain more information.

It was so decided.

Uruguay

The CHAIRMAN suggested that, in the case of Uruguay, which despite two remainders had not yet submitted a report, the Committee should act in accordance with rule 66, paragraph 2, of the provisional rules of procedure.

It was so decided.

Mr. SUKATI asked whether, in accordance with rule 66, the Committee would be obliged to mention the name of the State concerned in its report.

The CHAIRMAN felt that the rule made it clear that it was the Committee's duty to say that Uruguay had consistently been guilty of default.

Brazil (CERD/C/R.3/Add.48)

Mr. VALENCIA RODRIGUEZ considered the report submitted by Brazil extremely helpful since it pointed out that the natural historical evolution of the country had led to a harmonious life for the population irrespective of race and colour. Racial discrimination had never occurred in Brazil or the other Latin American countries. The report showed that Brazil had complied with article 5 (f)

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(Mr. Valencia Rodriguez)

of the Convention and also stated that there was no discrimination in respect of the other rights referred to in article 5. However, there were still certain gaps in the report submitted by Brazil, particularly with regard to administrative steps taken to apply articles 4, 6 and 7 of the Convention. That, however, seemed to be a flaw common to all of the reports and he accordingly proposed that Brazil's report should be considered satisfactory.

Mr. ROSSIDES said that Brazil was a country which could be said to have no racial discrimination. As pointed out in the report, racial discrimination was punishable by law. No mention was made of administrative measures to combat racial discrimination, but they seemed to be lacking in all countries which had no racial discrimination. He felt that the report should be considered satisfactory.

Mr. PARTSCH said that although racial discrimination seemed to be covered by Brazilian legislation, no mention was made of specific provisions of the Penal Code. In view of reports in certain newspapers, he would be interested to know the official position of the Brazilian Government concerning the country's Indian population. He did not agree with Mr. Valencia Rodriguez that the Committee had tended to be lenient with regard to insufficient information concerning articles 4, 6 and 7 of the Convention. In some other cases, the Committee had indeed referred to those omissions and requested further information. He therefore considered that the additional information submitted by Brazil did not meet all the requirements of document CERD/C/R.12 and that the Committee should be provided with more details on the administrative and judicial procedures which had been adopted in that country.

Mr. SAYEGH said that he would confine himself to assessing the completeness of the report submitted by Brazil. He agreed with Sir Herbert that if the Committee now considered substantive questions, it would be reversing its procedure in mid-course.

During the examination of the report submitted by Tunisia, some members had seemed to feel that States Parties were required in all circumstances to adopt legislation to combat racial discrimination. However, article 2, paragraph 1 (d), only called for legislation as required by circumstances and if the Committee accepted a Government's statement that no racial discrimination existed in its country, it also had to accept the statement that legislation to combat racial

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discrimination was unnecessary. On the other hand, the situation was different with regard to racist and propaganda organizations. Whether or not racial discrimination existed in their countries and whether or not they needed to adopt legislation to eliminate racial discrimination, States Parties were obligated under article 4 of the Convention to adopt legislation to outlaw racist organizations and propaganda. In the case of Brazil, therefore, the Committee did not need to ask the Government whether it had adopted legislation to eliminate racial discrimination, but whether it had taken any action under article 4 of the Convention.

He agreed with other speakers that the report contained no information about judicial, administrative, or other measures. That was an omission which was not confined to the Brazilian report and seemed to be more the rule than the exception. The Committee should decide once and for all whether it wanted to request further information in such cases. If it did not, there was no reason to single out Brazil and draw its Government's attention to that omission.

The CHAIRMAN invited the Committee to vote on the proposal that the report by Brazil should be classified as satisfactory.

The proposal was rejected by 7 votes to 5, with 2 abstentions.

The CHAIRMAN said that the Brazilian Government would therefore be asked to provide the necessary additional information in its next biennial report, which would be due on 5 January 1972.

Mr. HAASTRUP said that he had voted against the proposal to classify the report by Brazil as satisfactory, because, although many Governments might report that the religion, political system, or social situation of their countries obviated the need for specific measures to combat racial discrimination, it was nevertheless mandatory for States Parties to enact preventive legislation under article 4 of the Convention and that point should be stressed in the Committee's report to the General Assembly.

Mr. RESICH said that he had voted against the proposal, although he considered that the report by Brazil was incomplete only in respect of information concerning the mandatory measures referred to in article 4 of the Convention.

Czechoslovakia (CERD/C/R.3/Add.51)

Mr. TOMKO said that he wished to introduce the supplementary report submitted by Czechoslovakia, not as a representative of the Czechoslovak Government but as a professor of law familiar with legislation in the Czechoslovak Socialist Republic. The original report by Czechoslovakia (CERD/C/R.3/Add.2) and the supplementary report together provided full and detailed information concerning all legislative, judicial, administrative and other measures adopted and implemented against racial discrimination. The supplementary report gave not only the relevant legal references but also quotations and explanations and covered the fields of substantive criminal law, judicial penal procedure, substantive civil law, family law, labour law, constitutional law and legislation relating to the status of nationalities. It complied fully with the requirements set forth in the communication adopted by the Committee at its third session on 23 April 1971, and could, in his view, be considered satisfactory and complete.

Mr. RESICH said that the supplementary report submitted by Czechoslovakia, taken in conjunction with document CERD/C/R.3/Add.2, could stand as an example of the type of report the Committee wished to receive from States, and he agreed with Mr. Tomko that the report could be classified as satisfactory.

Mr. VALENCIA RODRIGUEZ said that document CERD/C/R.3/Add.51 was a commendable elaboration on the original report by Czechoslovakia, which itself might be termed one of the most satisfactory of the reports submitted. He drew particular attention to the fact that under the Czechoslovak Penal Code, the crimes of genocide, the support or propagation of fascism or any other similar movement which preached national or racial hatred, and the causing of intentional injury to the health of another person because of his or her nationality or race were not subject to prescription. In the Code of Penal Procedure and the Civil Code emphasis was placed on the equality of citizens before the law, irrespective of nationality or race, as would be expected in a socialist country like Czechoslovakia. The information on family law and labour law showed that Czechoslovak legislation met the requirements of article 5 of the Convention, and the Constitution Act on the Status of Nationalities ensured protection for all citizens in their political, economic and social activities. He agreed with the previous speakers that the report by Czechoslovakia should be classified as satisfactory.

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Mr. TARASOV recalled that during the Committee's discussion of the first report by Czechoslovakia many members had assessed the report as highly satisfactory and had commended the system for the prevention of racial discrimination it described. He felt that if there had been any omission in the initial report, it had only been in respect of the absence of the specific texts of the penal and social legislation referred to. That omission had now been rectified, and he supported the view of those members who had proposed that the Committee should classify the Czechoslovak report as satisfactory. As the first Czechoslovak report had stressed, that State had already enacted and implemented legislative measures to prevent the resurgence of nazism and fascism. The importance of the prevention of the propagation of racist ideologies such as nazism had been stressed by a number of United Nations bodies, including the General Assembly and the Commission on Human Rights.

He asked whether it would be possible for the Secretariat to include a table of contents in the final version of the summary records of the Committee's sessions indicating the meetings at which or pages on which the reports of the various States Parties were referred to. That would be particularly useful in cases where it was necessary to refer to an initial report in connexion with the Committee's consideration of a supplementary report.

Mr. HAASTRUP said that he supported the view of those speakers who considered the supplementary report by Czechoslovakia satisfactory. Concerning the point made by Mr. Valencia Rodriguez that the crime of genocide was not subject to prescription in Czechoslovak law, he drew attention to the fact that all countries which had adopted the British legal system held to the principle that "time does not run against crime", so that in those States also, the crime of genocide was not subject to prescription.

Mr. ROSSIDES said that the supplementary report by Czechoslovakia gave a very full account of legislation, both substantive and procedural, providing for the punishment of crimes involving racial discrimination. The obligation of States Parties under article 4 to adopt preventive measures against racist propaganda and organizations was covered by section 260 of the Czechoslovak Penal Code. He was satisfied with the statement in the last paragraph of the supplementary

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report that since violations of the legal provisions relating to racial discrimination did not occur in the Czechoslovak Socialist Republic, no special court or administrative measures were necessary, particularly since article 2, paragraph 1 (d), of the Convention stipulated that such measures need be adopted only "as required by circumstances". He therefore considered that the Czechoslovak report could be considered fully satisfactory.

Mr. PARTSCH expressed appreciation that Mr. Tarasov had reminded the Committee that the reason why the initial Czechoslovak report had not been classified as satisfactory had been mainly a question of presentation. The supplementary report provided the text as well as the references to the relevant laws, so that the error in presentation had now been fully rectified.

He agreed with Mr. Tarasov that it would be desirable for the table of contents of the final version of the summary records of the Committee's proceedings to indicate the meetings at which the various reports had been discussed. He had himself prepared such a list and would submit it to the Secretariat.

Mr. NASR said that he had considered the earlier report by Czechoslovakia quite adequate and agreed with Mr. Partsch that the request for further information had been due to the presentation of that report, which had now been rectified in the supplementary report.

The CHAIRMAN said that if he heard no objection, he would take it that the Committee agreed to classify the report as satisfactory.

It was so decided.

Panama (CERD/C/R.3/Add.52)

Mr. SAYEGH said that his observations on the supplementary report submitted by the Government of Panama would concern both the form of the report and its substance.

For the first time, the Committee was in the happy position of being confronted with too much, rather than too little, information. On the other hand, the Panamanian report was more a general report on human rights in Panama than on racial discrimination.

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(Mr. Sayegh)

The situation described in paragraph 2 on page 2 of the report was similiar to the one described in the supplementary report submitted by the Government of Brazil. However, he questioned the prediction made by the Panamanian Government that there was no danger that racism would ever be practised in that country. Practical measures against possible manifestations of racism were mandatory under article 4 of the Convention. If it failed to take such measures, the Government of Panama could not be said to be complying fully with the Convention.

He drew attention to the fourth paragraph under paragraph 3 (1) on page 4 and to paragraph 3 (p) on pages 8 and 9, in which it was reported that racial discrimination was being practised in a part of Panama which was under the jurisdiction of a State not a Party to the Convention. Since the Committee had never previously been confronted with a situation in which a State Party to the Convention reported the practice of racial discrimination by a State not a Party it would have to adopt some new procedure for dealing with the problem. For his part, he proposed that the Committee should adopt a formula to be included in its next report to the Genrral Assembly, which would read as follows: "The Committee on the Elimination of Racial Discrimination notes with deep regret that, in accordance with information formally furnished to the Committee by the Government of Panama, racial discrimination has been and is being systematically practised by the United States of America in the part of Panama known as the Panama Canal Zone. The Committee wishes to draw the attention of the General Assembly to this sad situation." If, in the course of the discussion, another member of the Committee proposed a better method for dealing with the situation, he would be glad to withdraw his proposal. Otherwise, he would insist on its being put to the vote.

Mr. HAASTRUP said the report from the Government of Panama was certainly a very detailed and comprehensive account which seemed to meet all the requirements laid down in the Convention and in the communication contained in document CERD/C/SR.12.

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(Mr. Haastrup)

With regard to Mr. Sayegh's proposal, he observed that under the Convention the Committee was not authorized to deal with the situation since the Government of the State Party making the report had acknowledged that it had no jurisdiction over the area in which racial discrimination was allegedly practised. The Committee might well face a similar problem when it considered the supplementary report submitted by the Government of Syria (CERD/C/R.3/Add.49) in which it was also reported that the Government of a State not a Party to the Convention was practising racial discrimination in an area which was not under the effective control of the Government submitting the report. By attempting to deal with such a situation, the Committee would be involving itself in delicate international political questions which were more appropriately debated in other organs of the United Nations. Unless another United Nations body requested the Committee to consider the problem of racial discrimination in the Panama Canal Zone, the Committee would be exceeding its authority under the Convention and perhaps setting a dangerous precedent in attempting to deal with the matter.

Mr. SUKATI said he agreed with Mr. Sayegh that the Government of Panama had submitted information in excess of that required under article 9 of the Convention. He felt, however, that that was better than having little or no information. He suggested that since the Committee was dealing with article 9 of the Convention the part of the report dealing with a complaint of the Government of Panama against the United States of America should just be ignored as irrelevant to the article.

Mr. SAYEGH said he did not think his proposal provided the happiest solution to the problem presented in the Panamanian report. He had submitted it in an attempt to encourage other members of the Committee to propose a better solution. Mr. Haastrup was opposed to it but had not suggested an alternative; Mr. Sukati had suggested that the Committee should disregard the passages in question. However, it should be borne in mind that the existence of racial discrimination had been formally reported to the Committee and that there was no reason to challenge the contention of the reporting Party. Mr. Haastrup seemed to feel that since the State accused of practising racial discrimination was not a Party to the Convention, the matter was outside the purview of the Committee.

(Mr. Sayegh)

However, the Committee's mandate extended to two types of countries: independent, sovereign States which were Parties to the Convention and territories where the people did not have the right to be represented by their own Government. The latter category came under the Committee's mandate, whether or not the administering Power was a State Party. That was the meaning of article 15. Consequently, he did not agree that the action he had proposed exceeded the Committee's authority. The Committee would merely note with regret that the existence of racial discrimination had been formally alleged by a State Party and that, in fulfilment of its terms of reference, the Committee was drawing that allegation to the attention of the General Assembly, which could then decide what action to take.

Mr. Haastrup had warned the Committee not to become involved in political questions; however, the whole question of racial discrimination was intertwined with politics. Finally, Mr. Haastrup had sought to relate the situation reported by Panama to one referred to in the Syrian report (CERD/C/R.3/Add.49), but the two cases were not analogous, one basic difference being that in dealing with the situation reported by Panama, the Committee would have to rely solely on the testimony of the Panamanian Government whereas the report submitted by Syria referred to the reports of official United Nations fact-finding bodies.

Mr. ORTIZ-MARTIN suggested that the Committee should first decide whether it was competent to deal with questions involving a State Member of the United Nations which was not a State Party to the Convention. If it decided that it was competent to deal with such questions, the Member State concerned would have to be granted a hearing before further action could be taken.

Mr. TARASSOV noted that in its supplementary report, the Government of Panama had endeavoured, with considerable success, to fill the gaps in its initial report. While the report covered many questions not directly related to racial discrimination, it contained much information on human rights in general, which would help the Committee to make a sound evaluation of the situation in Panama as racial discrimination was less likely to occur in a country where human rights and fundamental freedoms were adequately guaranteed. The report showed

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(Mr. Tarasov)

that the Constitution of Panama established the principle of the equality of all citizens. It cited various articles of the Panamanian Constitution, such as articles 27, 66 and 80, all of which provided real guarantees in that connexion. Taken as a whole, the report showed that Panamanian legislation was sufficiently developed to prevent and eliminate racial discrimination.

There seemed to be one inconsistency between the first report submitted by Panama (CERD/C/R.3/Add.9) and the present report. The first report indicated that article 103 of the Panamanian Constitution prohibited the formation of any party which had as its basis sex, race or religion, or which was intended to destroy the democratic form of government, while it was stated in paragraph 2 of the supplementary report that there was no need to strive to combat propaganda and organizations which were based on ideas or theories of superiority of one race or group of persons. Furthermore, he wondered whether, in view of the information contained in paragraph 3 (k) of the present report, it could be said that Panama was complying fully with article 4 of the Convention. The paragraph implied that all kinds of demonstrations and meetings were permitted in Panama, and it was conceivable such activities might at times be aimed at inciting or promoting racial discrimination.

Mr. Sayegh's proposal gave rise to certain legal difficulties since the United States was not a State Party to the Convention and there was therefore no procedure by which the Committee could verify the accuracy of the information supplied by Panama with the Government of the United States. On the other hand, there was no reason why the Committee should question information contained in an official report submitted by a State Party. Consequently, the procedure proposed by Mr. Sayegh for dealing with the problem seemed to be legally acceptable; in following it, the Committee would not be exceeding its authority or taking action of an immoderate nature. He would support the proposal provided a sentence were inserted after the first sentence in Mr. Sayegh's formula, to read: "The Committee did not have the possibility to request the relevant information on this question from the Government of the United States of America since the United States of America is not a Party to the Convention." The word "However" should also be inserted at the beginning of Mr. Sayegh's second sentence.

The meeting rose at 1 p.m.

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