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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Fifty-sixth session

SUMMARY RECORD OF THE 1398th MEETING

Held at the Palais des Nations, Geneva,
on Friday, 24 March 2000, at 10 a.m.

Chairman: Mr SHERIFIS

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GE.00-41195 (EXT)

The meeting was called to order at 10.20 a.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 7) (continued)
Draft concluding observations by the Committee concerning the tenth to twelfth periodic reports of Australia (CERD/C/56/Misc.42/Rev.2, distributed at the meeting, in English only)

1. Ms. McDOUGALL (Rapporteur for Australia) said that the document under consideration reflected the Committee's discussions and that in drafting it she had taken into account the suggestions of several experts.

2. Mr. ABOUL-NASR, complimenting Ms. McDougall on her draft, which he nevertheless found too long, said that rapporteurs should be more concise when preparing the Committee's concluding observations.

Paragraph 1

3. Paragraph 1 was adopted.

4. Mr. ABOUL-NASR said that the Committee should express its satisfaction with the delegation's oral presentation and its replies to questions by members of the Committee. He therefore proposed adding the words "and of the oral presentation" at the end of the second sentence.

5. Paragraph 2, as amended, was adopted.

Paragraphs 3 to 5

6. Paragraphs 3 to 5 were adopted.

7. Ms. McDOUGALL suggested that the word "any" in the last line should be deleted.

8. Paragraph 6, as amended, was adopted.

Paragraphs 7 and 8

9. Paragraphs 7 and 8 were adopted.

Paragraph 9

10. Mr. DIACONU, putting it to the Committee that Australia had made considerable efforts to resolve its problems of racial discrimination, particularly with regard to the land rights of indigenous Australians, proposed the following wording, which he considered more moderate: "The Committee recommends that the State party provide full information on this issue in the next periodic report."

11. Mr. NOBEL said he did not share that view. Since the problems had not yet been resolved, it should not be suggested to the State party that the Committee might be satisfied with the progress observed. It should be asked to transmit information on the points mentioned in decision 2(54) as soon as possible.

12. Following an exchange of views in which Mr. BANTON, Mr. ABOUL-NASR, Ms. McDOUGALL, Ms. JANUARY-BARDILL, Mr. RECHETOV and the CHAIRMAN took part, it was decided to adopt Mr. Diaconu's proposal.

13. Paragraph 9, as amended, was adopted.

Paragraphs 10 to 15

14. Paragraphs 10 to 15 were adopted.

Paragraph 16

15. Mr. BRYDE said he was under the impression that the Australian delegation had denied the disproportionate effects of the minimum mandatory sentencing schemes for indigenous Australians.

16. Ms. McDOUGALL explained that the representative of Australia had not denied them categorically and that the Committee had access to similar information from various sources, including the Commonwealth, regarding the disproportionate effects of applying those schemes, particularly to young indigenous Australians.

17. Mr. de GOUTTES, supported by Mr. RECHETOV and Mr. VALENCIA RODRIGUEZ, proposed, in view of the explanation given, that the words "especially juveniles" should be inserted after the words "indigenous Australians".

18. Mr. VALENCIA RODRIGUEZ proposed that the phrase "and other international treaties on human rights" should be deleted in the last sentence.

19. Paragraph 16, as amended, was adopted.

Paragraph 17

20. Mr. BANTON said that he did not understand why it would be necessary to include in the Committee's concluding observations a comment on asylum-seekers and a recommendation concerning the implementation of the provisions of the Convention relating to the Status of Refugees.

21. Mr. NOBEL explained that asylum-seekers constituted an ethnic minority in the territory of States parties and that the Committee often had to concern itself with their plight. During the oral consideration of the periodic report of Australia, the representative of that country had expressed a desire for the revision of the Convention relating to the Status of Refugees so that the Convention could no longer be used, in his words, as "a charter for illegal immigration." It

was therefore important that the Committee should express its commitment to the proper implementation of the Convention relating to the Status of Refugees in Australia too, in the knowledge that asylum-seekers were placed in detention centres in deplorable conditions and that the Convention and UNHCR's "Handbook on Refugee Determination Procedures" covered the treatment of asylum-seekers during the procedure for considering asylum applications.

22. Mr. RECHETOV said that he shared Mr. Nobel's views on the validity of the observation and the Committee's recommendation on the implementation of the Convention relating to the Status of Refugees, particularly as the matter had been discussed with the Australian delegation.

23. He also proposed that the words "fully and without limitations" in the second and third lines should be replaced by the word "faithfully."

24. Paragraph 17, as amended, was adopted.

Paragraph 18

25. Mr. VALENCIA RODRIGUEZ, supported by Mr. ABOUL-NASR, pointed out that the third sentence referred back unnecessarily to questions dealt with in the first two sentences. He proposed that it should be deleted in order to lighten the text.

26. Paragraph 18, as amended, was adopted.

Paragraph 19

27. Paragraph 19 was adopted.

Paragraph 20

28. Mr. RECHETOV said that the word "all" in the second line was unnecessary and proposed that it should be deleted.

29. Paragraph 20, as amended, was adopted.

30. The draft concluding observations by the Committee concerning the tenth to twelfth periodic reports of Australia, as orally amended, were adopted as a whole.

Draft concluding observations by the Committee concerning the initial, and the second to fourth periodic reports of Estonia (CERD/C/56/Misc.40/Rev.2, distributed at the meeting, in English only)

Paragraphs 1 to 5

31. Paragraphs 1 to 5 were adopted.

Paragraph 6

32. Ms. JANUARY-BARRILL proposed that the words “in order to favour” in the second line should be replaced by the words “to encourage.”

33. Paragraph 6, as amended, was adopted.

Paragraph 8

34. Paragraph 8 was adopted.

Paragraph 9

35. Mr. ABOUL-NASR said that he failed to understand why, according to the first sentence, only Estonian citizens could be members of national minorities.

36. Mr. RECHETOV proposed that the word “Estonian” should be deleted at the end of the first sentence since it was clear from the context that only Estonian citizens could be considered part of national minorities.

37. Mr. YUTZIS (Rapporteur for Estonia) explained that Estonia was one of the rare countries to have a definition of minorities, which covered Estonian citizens by birth or naturalization and excluded foreigners.

38. Mr. BOSSUYT said that he was not convinced that the interpretation of the concept of “national minorities” as it emerged from the second sentence was in keeping with the Convention, since national minorities belonged to the nation and therefore could not be foreign minorities. It was also at odds with the interpretation given to it by eminent members of the Sub-Commission on the Promotion and Protection of Human Rights.

39. Mr. BRYDE proposed that the full stop after the word “citizens” should be replaced by a comma and the first clause in the second sentence deleted.

40. Mr. DIACONU proposed that only the words “is incompatible with the Convention” should be deleted in the clause in question, since it was not for the Committee to determine whether or not the definition given by the State party to the notion of “national minority” was compatible with the Convention.

41. Mr. BANTON proposed that the second sentence should be restructured to read: “In the light of the significant number of non-nationals and stateless persons residing on the territory of the State party, it believes that such a restrictive and narrow definition may restrict the scope of the State Programme on Integration.”

42. Paragraph 9, as amended, was adopted.

Paragraph 10

43. Paragraph 10 was adopted.

Paragraph 11

44. Mr. de GOUTTES proposed that the second sentence of the paragraph should be deleted, since it might cause controversy.

45. Mr. BRYDE said he did not think that the provisions of the Act setting quotas for immigration were in breach of the Convention; similar clauses existed in the legislation of European countries like France and Denmark and had not been criticized by the Committee. He therefore proposed shortening the paragraph to read: "The Committee recommends that the provisions for restricted quotas on immigration be applied without discrimination based on race or ethnic or national origin".

46. Mr. BOSSUYT, speaking in support of the proposals by Mr. de Gouttes and Mr. Bryde, said he thought that it was an exaggeration to say that regional integration policies were in contradiction with the Convention. There was no discrimination in the fact that States granted certain favours under agreements based on the principle of reciprocity. Non-acceptance of immigrants of a particular race by a State party to one of those bilateral agreements could, however, be considered discrimination.

47. Mr. SHAHI said he doubted that the Convention contained any provision whereby the Committee could validly recommend the application of the quota principle in a non-discriminatory form.

48. Mr. NOBEL supported Mr. de Gouttes' proposal, but said that the risk of the development of racist practices under cover of regional integration agreements should not be neglected.

49. Mr. FALL said he was of the same opinion and thought that the question of a conflict between the implementation of regional agreements and the implementation of the Convention would occur increasingly frequently in the future. He therefore suggested that the Committee should discuss the matter at its next session.

50. Mr. ABOUL-NASR said he objected to the opinions expressed by the European members of the Committee, who, in his view, defended the positions of their countries of origin. He was in favour of keeping the paragraph as it stood, with the amendments proposed by the Rapporteur.

51. Mr. YUTZIS said that even if he did not share the views of the members who wished to delete the second sentence, he would accept the amendment so as not to prolong the discussion unnecessarily.

52. The CHAIRMAN said he would take it that the Committee agreed by consensus to delete the second sentence of the paragraph.

53. It was so decided.

54. Paragraph 11, as amended, was adopted.

Paragraphs 12 to 17

55. Paragraphs 12 to 17 were adopted.

Paragraph 18

56. Mr. FALL proposed that the word “all” should be deleted.

Paragraph 18, as amended, was adopted.

57. The draft concluding observations by the Committee concerning the initial and the second to fourth periodic reports of Estonia, as orally amended, were adopted as a whole.

ORGANIZATIONAL AND OTHER MATTERS (agenda item 5) (continued)

General discussion

58. The CHAIRMAN asked the secretariat to transmit to the Permanent Mission of Australia to the United Nations Office at Geneva, the groups concerned and the press a first copy of the text of the Committee’s concluding observations concerning the tenth to twelfth periodic reports of Australia.

59. It was so decided.

60. Mr. RECHETOV said he appreciated the great importance which Australia attached to its relations with the Committee. He wondered, however, about the validity of the practice of making available to States parties the texts of the draft concluding observations of the Committee concerning their periodic reports. Among other things, he feared that the practice might expose the Committee to pressures which would be undesirable for the serenity of its discussions. He hoped that the decision to transmit immediately to the State party the text of the Committee's draft concluding observations concerning it would not constitute a precedent.

61. The CHAIRMAN said that he himself had proposed to the Bureau that an item on the communication to States parties of the Committee’s concluding observations concerning them and the relations between members of the Committee and States parties due to submit a periodic report to the Committee should be included in the agenda of the fifty-seventh session. Under such an agenda item, the Committee would then be required, at that session, to consider the practice whereby some rapporteurs sent a questionnaire to the States parties with which they were concerned requesting additional information on a periodic report prior to its oral consideration. The question had already been raised in the Committee, several of whose members considered that the practice was unfair to States parties to which questionnaires had not been sent. They also felt that there was a need to establish a standard procedure.

62. At its next session, the Committee would in addition be called upon to consider the practice of sending States parties the texts of the Committee's concluding observations on their periodic reports as soon as they were adopted in order to gather any comments and incorporate them in the Committee's annual report to the General Assembly.

63. Mr. NOBEL raised the question of what approach the rapporteurs should take in the interim. He proposed that they should refrain from sending questionnaires to States parties whose reports they might have to consider until the Committee had given a ruling at its August 2000 session.

64. Mr. BANTON recalled that the Committee had already raised the extremely complex issue of sending questionnaires to individual States parties. It had emerged from the discussion that uniformity was desirable but almost impossible to secure, mainly because of the diversity of the situations. Similarly, it was difficult to apply in practice the 30-minute time limit given for each rapporteur to introduce his report. In view of the complexity of those issues, however, the Committee should not open a discussion on the matter at the current stage.

65. Mr. YUTZIS, speaking on a point of order, said that Committee members should wait until the August session to discuss those issues.

66. Mr. SHAHI said that he would like to know meanwhile the maximum time allotted to rapporteurs for introducing their reports.

67. The CHAIRMAN said that, in accordance with the applicable rule, rapporteurs had to introduce their reports as briefly as possible, without exceeding 30 minutes.

68. He proposed that, at the August 2000 session, Committee members should consider the questions of the standardization of questionnaires, the communication of the Committee's conclusions to States parties and the time allotted to rapporteurs.

69. It was so decided.

Draft decision concerning the venue for the fifty-eighth session of the Committee (CERD/C/56/Misc.43, distributed at the meeting, in English only)

70. The CHAIRMAN reminded Committee members that the draft decision under consideration had already been adopted in principle; it was merely a question of polishing the wording before submitting it to the General Assembly.

71. Mr. VALENCIA RODRIGUEZ said he wished to thank the secretariat and the staff members of the Office of the High Commissioner for Human Rights who had helped him to draft the document in English. On reflection, he suggested that the word "financial" at the beginning of the third preambular paragraph should be replaced by the term "programme-budget."

72. Mr. ABOUL-NASR suggested that the word "concerning" in the fourth preambular paragraph should be replaced by the words "informing the Committee of."

73. Mr. de GOUTTES, referring to the first operative paragraph, said he wondered whether it was really necessary to "request" that the Committee's fifty-eighth session be held in New York since that was already an accepted fact. In adopting the decision, which concerned only the holding of the fifty-eighth session at Headquarters, the Committee might give the impression that it was abandoning its intention of holding its fifty-ninth session in South Africa, in conjunction with the World Conference against Racism. There was no question of abandoning the project before all possible sources of funding outside the United Nations regular budget had been explored. The Committee's wish to meet in South Africa in August 2001 should be clearly expressed at the meeting of the Preparatory Committee for the Conference in May 2001.

74. The CHAIRMAN said that was another matter to which he proposed to revert to later. He asked members of the Committee to concentrate for the time being on the text under consideration.

75. Mr. BOSSUYT recalled that the decision to hold the fifty-eighth session at United Nations Headquarters in New York was intended to facilitate the task of developing countries which could not send delegations to Geneva. He therefore proposed to clarify the matter by adding a phrase at the end of the first operative paragraph, along the lines: "in order to give priority to consideration of the reports of States parties which encounter financial or other difficulties with regard to their participation in meetings of the Committee in Geneva".

76. Mr. VALENCIA RODRIGUEZ agreed with the proposal but pointed out that it was a re-statement of what had been said in paragraph 2. Going back to Mr. de Gouttes' comment, he said that the request contained in operative paragraph 1 was useful, since the dates proposed for the fifty-eighth session had changed, and the session was due to be held in January instead of March as originally planned.

77. The CHAIRMAN asked whether the Committee agreed that the text under consideration, as amended by Mr. Valencia Rodriguez, Mr. Aboul-Nasr and Mr. Bossuyt, should be transmitted to the General Assembly as a formal Committee decision.

78. It was so decided.

Venue of the fifty-ninth session of the Committee

79. The CHAIRMAN, returning to the question of the holding of the Committee's fifty-ninth session in South Africa, said that for his part he was intending that day to send the Ambassador of South Africa a letter informing him of the Committee's policy decision to meet in South Africa in August 2001 in conjunction with the World Conference against Racism.

80. As a follow-up to Mr. de Gouttes' suggestion, a similar letter could also be sent to the Chairman of the Preparatory Committee, who should be informed of that policy decision too, if only for purposes of coordination if the project materialized. Since the additional costs entailed by such a move could not be covered from the regular budget of the United Nations, it would also be necessary to consider whether they could be met from the special Conference budget.

81. The CHAIRMAN said that if there was no objection he would take it that the members of the Committee agreed that the letter should be sent.

82. It was so decided.

Draft general recommendation concerning article 6 of the Convention (CERD/C/56/Misc.27, distributed at the meeting, in English only)

83. Mr. BANTON recalled that it was on the occasion of the consideration of an individual communication that the members of the Committee had come to agree on the position expressed in that document. Several members had subsequently felt that it would be useful to reflect it in a draft general recommendation addressed to all States parties.

84. Mr. BOSSUYT said he had no objection concerning the contents of the recommendation but found the wording of paragraph 2, in particular the use of the word "ensure", to be clumsy. Was there not a risk of interference from Governments in the independent functioning of judicial authority? He therefore proposed that the phrase "recommends State parties to ensure" in the first line should be replaced by the word "considers" and that the word "should" should be inserted before the word "operate" in the third line.

85. Mr. BANTON endorsed the proposal.

86. Mr. DIACONU said he thought that Mr. Bossuyt's solution was not the most felicitous. The words "should operate" gave the impression that instructions were being given to courts.

87. The word "presumption" in the third line, moreover, was a poor choice. It had a technical meaning in law and was not appropriate in the context. He therefore proposed that the second paragraph should be amended to read: "The Committee considers that courts and tribunals, when considering possible reparation or satisfaction to victims of racial discrimination, should consider the possibility and the need to offer economic compensation for the injury suffered by the victim."

88. Ms. McDOUGALL pointed out that ethnic groups were not always an "ethnic majority". She therefore proposed that in paragraph 1 the phrase "members of the ethnic majority often underestimate" should be deleted and that the words "is often underestimated" should be added at the end of the paragraph.

89. With reference to paragraph 2, she thought that the problem raised by the two previous speakers could be solved by replacing the word "entails" in the fourth line by the words "may entail."

90. Mr. ABOUL-NASR endorsed Mr. Diaconu's comment. It was not for the Committee, through the States parties, to address recommendations to the courts. Moreover, the Committee made too many general recommendations for his taste.

91. Mr. de GOUTTES said, with reference to paragraph 1, that he supported Ms. McDougall's proposal.

92. With reference to paragraph 2, he supported the proposals by Mr. Bossuyt and Mr. Diaconu to delete the word "presumption."

93. Mr. BANTON said he also accepted Ms. McDougall's proposal concerning paragraph 1. In the case of paragraph 2, he suggested a slight amendment to Mr. Diaconu's proposal: to avoid repetition, the word "considering" in the second line could be replaced by the word "examining." He would also prefer to keep the reference to the "victim's feelings" which appeared in the original text, unless the wording used at the end of paragraph 1 ("the injured party's perception of his own worth and reputation") was repeated in paragraph 2. A third solution would be to say "for the injury to the victim's feelings and reputation."

94. Mr. FALL said that he did not find the words "possibility" and "need" in Mr. Diaconu's proposal very compatible. One or the other should be used.

95. Mr. DIACONU suggested that "need", which was stronger, should be kept.

96. The CHAIRMAN proposed, in view of the lateness of the hour, that consideration of the draft recommendation should be continued at the next meeting.

97. It was so decided.

The meeting rose at 1.05 p.m.