

SUMMARY RECORD OF THE ONE HUNDRED AND FORTY-FIRST MEETING

Held on Wednesday, 2 May 1973, at 3.15 p.m.

Chairman:

Mr. VALENCIA RODRIGUEZ

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

(a) SECOND PERIODIC REPORTS OF STATES PARTIES DUE IN 1972 (continued)

India (CERD/C/R.30/Add.24) (concluded)

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

Mr. DAYAL said that the three reports submitted by India (CERD/C/R.3/Add.3/Rev.1 and Add.39; CERD/C/R.30/Add.24) should be read together in order to have a complete picture of the way in which India was giving effect to the Convention. India was a huge country whose vast population represented a very great diversity of cultures and races. Indian society, whose progress had been halted by a long period of colonialism, had inherited complex structures and comprised, in particular, a number of underprivileged groups, including the Scheduled Castes and Scheduled Tribes. The Indian Government had stated candidly the nature and magnitude of the task it had undertaken in seeking the peaceful elimination of a form of discrimination which was a relic of the past.

India had given the Committee detailed information on the legislative, judicial, administrative and other measures adopted to combat discrimination. Many provisions of the Constitution of interest to the Committee and concerning underprivileged groups were cited in the report. Thus, the Scheduled Castes and Scheduled Tribes enjoyed all the rights open to other citizens of India, but, additionally, they had certain special privileges, such as reservation of seats in public services and in legislatures. Furthermore, the Constitution contained special provisions for the advancement of socially and educationally backward classes of citizens.

A distinction must be drawn between the Scheduled Castes and the Scheduled Tribes. The Castes were not ethnically different from the majority of the Indian people, but the Tribes represented a different ethnic and cultural type; when their numbers justified it, the members of the Tribes formed separate or autonomous states.

He would like to try to reply, to the best of his knowledge, to certain questions which had been raised during the discussion of India's report.

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(Mr. Dayal)

Mr. Aboul-Nasr had asked for more information on Auroville. It was a community set up under UNESCO auspices to enable persons of different national origins and background to live together in harmony, engaged in a common search for spiritual values.

As to India's role in combating racial discrimination at the international level, he had himself, as representative of India, introduced in the General Assembly the item on racial discrimination and apartheid.

Mr. Partsch and Mr. Macdonald had expressed interest in the National Integration Council. They would find further information on page 2 of the report under consideration. He hoped that the representative of India would supply further information on the Council's work and on the experience which had been gained.

Mr. Haastrup had expressed regret at the reference in the report to "Chinese aggression"; the Indian Government was fully entitled not to view the invasion of its territory by the Chinese army as a friendly or goodwill visit and to mention the matter in the report, but the phrase was admittedly not indispensable for the purposes of the report, which would have lost nothing if it had been omitted.

He had tried to understand Mr. Dehlavi's arguments but had found nothing coherent in them to which he could give an answer. He was surprised that a person who had been associated, even slightly, with Mahatma Gandhi had not thus acquired a greater spirit of tolerance. He had received the impression that Mr. Dehlavi wanted more information on the caste system in India; he ought, however, to know the subject well since he himself came from that part of the world. He had been pained to hear Mr. Dehlavi link the caste system, which dated from the Aryan invasion, with the teaching of the Hindu religion. He himself was not trying to justify an anachronism which the Indian Government was seeking to eliminate - with a considerable measure of success. For example, the Minister next in rank to the Prime Minister was a member of a Scheduled Caste and there were many high officials drawn from the backward elements of Indian society.

Without wishing to defend the Indian report, he pointed out that all reports should be considered objectively. In his opinion, the Indian report did not paint a rosy picture of the situation; quite the contrary, the Indian Government had been remarkably frank and modest. It recognized, for example, that the provisions relating to the special reservation of seats in Parliament and in the state

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(Mr. Dayal)

assemblies for the Scheduled Castes and the Scheduled Tribes, which should have lapsed in 1970, had been extended for 10 years because they had not yet had the desired effect.

He did not wish to enter into a discussion of the various religions and beliefs, for he respected them all as, indeed, he respected atheism. He repeated, however, that the caste system was not an integral part of Hinduism.

Mr. SAYEGH said he was afraid that some of the remarks made during the discussion might create precedents. Mr. Haastrup and Mr. Dehlavi had taken exception to the reference to "Chinese aggression". The Committee would be stepping outside its terms of reference if it tried to censor what States Parties wrote in the reports, for which they alone were responsible. Besides, the reports were issued as restricted documents of the Committee and given only limited distribution.

The Convention had wisely provided for a system of checks and balances: on the one hand, there were the States Parties, which were political entities; on the other hand, there were the members of the Committee, who were above political quarrels. Each group had its own role to which it should stick. A State Party could not be expected to use academic terminology to designate what, in its view, was an aggression.

It had been said that the reference was not relevant. However, he did not agree with Mr. Dayal that the report would not have suffered had it been omitted. In fact, the paragraph made it possible to understand how the situation had evolved: the existence of centrifugal forces had led to the creation of a body responsible for ensuring integration; subsequently an external event had caused the centrifugal forces to disappear and had rendered action by the integration body unnecessary; that body could always be reactivated if necessary. If the process had not been explained in the report, the Committee might have asked for additional information on that point.

Mr. DEHLAVI agreed with Mr. Sayegh that the members of the Committee were not in the same position as States Parties. However, once a report had been submitted, the Committee should take note of its contents and could indicate to the author of the report that certain passages did not seem relevant. The State Party could take note of that opinion or not. In the present case, he had picked out a reference to "Chinese aggression" because he had thought that it might give

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(Mr. Dehlavi)

rise to unnecessary dissension within the Committee, particularly since the State in question was not a party to the Convention. He was sorry that Mr. Dayal had not seen fit to mention his name with that of Mr. Haastrup.

He expressed surprise that Mr. Dayal had been pained by the remarks of a colleague. His own questions had not been directed at Mr. Dayal, who was a member of the Committee in his capacity as an independent expert not as representative of India. He pointed out that they had not been intended as an attack on anyone. Moreover, he had not asked for information concerning the caste system. He had stated that he was aware of the difficulties that the Indian Government must be encountering, given the fact that the population was largely illiterate and was deeply attached to its age-old traditions, and had asked to what extent the Government was succeeding in overcoming that obstacle and how acts of resistance to its genuine efforts to eliminate discrimination were punished, when the need arose.

He, too, respected all religions; he had very close links with India and had many friends there. Whether or not the caste system was an integral part of the Hindu religion, it was nevertheless a fact of life. The Committee should examine the reports and indicate the genuine difficulties it encountered in that examination.

Mr. HAASTRUP felt that any member of the Committee was entitled to express his opinion on any point in any report; that however, did not prejudice the decision of the Committee as a whole. When the Committee had considered the report from Pakistan, he also had mentioned that it contained a passage which might give rise to dissension and had invited the members of the Committee not to enter into a polemic.

Recalling the different origins of the members of the Committee, he emphasized that they should concentrate on the substance of the problems. The reference to "Chinese aggression" seemed all the more superfluous since it referred to something that had happened in October 1962 - in other words, before the Convention had entered into force. He was pleased to note that Mr. Dayal had admitted that the omission of the phrase would not have altered the quality of the report.

In conclusion, he protested his good faith, saying that he had not sought to criticize anyone.

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Mr. DAYAL, commenting on the remarks made by Mr. Sayegh, said that under the principle of sovereignty States Parties were perfectly free to include in their report any piece of information and to use whatever terminology they deemed appropriate. Members of the Committee could take such information into account or consider it irrelevant. In the case under consideration, his position was in the middle: although the reference did not seem superfluous, it was not indispensable either.

In reply to Mr. Dehlavi, who had questioned his credentials to speak on the Indian report, he pointed out that he was an Indian national and had spent 35 years serving his country and thus was in a position to answer the questions raised in full knowledge of the facts. He was sorry he had been unable to dispel Mr. Dehlavi's doubt on the caste question but hoped that he had convinced the other members of the Committee.

Mr. DEHLAVI, speaking on a point of order, pointed out that his questions had been directed not at Mr. Dayal but at the representative of India.

Mr. SAYEGH regretted that his statement had led to a controversy, for that was exactly what he had been trying to avoid. He had never doubted that the members of the Committee had the right to express any opinion whatsoever. He felt, however, that if the Committee agreed that its members could challenge any statements in a report there was a danger that a tendency might gradually emerge to ask States submitting their reports to delete certain passages. The Committee should realize that danger.

Mr. SAFRONCHUK agreed that Mr. Sayegh's warnings were very relevant. Article 9 of the Convention stated that members of the Committee might give their views on the reports of States Parties. However, like Mr. Sayegh, he wondered whether the Committee could lay down for Governments the terms to be used in writing their reports. The States Parties were sovereign States and as such had the freedom to make any judgement they wished of world events.

Mr. MANI (India) commended the freedom with which members of the Committee had expressed their opinion and recalled that India too attached the greatest importance to freedom of expression. On the question of relations between India and South Africa, he recalled how Gandhi had spent some years in South Africa where, considered a "coolie", he had himself suffered from racial discrimination. Once India had become independent, it had broken off all relations

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(Mr. Mani)

with South Africa. South African vessels could not dock at Indian ports; and if any South African citizen entered Indian territory he would be arrested immediately and charged with the crime of apartheid. India did not have any relations with Portugal or Southern Rhodesia either. As was proved by its activities in many United Nations bodies, India was in the forefront of the struggle against racism, racial discrimination and apartheid throughout the world.

He declared that there was no racial discrimination in India. Indian society was an open society in which the press had complete freedom and everyone enjoyed freedom of movement and information. The National Integration Council had therefore not had to deal specifically with the problem of racial discrimination. India wished to eliminate every kind of discrimination, in the political, social, cultural and economic fields. In order to do so, centuries of inequality had to be wiped out, whereas the country had been free and independent for only 25 years. The Indian Constitution was based on secular principles and sought to give equal opportunities to all. The National Integration Council was one of the instruments for implementing the policy of eliminating inequality.

Replying to questions, he said that Auroville, situated near the former French settlement of Pondicherry, was a town with a population of 50,000 people who lived in harmony with nature. Factories were surrounded by gardens and there were no walls or barriers in the town. The community had existed for 10 years and was a research and experimentation centre. The Government wished to establish new communes of the same type in India that would follow that example of perfect harmony between different races and religions.

The Government of India, anxious to guarantee real equality for all before the law, had also appointed an ombudsman whose duties consisted of receiving complaints from people against various administrations and investigating those complaints in order to overcome administrative inertia or even corruption.

He did not feel that the caste system which existed in India could be described as social apartheid. Apartheid was a deliberate policy applied in South Africa and imitated in Angola, Mozambique and Southern Rhodesia. Under that system blacks could not live in white areas and had to have a pass to enter them. Any violation of those measures resulted in the arrest of the offender. That was not the situation in India; the "untouchables" enjoyed freedom of movement and free choice of employment.

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(Mr. Mani)

The caste system and "untouchability" had existed in India since time immemorial. It was admittedly an essentially Hindu form of social organization, yet it was to be found to some extent in other Moslem and Christian communities. It had probably been introduced into India by the Aryans when they had invaded the subcontinent in about 2500 B.C. That form of social organization was based on the division of labour between different castes. Every community needed some kind of structure, and therefore institutionalized distinctions between its members. For example, there was a comparable social structure in Africa. Although social groups had existed in Japan, it had been possible to remove the distinctions because Japan had never been subjected to colonial rule and thus was able to remove social insecurities when that process had started in Europe.

He quoted article 15 (1) of the Constitution which provided that States should not discriminate against any citizen on grounds only of religion, race, caste, sex, or place of birth. Likewise, jobs were no longer inherited and there was no segregation in religion. India had embarked on a long process which was to lead to a completely integrated society. Members of the Scheduled Castes could occupy posts in all sectors of economic, political and social life. The Indian Defence Minister was a member of one of those castes.

It should be understood that the caste system was based not on religious structures but on social structures which India was trying to break down. But there was absolutely no basis for claiming that the caste system constituted a form of social apartheid.

India faced colossal problems which it had to resolve pragmatically. It was nevertheless firmly resolved to tackle the roots of the evil and to promote national integration. It was trying to develop a mixed economy in order to provide everyone with a decent standard of living. The educational system was deliberately neutral and respected minority cultures.

He was sure that the Committee could become the most important organ in the struggle against racial discrimination. But it was men and women who had to preserve freedom: if freedom died, no constitution or law could restore it.

The CHAIRMAN said he took it that the Committee considered the second periodic report of India satisfactory and hoped that the Indian Government would continue to co-operate with the Committee as in the past.

It was so decided.

Mr. Mani withdrew.

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Federal Republic of Germany (CERD/C/R.30/Add.25 and Corr.1)

At the invitation of the Chairman, Mr. von Kyaw (Federal Republic of Germany) took a place at the Committee table.

Mr. SAYEGH noted that the second periodic report by the Federal Republic of Germany could be considered as perfectly satisfactory as far as its form was concerned, but that the information it contained raised a number of questions of substance.

The first concerned the complaints against the Federal Republic of Germany which had been submitted to the European Commission on Human Rights. The report indicated that there had been 2,872 complaints of that kind and that only one had been passed on to the European Court. It would be useful to know what had become of the other complaints.

The second question concerned article 7 of the Convention. The initial report by the FRG (CERD/C/R.3/Add.29) stated that the German people and its Government had learned from a terrible past. However, it was not enough to be aware of the odious nature of discrimination and measures to prevent its recurrence must be adopted. There was no more important field than education in that regard. In its first report, the Government of the FRG had emphasized the action taken to combat prejudice and to encourage understanding among nations. For further details it referred to document A/7683, which itself referred to document A/7638/Add.1 and 3, which was unfortunately out of print. He hoped that the representative of the Federal Republic of Germany would be able to resolve the difficulties caused by the lack of documentation. In its latest report, the FRG referred to another United Nations document (A/8367), which merely reproduced certain statements by senior members of the Government. It stated that teaching designed to promote understanding among races had been introduced in the schools, but it was difficult to know whether that was a permanent decision or merely a measure taken on the occasion of the International Year for Action to Combat Racism and Racial Discrimination.

The third question concerned the organizations and associations which were declared illegal by reason of their activities. According to paragraph 18 of the first report, 21 associations and organizations had been outlawed by the courts. The members of the Committee had requested information on the activities and aims

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(Mr. Sayegh)

of those organizations. The penultimate paragraph of the second periodic report stated that "a violation against the... basic right of the discrimination ban... was not ascertained, neither in the case of political parties, nor any other organizations and activities". It was not clear to him whether that sentence referred to the organizations mentioned in the previous report or to other organizations on which the courts had been required to give decisions during the period covered by the current report. The questions which had been raised when the first report had been considered deserved to be asked once more: of the 21 organizations mentioned, how many had been outlawed on grounds of racial discrimination? What was the current status of those organizations? Had they been rehabilitated or had they reappeared in another form? Had they been banned and their leaders not been prosecuted? If that was so, the second obligation laid down in article 4 (b) of the Convention had not been fulfilled.

A fourth question arose, concerning the treatment of foreign workers. The second paragraph of section I (e) of the report indicated that foreign workers who were citizens of a member State of the European Economic Community enjoyed a privileged position since they required no labour permit and were not restricted in any way with regard to taking up employment. That raised a fundamental question since, under article 1, paragraph 3 of the Convention, it seemed that all non-nationals should receive equal treatment. The question was one which the Committee was encountering for the first time and he wished to stress that he was merely putting forward his own interpretation. The Federal Republic of Germany was doubtless thus acting in conformity with the requirements of the Treaty of Rome, but if it seemed that they were incompatible with the obligations which it had assumed under the Convention, a choice would be necessary.

The fifth question related to the attitude of the FRG with regard to the policies formulated in general recommendation III of the Committee. It was true that the second report by the FRG antedated the adoption of that recommendation, but he hoped that the representative of that country would be good enough to give some explanations on that matter. Of course, it could be argued that, since the FRG was not a Member of the United Nations, it was not bound by its decisions; however, in the statement it had annexed to its instrument of ratification, the Government had reaffirmed its conviction that any discrimination on grounds of

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(Mr. Sayegh)

race, colour or ethnic origin precluded friendly relations among nations. That declaration of principle justified the following questions: were there diplomatic or consular relations between the Federal Republic of Germany and South Africa? Were South African nationals permitted to travel to the FRG? Were there trade relations between the FRG and South Africa? The latest report of the Special Committee on Apartheid (A/8722) gave a reply to that question. It contained a table of South Africa's principal trading partners, and the Federal Republic of Germany occupied the third place. It therefore seemed that a State Party to the Convention maintained trade relations, the volume of which was growing steadily, with the State which was the incarnation of racial discrimination in all its horror. If that was confirmed, the Committee could not remain silent and he intended to submit a proposal in which the Committee would stress the fact that the maintenance of trade relations with South Africa was incompatible with the provisions of the Convention.

Mr. ABUL-NASR said that some of his questions partly coincided with those raised by Mr. Sayegh.

He thanked the Government for bringing the complaints submitted to the European Commission on Human Rights to the Committee's attention. However, the fact that they had not been passed on to the European Court did not mean that they were unrelated to the Convention, and explanations should be provided with respect to them.

With regard to the section of the report relating to foreign workers, the efforts made by the Government to improve their lot were commendable, but the difference in treatment between workers who were nationals of member States of the European Economic Community and others did not appear justified as far as the Convention was concerned. The provisions of the law of 15 January 1972 on the Constitution of Enterprises seemed to be satisfactory, but he would like to know whether the principle of equal pay for equal work was always observed. With regard to efforts to provide schooling for the children of foreign workers, he asked whether the education was free and whether the children of foreign workers could attend the school of their choice.

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(Mr. Aboul-Nasr)

He noted that according to section II of the report the law protected citizens against any discriminatory acts by the public authorities, but he would like it to be confirmed that those provisions were also applicable to foreigners applying for entry visas or residence permits.

With regard to relations of States Parties with the racist régimes of southern Africa, he drew attention to the resolution just adopted by the Special Committee of Twenty-Four (A/AC.109/422) in which that Committee condemned all violations of the sanctions imposed by the Security Council as being contrary to the obligations assumed by Member States under Article 25 of the Charter. Of course the Federal Republic of Germany was not at present bound by the Charter but it would be helpful if its representative could give some clarifications regarding the future position of his Government with respect to the obligations laid down in Article 25 of the Charter.

In conclusion, he expressed the hope that the clarifications he received would enable him to consider the report of the Federal Republic of Germany satisfactory.

Mr. HAASTRUP agreed with Mr. Sayegh that the report of the Federal Republic of Germany could be considered fully satisfactory from the standpoint of form. As to its substance, the Government was to be commended for its efforts to inform the Committee. However, certain statements called for clarification.

The large number of cases submitted to the European Commission on Human Rights bore witness to the Government's honesty, but it would be interesting to know the nature of the complaints submitted and to be told what had been the outcome. The part of the report referring to foreign workers said nothing about the condition of workers from the States associated with the European Economic Community. Some details on that point would be most useful.

The report gave a sincere account of the efforts made by the Government to implement article 4 (a) of the Convention. In that connexion, however, it should be noted that films inciting hatred against Africans had been shown in the Federal Republic. African diplomats had protested such showings but the Government seemed to be powerless to take action because there was no censorship. He noted that the Government planned to amend the Penal Code so as to make glorification of

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(Mr. Haastrup)

violence and incitement to racial hatred punishable offences, but he stressed that action along those lines should be taken without delay.

The Government of the Federal Republic of Germany deserved to be commended for the circumstantial nature of its report; it was the specificity and abundance of the details it furnished which had enabled the members of the Committee to raise so many questions. Nothing in the report could be said to indicate that the Government lacked sincerity in its efforts to apply the Convention. The members of the Committee all knew that that was a long-term undertaking. He hoped that the Federal Republic's next report would show that the efforts made had borne fruit.

With regard to relations with South Africa, he thought the Committee was entitled to ask what had been done to reduce trade with that country. It would be helpful if the Government could show clearly that none of its acts encouraged the racist policies of southern Africa.

The Federal Republic's report was in conformity with the guidelines in document CERD/C/R.12. He hoped that the representative of the Government would be in a position to give satisfactory replies to the questions to which the report had given rise.

Mr. DAYAL noted the importance of the questions raised by Mr. Sayegh and by the two members of the Committee whose comment had followed. He proposed that the representative of the Federal Republic of Germany should be invited to reply to them at the beginning of the following meeting; that would facilitate the Committee's task by enabling it to give attention to any questions remaining unanswered. The precedent set in the case of the examination of Panama's report could be invoked in justification of that procedure.

The CHAIRMAN asked the representative of the Federal Republic of Germany if he would agree to speak at the beginning of the following meeting in order to reply to the questions which had been asked.

Mr. von KYAW (Federal Republic of Germany) said that he was quite willing to accede to the Committee's wish.

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The CHAIRMAN said he took it that the Committee wished to follow the procedure suggested.

It was so decided.

Mr. von Kyaw withdrew.

The CHAIRMAN took up the question of States whose reports had not yet been sent to the Committee. The Committee had not received the second periodic report of Sierra Leone. However, it had already sent Sierra Leone a second reminder. It would be obliged to send a third reminder asking Sierra Leone to submit its report before 1 July 1973. As that was an exceptional measure, the Committee should request the Rapporteur to draw up the third reminder on the basis of the text appearing in document A/8418, annex III.

The Committee should also send Peru and Lesotho, whose initial reports had not yet been received, a first reminder, drafted on the basis of the text appearing in document A/8027, annex III C, to the effect that the reports should be submitted before 1 July 1973.

A second reminder should be sent to Cameroon, Jamaica and the Central African Republic asking them to submit their initial reports before 1 July 1973 on the basis of the text appearing in document A/8418, annex III.

As Zambia, Algeria and Cuba had not yet sent in their initial reports, which were due in 1973, the Committee should address to them, on the basis of the text in document A/8027, annex III C, a first reminder asking them to submit their reports before 1 July 1973.

As Iraq had not yet submitted its second periodic report, which was due in 1973, the Committee should send it a second reminder, on the basis of the text in document A/8418, annex III, asking it to submit the report before 1 July 1973.

In all, the Committee had to send out 10 reminders. It had so far received 10 reports, and seven States were to send in their reports before the next session, at which the Committee would thus have 27 reports before it.

If he heard no objection, he would take it that the Committee accepted those suggestions.

It was so decided.

The meeting rose at 6.10 p.m.