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the Elimination
of all Forms of
Racial Discrimination**

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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Sixty-ninth session

SUMMARY RECORD OF THE 1763rd MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 3 August 2006, at 10 a.m.

Chairman: Mr. de GOUTTES

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FOLLOW-UP PROCEDURE

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

GENERAL DEBATE ON THE SITUATION IN LEBANON

1. The CHAIRPERSON recalled that although the Committee had agreed to defer its consideration of the thirteenth periodic report of Israel until its seventieth session, as a human rights body it had felt it necessary and appropriate to discuss the current situation in Lebanon in the light of the Convention.

2. Mr. AMIR said the situation in Lebanon was of great concern to the Committee, other organs of the United Nations and international public opinion. He recalled that international humanitarian law had developed following the Second World War as a result of the recognition by the international community of the need to protect civilian populations and refugees in conflict situations. Discussion of the humanitarian issues involved in the current situation in Lebanon was perfectly in keeping with the mandate of the Committee.

3. The civilian population in Lebanon were the innocent victims of a situation which was not of their choosing. The number of victims, including women and children, continued to grow. The guilty party in the event was a State which, despite being a party to the Convention and other international human rights instruments and despite its duty to spare civilian populations, continued to inflict death and suffering on those populations because of their alleged affiliation with or proximity to the other party to the conflict. He recalled that in a similar situation, in his capacity of Country Rapporteur, he had succeeded in prevailing on the Government of Senegal to stop bombing civilian targets in the Casamance region.

4. The Security Council, the Secretary-General, the United Nations High Commissioner for Human Rights and others had expressed their grave concern at the situation in Lebanon and the Committee must likewise speak out to call on those responsible to fulfil their duty to protect the innocent. He therefore proposed that the Committee adopt a decision reminding States, whether they were parties to the Convention or not, to fulfil their duty to protect non-combatants. If the Committee failed to do so, if it failed to follow the example of organizations like the United Nations Children's Fund (UNICEF), which had clearly pointed the finger of blame at those responsible for harming innocent children, it would encourage other States to also ignore their duty to respect and protect civilian populations, on the pretext, for example, that combatants were hiding among them.

5. Mr. AVTONOMOV agreed with Mr. Amir that the situation in Lebanon was catastrophic and certainly fell within the mandate of the Committee. Targeting the civilian population must stop and he stressed that the international community could not stand idly by while civilians, including women and children, continued to be traumatized and civilian infrastructures were destroyed.

6. The Committee had a duty to take up the issue of the need to protect human rights even in conflict situations. It was important to express its grave concern and condemn actions which had a devastating effect on the civilian population and would also affect future

generations. Although he recognized the difficulty of ensuring minimal human rights guarantees in conflict situations, failure to deal with the current situation could have serious consequences for the region, exacerbate an already difficult situation and seriously affect the peace process in the Middle East.

7. Mr. TANG associated himself with the statements made by Mr. Amir and Mr. Avtonomov. Israeli attacks against the civilian population were violations of international law and international humanitarian law and of the principle of national sovereignty; its attack on United Nations peacekeepers, in which one Chinese citizen had died, was a violation of the Charter of the United Nations, which Israel, as a member State, should uphold.

8. No country had the right to attack the civilian population of another State; that was tantamount to an act of racial discrimination and it was perfectly appropriate for the Committee to discuss the matter. The international community had a responsibility to ensure that international norms were respected and that both parties ceased hostilities. The Security Council and the High Commissioner for Human Rights had already expressed their grave concern and were continuing to work for a solution to the crisis. He agreed that the Committee should adopt a decision condemning violence against civilian populations and clearly calling for an end to the hostilities.

9. Mr. KJAERUM said the situation in Lebanon was a source of concern for the international community as a whole. The Secretary-General had repeatedly called on all parties to cease hostilities without delay and the High Commissioner for Human Rights had called for an independent investigation of allegations of violations of international human rights and international humanitarian law. The issue of whether or not the situation in Lebanon fell within the mandate of the Committee was related to the applicability of the Convention and the extraterritorial applicability of international human rights instruments.

10. He noted that both Israel and Lebanon had ratified the Convention and were therefore bound by its provisions. Furthermore, the International Court of Justice had ruled that human rights instruments did not cease to apply in times of armed conflict, although in some circumstances there could be derogation of certain rights. In that context and recalling also general comment No. 31 of the Human Rights Committee, he said that no such derogations applied to the current crisis, so that the Convention and other instruments continued to apply to the actions of Israel and Lebanon within and possibly outside their territories.

11. According to the International Court of Justice, human rights instruments ratified by a State were applicable outside the territory of that State when it had jurisdiction over that foreign territory. The test was whether or not the State in question had de facto control over the territory; if so, the State was obliged to comply with the provisions of international human rights instruments it had ratified in those foreign territories. That issue would have to be decided by an independent investigation of the facts in Lebanon. Clearly, however, both Israel and Lebanon must meet their treaty obligations within their own territories and, for example, in no way discriminate with regard to relief or assistance efforts for the affected populations.

12. He believed the Committee did not have an obvious mandate with regard to the current situation in Lebanon. The Chairperson should however convey the spirit of the Committee's discussion to the High Commissioner for Human Rights for her Office to undertake appropriate action to investigate the human rights situation of the civilian populations affected by the armed conflict.

13. Mr. LINDGREN ALVES recalled that he had been in favour not of a general debate but rather of considering the situation in Lebanon under the Committee's urgent procedure, which the crisis fully warranted. However, the debate would serve its purpose as it was the obligation of all international bodies to address the most blatant cases of violence and aggression in the world. The current situation could be compared to that which had existed several decades previously in the Middle East, when the United Nations had been prompted to deal with the violation of human rights by Israel against Palestine and Lebanon.

14. All international positions referred to the need to respect the principle of proportionality in military operations. It could be acknowledged that Israel had the right to self-defence, but it must do so in a proportionate manner, not as was currently the case. As to whether the plight of Lebanon related to the Convention, he considered that it did, given the barbarity of the situation as witnessed by the targeting of women and children. In the absence of concrete facts regarding a possible connection with the Convention, the logical reasoning was that there was a tinge of racism stimulating the disproportionality of Israel's reaction to the kidnapping at the origin of the conflict. The Committee must decide whether it believed Israel would have responded as extremely had the country in question not been Arab. If the Committee decided that there was a racist motivation for the disproportionate response, it must condemn the actions, although he was unsure as to the best way of doing so. The urgent procedures had been used in the past to send messages to Governments about non-urgent matters, and it was clear that the situation in question was of the utmost urgency.

15. Mr. SHAHI agreed that there was clear disproportionality in the exercise of whatever right to self-defence was conceded to Israel, and he supported Mr. Lindgren Alves' point that Israel would not have resorted to such indiscriminate bombardments if it were fighting a non-Arab country. He acknowledged that Hezbollah had instigated events by kidnapping Israeli soldiers, but the right of resistance against occupation by powerful countries was never mentioned. As far as the applicability of the Convention was concerned, it was clear that it was a case of war between two different ethnic groups.

16. As to the competence of the Committee in the matter, the High Commissioner for Human Rights had given the lead by speaking of war crimes, crimes against humanity and the deteriorating humanitarian situation. If the Committee itself was not prepared to take a position, it should support the High Commissioner for Human Rights in calling for a ceasefire and immediate dialogue. Humanitarian concerns and the duty to uphold the principles of the United Nations Charter must guide the Committee and the other United Nations bodies and should not be subordinated to the geopolitics of major powers.

17. Mr. THORNBERRY said that the Committee had often dealt with very serious situations, and conflicts as such had not ruled out the interest and concern of the Committee. In that regard

he noted the Committee's statement of 10 March 2003 on "the current international situation". The current conflict had seen denials of the most basic human right: the right to life. Regarding the Committee's mandate, one possible way forward might have been for States to report to the Committee so that it could have explored details and come to firm conclusions, but, in a crisis situation, that might have been of little comfort to those involved in the tragedy.

18. One of the foreseeable consequences of the conflict was the escalation of racial, ethnic and religious hatred. Such patterns of escalating hatred were always the concern of the Committee, regardless of the context. Unresolved situations and armed conflicts produced new forms of racial discrimination, and the conflict in Lebanon would doubtless generate discriminatory attitudes and practices and new hatreds. The Committee would, in time, inevitably come to address discrimination that could be traced back to an event such as the current conflict. The Committee's duty was not exhausted by regretting and warning; it should also attend to the details of what needed to be done by all actors in the light of the principles of the Convention. The Committee's mandate as a human rights body was to add its voice to that of others who were clamouring for peace.

19. Ms. JANUARY-BARDILL said that the bombing in the current conflict had been anything but smart. The fact that the carnage of the civilian population had not been stopped on the basis of the argument that every peace should be based on enduring principles and that such a quick ceasefire would be no more than a quick fix demonstrated how little value was placed on human life in that region. She tended to agree with Mr. Lindgren Alves that institutional racism existed in that part of the world: people allowed themselves to kill in that way only when they had inferiorized the enemy. The killing of civilians on such a scale could not be justified by any security concerns. The threat of a regional war was becoming an increasing reality. The United Nations Security Council must accept its responsibilities and condemn Israel's action, which was contrary to all international law, and demand an immediate ceasefire followed by negotiations.

20. Mr. YUTZIS recalled the words of the philosopher Emmanuel Levinas, who held that human rights began with the commandment "thou shalt not kill". The civilians caught up in the conflict were suffering the consequences of a historical condition which was not of their choosing. He noted that article 11 of the Convention was never applied. In any case, as a treaty body, the Committee must do something to draw attention to those events and add its voice to that of others. He acknowledged that there was a very fine line when attempts were made to differentiate between humanitarian law and political conditions.

21. Ms. DAH agreed that the distinction between politics, humanitarian assistance and human rights was very vague. The consensus appeared to be that it would be improper for the Committee not to make its voice heard at such a crucial time. As a member of a Committee which worked to combat all forms of discrimination, she regretted that the bombs in Lebanon had been indiscriminate, killing civilians, including children. The Committee should call on more authoritative and capable bodies to call for a ceasefire, namely the United Nations High Commissioner for Human Rights and the new Human Rights Council, as there was still some doubt regarding the competence of the Committee in that particular situation. Although

there might be racial motives behind the conflict, there was insufficient evidence to support that argument. The conflict would solve nothing, but would simply exacerbate the existing hatred and develop other forms. When considering the reports of Israel and Lebanon in the future, the Committee would have to assess the extent to which the conflict had created or reinforced discrimination; in that way the current situation could be connected to the Committee's mandate.

22. Mr. EWOMSAN said that the diverging opinions underlying all armed conflicts invariably led to discrimination and hatred. The situation in Lebanon could therefore not be met with indifference and members had a duty to speak out in their capacity as human beings. However, the Committee had a clearly defined mandate and must be mindful of the responsibilities and limits set forth in the Convention. Impartiality was crucial to the discharge of that mandate. The Committee would be examining Israel's periodic report within a few months and should avoid taking any action that could be interpreted as compromising its objectivity. Instead, it should call on more competent institutions that could identify steps to be taken towards a ceasefire agreement and guarantee respect for human rights.

23. Mr. ABOUL-NASR said that the Committee must not remain silent regarding the serious violations of human rights in Lebanon. Acting upon the Secretary-General's call to condemn such action "in the strongest possible terms", it should issue a statement that reflected the spirit of those words and called for an immediate cessation of the killing.

24. Mr. BOYD said that there was no obvious link between the humanitarian crisis in Lebanon and the Convention. While he agreed that it was important to speak out, the Committee should therefore exercise extreme caution. Should it choose to issue a statement that went beyond the limits of its mandate, it should be made clear that the text reflected members' personal views as concerned human beings and not as members of the Committee.

25. Doubtlessly, all persons living in the conflict zone had a right to security of person and protection by the State against violence or bodily harm, as specified in article 5 of the Convention. The Committee had referred to those rights on earlier occasions when commenting on the situation in Darfur or Rwanda, amongst others, where peoples' article-5 rights had been compromised by the very authorities responsible for protecting them. However, the situation in Lebanon was somewhat different, given that the physical integrity of Lebanese civilians was being endangered by outside actors.

26. He had been surprised to note that, during the Committee's dialogue, little reference had been made to those who used Lebanon as a base to attack the population of another country. Certain members, in particular Mr. Lindgren Alves, appeared to downplay the role of that group in the current conflict. Its responsibility could not be reduced to the capture of the two Israeli soldiers, when in reality it had launched hundreds of missiles against a foreign civilian population. It was unreasonable to interpret such actions as resistance to an occupying force, since Israel had not been occupying Lebanese territory at the time the current conflict had erupted. Similarly, the actions of the other party to the conflict, such as the bombing of sites with military significance that invariably resulted in the killing of Lebanese civilians, had devastating consequences and must be condemned. The third parties responsible for the current

tragedy were those States parties to the Convention that provided material support and refuge to combatants and supported their activities inside Lebanon. And yet the civilian populations, who played no active role in the multidimensional conflict in the Middle East, were those who suffered its terrible consequences.

27. The question of a possible nexus between the Convention and the situation in Lebanon remained open. Thus far, there was no evidence suggesting that Israel targeted civilians intentionally; such action would serve no military purpose and would be politically counterproductive. The other party to the conflict, however, had never denied its intention to target civilians. It would be similarly far-fetched to suggest that Israel's actions had underlying racist or discriminatory motives. The most likely explanation for what some viewed as a disproportionate response on Israel's part was Lebanon's geographical proximity, rather than the ethnic or religious characteristics of its population.

28. Should the Committee decide to issue a statement, it should speak out against all causes of suffering in order to be credible and attain its objective, namely ending the violence.

29. Mr. PILLAI said that, in principle, he believed that the Committee should remain within the limits of its clearly defined mandate and engage in dialogue on issues directly related to the Convention only. However, in the light of the comments made by other members, he felt compelled to share his views.

30. In a recent statement, the Prime Minister of Lebanon had pointed out that both parties to the conflict inflicted tremendous suffering on the country and its people, albeit in differing degrees. No immediate end to that suffering appeared to be in sight. In view of the humanitarian tragedy unfolding in Lebanon, he felt tremendous pain and a great sense of loss. When the Committee had considered Lebanon's report some years back, he had been impressed with the democratic values and the nature of the society the country aspired to build. The international community must therefore do its utmost to end the violence.

31. The situation in Lebanon did not result from racial discrimination and the violations went well beyond the narrow scope of the Convention. However, the Committee was free to express its profound sorrow over the loss of lives and the suffering of civilians on either side of the border. He thought it well advised for the Committee to express its solidarity with the Office of the United Nations High Commissioner for Human Rights and with all action taken by United Nations mechanisms to stop the violence and destruction, assist the many displaced persons, and help reconstruct the shattered Lebanese economy.

32. Mr. LINDGREN ALVES said that he was surprised that, after his many years of service as a member of the Committee, his intolerance of terrorist organizations and of violence targeting civilians was not taken for granted. He had never made a secret of those views and had thus not deemed it necessary to expressly condemn the actions of Hezbollah. He would never condone attacks against civilians by Hezbollah or similar organizations, whatever their purported cause. However, it was his own personal belief that Israel's actions only bred further violence and terrorism throughout the world. It was important for the Committee to take a stand and he wondered whether Mr. Thornberry might agree to prepare a relevant draft.

33. Mr. CALI TSAY said that the Committee's mandate was not limited to condemning racist or discriminatory acts, but also included taking preventive action. While he did not consider himself competent to give his opinion on the situation in the Middle East, he had first-hand experience of armed conflict and was keenly aware of the hatred, pain and resentment caused by war. In Guatemala, the United Nations had played a key role in ending the violence, disappearances and massacre of civilians. In order to avoid the violence in Lebanon spiralling into genocide, the United Nations must once again assume its role as a mediator in efforts to prevent civilian casualties.

34. Mr. ABOUL-NASR endorsed the statement by Mr. Cali Tsay. However, he strongly disagreed with those who referred to Hezbollah as a terrorist organization. Hezbollah was a movement of resistance against the occupation of part of its land, similar to the French resistance during the Second World War.

35. The CHAIRPERSON, summarizing the debate, said that all members had expressed their anguish over the human suffering in Lebanon. While some had focused on legal issues, others had spoken about the human dimension of the conflict. All contributions had reflected a strong commitment to the protection of human rights. It had transpired from the discussion that there was no clear line separating politics, humanitarian issues and human rights. Several members had mentioned the causal link between armed conflict and phenomena such as racial hatred and even terrorism. Members had further conveyed that, beyond the limits of the Committee's mandate under the Convention, they felt a responsibility to speak out in their capacity as members of the human rights community and as human beings.

36. He suggested that the Bureau should convene at 2 p.m. on Thursday, 3 August 2006, to discuss a follow-up to the debate and examine the modalities for bringing the issue to the attention of the competent institutions. It might also be useful to transmit the summary records of the Committee's dialogue to the United Nations High Commissioner for Human Rights and the Human Rights Council.

37. It was so decided.

FOLLOW-UP PROCEDURE (agenda item 7) (CERD/C/AUS/CO/14 and Add.1; CERD/C/LAO/CO/15 and Add.1; CERD/C/69/Misc.9)

38. Mr. KJAERUM (Follow-up Coordinator) recalled that five States parties had been due to submit their comments on the follow-up action they had taken in response to the Committee's concluding observations and recommendations. They were: Australia, Azerbaijan, Bahrain, France and the Lao People's Democratic Republic. Australia and the Lao People's Democratic Republic had submitted their responses, and reminders had been sent to the other States parties. The response of France had just been received, but he had not yet had time to study it.

39. He had discussed the responses received from Australia and the Lao People's Democratic Republic with the relevant country rapporteurs, and had made a number of recommendations. In respect of the comments of Australia, contained in document CERD/C/AUS/CO/14/Add.1, he

recommended that the Chairperson, on behalf of the Committee, thank the Australian Government for its detailed and timely response. In respect of the Government's remarks on the Human Rights and Equal Opportunity Commission (HREOC) (see the Committee's concluding observations, document CERD/C/AUS/CO/14, paragraph 10), the Committee should ask to be kept informed of any changes in the mandate and structure of the Commission and emphasize the need to respect the Principles relating to the status of national institutions for the promotion and protection of human rights (the "Paris Principles"; General Assembly resolution 48/134, annex). With reference to the abolition of the Aboriginal and Torres Strait Islander Commission (ATSIC) (document CERD/C/AUS/CO/14, para. 11), the Committee should emphasize the importance of dialogue between the Government and indigenous peoples and the responsibility of the Government to provide a forum for that dialogue which involved elected indigenous representatives.

40. With regard to the Native Title system, the Committee should ask for information to be included in Australia's next periodic report, especially concerning the reforms proposed in September 2005. Finally, the Committee should ask the Government to take into account its views on the concept of informed consent, as laid out in its general recommendation No. 23 on indigenous peoples.

41. Turning to the comments submitted by the Lao People's Democratic Republic (document CERD/C/LAO/CO/15/Add.1), he suggested that the Committee should write to the Government thanking it for its response and making the following points. The revised version of article 176 of the Penal Code was still not fully consistent with article 1 of the Convention, since it referred only to "ethnicity" rather than to "race", "nationality", "descent" or "colour".

42. The Committee should request additional information about the situation of the Hmong minority, which the Lao Government had addressed in paragraphs 3 and 4 of its comments, particularly the provision of humanitarian aid, the establishment of a dialogue between the Government and the Hmong community and the Government's response to requests for international human rights monitoring. In the light of the investigation described in paragraph 22 of the Government's comments, the Committee should draw the Government's attention to its general recommendation XXXI on the prevention of racial discrimination in the administration and functioning of the criminal justice system.

43. Finally, the Committee should ask for more information about poverty and limitations in economic development which disproportionately affected certain ethnic groups to be included in the Lao People's Democratic Republic's next periodic report.

44. In June 2006, he had visited Ireland in order to assess the measures undertaken by the Government to follow up the Committee's recommendations, adopted in March 2005 (document CERD/C/IRL/CO/2). His report on the visit was contained in document CERD/C/69/Misc.9. The follow-up procedure was still in its infancy, and there was no precedent on which to base future action. He suggested that the report should be forwarded to the State party for information, in the light of any comments by Committee members.

45. The following States parties were due to submit follow-up comments before the next session: Azerbaijan and Bahrain (still outstanding from the current session), Barbados, Georgia, Nigeria, Tanzania, Turkmenistan, Venezuela and Zambia.

46. Mr. THORNBERRY (Rapporteur) asked whether all the comments submitted by States parties under the follow-up procedure should be included in full in the Committee's annual report to the General Assembly.

47. The CHAIRPERSON suggested that a reference to the comments, giving the relevant document symbol, should be included, rather than the full text.

48. Replying to comments by Mr. KJAERUM (Follow-up Coordinator) and Mr. THORNBERRY (Rapporteur), he said that Mr. Kjaerum would draft replies to the States parties, in consultation with the country rapporteurs. He had already informed the Committee of their contents, and members would therefore not need to review the letters formally again.

49. Mr. ABOUL-NASR, speaking on a point of order, said that no letter should be sent in the Committee's name unless it had had the opportunity to discuss it.

50. The CHAIRPERSON said that the draft letters would be circulated to all members of the Committee for comment before they were dispatched to the States parties concerned.

51. Mr. THORNBERRY (Rapporteur) noted that the submission of State party comments on their follow-up to the Committee's recommendations was a new practice and that the Committee might therefore need to decide whether to include them in the annual report.

52. Mr. PILLAI (Vice-Chairperson) said that the Follow-up Coordinator's report on his visit to Ireland was likewise the first of its kind. It should be summarized in the Follow-up Coordinator's report on his activities, which would form part of the Committee's annual report.

53. Mr. AMIR pointed out that some aspects of the dialogue between States parties and the Committee might be confidential.

54. The CHAIRPERSON said that the States parties' responses were not confidential in any way. He suggested that the debate on the coverage of State party responses in the Committee's annual report should be postponed to a subsequent meeting.

55. It was so decided.

The meeting rose at 1.05 p.m.