



**International Convention on
the Elimination
of all Forms of
Racial Discrimination**

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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Sixty-fifth session

SUMMARY RECORD OF THE 1647th MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 4 August 2004, at 10 a.m.

Chairman: Mr. SICILIANOS
(Vice-Chairman)

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In the absence of Mr. Yutzis, Mr. Sicilianos (Vice-Chairman) took the Chair.

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

ORGANIZATIONAL AND OTHER MATTERS (agenda item 2) (continued)

Response of the Committee to the request by the Intergovernmental Working Group on the effective implementation of the Durban Declaration and Programme of Action (CERD/C/65/Misc.17)

1. The CHAIRMAN recalled that, at its second session, the Intergovernmental Working Group on the effective implementation of the Durban Declaration and Programme of Action had invited the Committee to submit its written views on the effectiveness of the Convention on the Elimination of All Forms of Racial Discrimination, including its implementation. In that connection, he drew attention to a document prepared by the secretariat under the supervision of Ms. January-Bardill. The document was entitled a “Draft in progress”. He suggested that, following its introduction, the Committee should have a preliminary exchange of views before considering the draft document paragraph by paragraph.
2. Ms. JANUARY-BARDILL said that the document before the Committee demonstrated the valuable contribution of the Committee’s work to the implementation of the Durban Declaration and Programme of Action. It could also serve as a useful tool in the consideration of the reports submitted by States parties under article 9, paragraph 1, of the Convention.
3. One of the tasks of the Intergovernmental Working Group was to consider the preparation of complementary international standards to strengthen and update international instruments against racism, racial discrimination, xenophobia and related intolerance in all their aspects. At its first session, in January 2003, the Working Group had had a preliminary exchange of views with two members of the Committee on the application of existing international standards and on the issue of complementary standards. At the conclusion of the session, the Working Group had invited the Committee to consider evaluating and assessing, as appropriate, the current implementation of the Convention in the context of manifestations of contemporary forms of racism and to provide the Working Group with its views on possible areas where complementary international standards might strengthen the fight against racism, racial discrimination, xenophobia and related intolerance.
4. Three members of the Committee had attended the Working Group’s second session, held in January and February 2004. Since the Committee had not yet considered the issue of complementary standards, they had given their personal views on the matter. They had agreed that the existing international instruments were adequate and that the real problem in effectively combating racism was a lack of political will. At the same time, contemporary forms of racism, particularly racism on the Internet, though partly addressed in article 4 of the Convention, required further examination by the Committee. The Acting United Nations High Commissioner for Human Rights had suggested that a complementary standard was needed to prevent the propagation of racist hatred through the Internet and that an international convention on human rights education would be desirable. At a subsequent meeting, the Bureau had agreed that there

was also a need to make the Committee's contribution to the implementation of the Durban Declaration and Programme of Action more visible, to develop a more effective format for communications so as to enhance the implementation of article 14, and to update the booklet on the Convention.

5. The document under consideration highlighted the normative standards contained in the Convention, demonstrated how the Committee monitored the application of those standards through its examination of States parties' reports and outlined the parallels with the standards recommended in the Durban Declaration and Programme of Action. The Committee would first take up the executive summary, which consisted of three introductory paragraphs and two sections containing concluding remarks on the implementation and effectiveness of the substantive provisions of the Convention and on the implementation and effectiveness of the Committee's procedures.

6. The first introductory paragraph described the main obstacles to overcoming racial discrimination and achieving racial equality, drawing on the language of the Durban Declaration. The second dealt with the issue of ratification of the Convention. The third stressed the need to make the Convention and the Committee's recommendations and jurisprudence more visible and more accessible to all.

7. The concluding remarks on the implementation and effectiveness of the substantive provisions of the Convention described the steps taken by the Committee to ensure compliance with articles 1-7 of the Convention, the progress made and the remaining problem areas, including the persistence of de facto racial segregation, the perceived conflict between the right to freedom of opinion and expression, and the requirement under article 4 to prohibit all dissemination of ideas based on racial superiority or hatred, and the difficulties faced by victims of racism in obtaining effective remedies. It was suggested that an international declaration on cultural rights should be adopted in order to foster a common understanding of the concept, and support was expressed for the Working Group's recommendation concerning the adoption of guidelines on the promotion of tolerance, cultural interaction, respect for cultural diversity and human rights guaranteed at the international level.

8. The concluding remarks on the implementation and effectiveness of the Committee's procedures highlighted the Committee's efforts, in cooperation with other treaty bodies, to enhance reporting by States parties; the success of the review procedure in motivating States to submit overdue reports; the recent decision to appoint a rapporteur for follow-up on the Committee's recommendations; the effectiveness of the early warning measures and urgent action procedures, which had enabled the Committee to take a more active role in preventing racial violence and intolerance; and the need to increase the number of States that had made the declaration under article 14 and to make the individual communications procedure more accessible. Lastly, it was suggested that a new optional protocol to the Convention should be drafted to allow the Committee to make country visits. Such visits would enhance the dialogue with States parties and enable the Committee to meet representatives of national human rights institutions.

9. The CHAIRMAN said that the authors were to be commended for preparing a comprehensive document that complied with the Working Group's request for the Committee to examine both the effectiveness of the Convention and the procedures for its implementation.

10. Mr. ABOUL-NASR said that, while the document was excellent overall, it did not adequately address the issue of the Committee's reports to the General Assembly. The reports were taken up by the Assembly under a very wide-ranging agenda item, with the result that no one referred to them or perhaps even looked at them. In the document, the Committee should call for its reports to the Assembly to be given the attention they merited.

11. The CHAIRMAN said that that point had been made in the third introductory paragraph. However, the Committee might wish to use more forceful language. It could make the necessary amendments when it began its paragraph-by-paragraph consideration of the document.

12. Mr. de GOUTTES considered that the authors had produced an interesting and valuable document. He was not convinced, however, of the need for a new optional protocol on country visits. The Committee would retain greater flexibility if a mechanism could be devised whereby country visits were made within the framework of the early warning and urgent action procedures, as the Committee had previously envisaged. He expressed regret that the authors had not given greater prominence to those procedures, which constituted one of the Committee's most important innovations. In the light of those concerns, he proposed that the single paragraph on country visits should be amalgamated with the paragraph on early warning and urgent action procedures.

13. Mr. AMIR said that the document was so long that it was difficult to discern its main thrust. The crucial points were made in the executive summary. As the authors stated, the obstacles to overcoming racial discrimination and achieving racial equality lay not in the inadequacy of the existing international standards but in the lack of political will to implement them. The Committee needed to produce a shorter, more reader-friendly text that could be used by all the political actors responsible for implementation of the Durban Declaration and Programme of Action. He proposed that, instead of proceeding on an article-by-article basis, the document should examine the implementation and effectiveness of the Convention as a whole.

14. Mr. SHAHI agreed with Mr. de Gouttes that country visits came within the scope of early warning and urgent action procedures, and should therefore be incorporated into the relevant paragraph in the draft document. He was concerned that since the Committee only met for two sessions a year, it would not have sufficient time to address current developments in all States parties, as mentioned in that paragraph. He wished to know who would monitor those developments during intersessional periods.

15. Mr. KJAERUM considered that the draft document should be published and made available to a wider audience as a booklet, in an effort to publicize the Committee's work. The process of adopting the document would provide the Committee with an opportunity to discuss methods of strengthening the implementation of the Convention. The way in which the document sought to use existing mechanisms to deal with new problems, such as racism on the Internet, should be commended. In the event that the Committee decided to draft an optional protocol on country visits, the Optional Protocol to the United Nations Convention against Torture could serve as a useful model.

16. Mr. HERNDL supported Mr. Kjaerum's suggestion that the draft document could be used to publicize the Committee's activities in relation to the individual provisions of the Convention. The document rightly referred to the problems encountered regarding State party reports, such as late submission.
17. As to new procedures, organizing country visits would, in his view, be a productive step for the Committee. Such visits could either be considered to come within the scope of early warning and urgent action procedures, or could be classified separately. General country visits to "enhance the dialogue between the Committee and States parties" might not necessarily relate to grave violations of the Convention, but could provide the Committee with a method of obtaining additional information on which to base future discussions. He did not consider it necessary to adopt an optional protocol relating to visits since the drafting, adoption and ratification processes were extremely time-consuming, and the Committee would subsequently be restricted to visiting only countries which had ratified the protocol. The Optional Protocol to the Convention against Torture would not provide an appropriate model since it related specifically to visits to investigate conditions in detention facilities.
18. Although consideration must be given to the financing of country visits, the amount of funding necessary would depend on the type of visits to be carried out and the number of Committee members taking part. He did not think that the granting of additional funding would be dependent on the existence of an official instrument such as an optional protocol.
19. Mr. LINDGREN ALVES said the document should emphasize that one of the main problems of the Convention was that, as with all instruments of international law, its successful implementation depended greatly on the political will of the States parties. Reference should be made to the fact that the Convention was a comprehensive document, which allowed the Committee to take extra measures if they were deemed necessary. However, not all States parties abided by the Convention or the recommendations of the Committee.
20. The CHAIRMAN agreed that it was important to mention the effect of the political will of States parties on the implementation of the Convention.
21. Mr. CALI TZAY considered that the "draft in progress" was a comprehensive document. He agreed with Mr. Aboul-Nasr that the Committee's work deserved to be better known and recognized.
22. Mr. TANG Chengyuan, referring to the new inquiry procedure, said that if the Committee had reliable information that there had been a violation of the Convention in a particular State party, it would need to conduct an inquiry. He wished to know how the inquiry procedure would differ from the procedure for requesting further information during the reporting period under article 9 of the Convention. He asked how the Committee would deal with inquiry requests submitted during intersessional periods. He supported the idea of conducting country visits, but considered that restricted financial resources could pose a problem. In the past, certain States parties had invited the Committee to visit, but not all countries would be prepared to bear the cost of such a visit.

23. Mr. PILLAI considered that the executive summary should be presented to the Intergovernmental Working Group as a document in its own right, and the rest of the draft document should be treated as an annex to the annual report on the work of the Committee. Although he understood the concerns expressed by Mr. Herndl in relation to a possible optional protocol to the Convention, he considered that it would be worth taking the time to draft one, since it would receive greater official recognition than a decision by the Committee on the implementation of a new procedure.
24. Mr. ABOUL-NASR said the fact that the Convention had not been translated into Arabic could in itself be considered racial discrimination since over 22 countries used Arabic as an official language. It was imperative that the Convention and all documents relating to the work of the Committee be translated; the Committee should make a recommendation to that effect.
25. Mr. AVTONOMOV considered that country visits should be classified as a new procedure, although they also related to other existing procedures such as early warning and urgent action. Visits could fall within the scope of follow-up procedure, since it was sometimes necessary to visit a country in order to have a clearer understanding of the position of the Government. In certain cases, visits would also be useful during the review procedure, in order to get a holistic view of the situation in a State party. In previous cases, such as the review of Laos, the Committee had held meetings with NGOs but had only received information on limited aspects of its investigation. In such cases, country visits would give the Committee the opportunity to obtain a general overview of the situation in the country in question.
26. Bearing in mind their considerable financial implications, country visits should be restricted to cases where there were reasonable grounds for suspecting grave violations of the rights guaranteed in the Convention. Country visits, in conjunction with technical assistance in the preparation of periodic reports, could be particularly useful in cases such as Saint Lucia, where dialogue had lain dormant for some time. However, clear criteria must be established to determine the necessity of such visits in a given country.
27. In the light of the current absence of a legal basis for the new procedure, the preparation of a relevant protocol was crucial. While requesting authorization from the Secretary-General on a case-by-case basis might provide an interim solution, the establishment of country visits as one of the Committee's regular procedures required a solid legal framework. The question of financing also needed to be addressed. He thought it preferable to fund country visits through the regular United Nations budget instead of having recourse to State party support. The latter option could potentially undermine the independence of such missions. Notwithstanding those difficulties, he supported the institution of the new procedure.
28. Mr. VALENCIA RODRÍGUEZ said that the draft document would certainly prove a useful tool. He strongly supported its publication as a separate document in all six official languages and its submission to the General Assembly together with the Committee's annual report.
29. While the value of an optional protocol was beyond doubt, experience had shown that the formulation of such instruments was often a protracted process. For the sake of efficiency, he therefore proposed linking the country visits to the existing early warning mechanism. Integrating the new procedure into that mechanism might also solve the problem of financing. In

accordance with past practice, in cases where such visits were considered appropriate, resources could be made available through the Office of the High Commissioner for Human Rights. He, too, objected to the idea of State party funding.

30. Mr. BOYD thanked the secretariat and Ms. January-Bardill for their excellent work in drafting the document before the Committee.

31. He noted the emphasis placed on eliminating legal barriers to equality in the first paragraph of the executive summary, but stressed that achieving de facto equality was an even greater challenge and often exceeded Governments' means. While it was important to guarantee equality in legislation, social impediments to equal participation in public life should be formally acknowledged. He therefore proposed including a specific reference to that situation in the document. He also proposed amending the first sentence of the executive summary to read: "The Committee notes that the Durban Declaration acknowledges 'the obstacles ...'."

32. The CHAIRMAN said that, while he appreciated Mr. Boyd's concern about de facto racial equality, the key message of the introductory paragraph was the concern about the lack of political will to achieve racial equality.

33. Mr. THORNBERRY said that an additional protocol would certainly address the legal and financial implications of country visits and enhance the Committee's profile. It could also accommodate a more formal link between country visits and the early warning and urgent action procedures.

34. Conflict prevention was an important aspect of the protection of human rights and he encouraged further discussion on the potential role of country visits in that regard. The Committee should also give further consideration to its role in the development of indicators for conflict prevention, in particular in the light of the recent appointment of a Special Adviser on the Prevention of Genocide.

35. Country visits were a powerful tool for gaining insight into the realities in a given country. Combined with an element of technical assistance, they could foster a constructive dialogue with States parties. Although the process of drafting an optional protocol might take years, he firmly supported the idea.

36. The publication of the document on the implementation of the Convention would be particularly meaningful given the scarcity of studies on racial discrimination. The document accurately captured the contemporary dimension of the issue and its publication would lend greater visibility to the Committee's activities. He proposed including additional information on the Committee's collaboration with NGOs, as their contributions were of vital importance to its work. A special rapporteur on follow-up should be appointed as a matter of urgency.

37. He drew attention to the work done by UNESCO in developing an international convention on cultural diversity. The Committee was clearly in a position to contribute substantially to such an endeavour, and in that connection, strengthening its links with the organization could prove beneficial. He also proposed further discussion on Mr. Boyd's observations concerning the law and its limitations, and the role of education in that regard.

38. Mr. AMIR reminded the Committee that the High Commissioner for Human Rights had taken note of its interest in participating in conferences on peacekeeping, security and human rights-related issues between sessions. The High Commissioner had also undertaken to ensure that the General Assembly in future paid greater heed to treaty bodies' annual reports. He wondered whether a reference to the High Commissioner's pledge could be included in the draft document.

39. It would be useful to establish whether the financial implications, of the non-ratification of article 8 of the Convention imperilled the Committee's work. If so, it might be useful to draw the General Assembly's attention to that fact by including a reference to the difficulties arising in relation to that article in the document.

40. Thus far, the rapporteur had relied exclusively on written documents in the formulation of reports. Country visits would make it easier to obtain first-hand information on the situation in the country concerned and thus enhance the credibility of the reports. When addressing the issue in the past, he had been informed that statutory limitations on the rapporteur's mandate precluded the possibility of such a procedure. However, while the Convention had remained unchanged, there had been important developments in the field of human rights and procedures needed to be adapted accordingly. He therefore proposed the incorporation of a relevant amendment in an optional protocol. Country visits would both underpin the Committee's work and facilitate more active participation in the process of eliminating racial discrimination. In that connection, the High Commissioner's commitment to increasing the Committee's participation in peace-related activities was promising. An important proportion of the United Nations budget was allocated to peacekeeping and conflict prevention activities; the protection of human rights was equally important and warranted due attention.

41. The CHAIRMAN thanked the secretariat and Ms. January-Bardill on behalf of the Committee for the excellent draft document. He took note of the widespread support expressed and invited members to consider the document paragraph by paragraph.

First to third paragraphs of the executive summary

42. Mr. ABOUL-NASR said that, while the third paragraph pointed to a lack of publicity for the Committee's work, it failed to mention the lack of recognition on the part of the General Assembly. He therefore proposed including a specific reference to that situation.

43. Mr. LINDGREN ALVES said that the document should stress the value of the Convention. He proposed adding the following sentence at the end of the first paragraph: "The Committee fully agrees with that observation and stresses further that, as is the case with all international normative standards, the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) is very useful and effective for States which really wish to abide by it. ICERD is a good instrument that has helped in improving many situations. Where it has failed, it is because political will is inconsistent in the States concerned."

44. Mr. HERNDL said that particular attention should be paid to the wording of the executive summary as some sentences presented the Committee's views as beyond dispute. He proposed that the word "stresses" should be replaced by the word "notes" in the first and second paragraphs. In the third paragraph, "its recommendations" and "its jurisprudence" should be

amended to “their recommendations” and “their jurisprudence”. “It is a regrettable fact”, in the second sentence of the third paragraph, should be replaced by “It is a fact to be regretted”. In the last sentence “so as to provide” should be amended to “with a view to providing”. Such details were important, given that the executive summary and the introduction would be the most widely read sections of the document.

45. Mr. PILLAI suggested that the executive summary should begin on a more positive note, rather than alluding to the obstacles to overcoming racial discrimination. The following preamble should be inserted at the beginning of the text, before the paragraph proposed by Mr. Lindgren Alves. “The role of the International Convention on the Elimination of All Forms of Racial Discrimination in combating racial discrimination cannot be overemphasized. The Convention sets many standards for its implementation by States in diverse dimensions: political, legal, administrative and social.”

46. Mr. THORNBERRY requested clarification, in the light of Mr. Herndl’s comment on wording, on whether the Committee had actually been providing protection (cf. third paragraph, last sentence).

47. The CHAIRMAN asked Mr. Herndl to transmit editing proposals to the secretariat. The rapporteur would then check the revised text and the document would be redrafted, indicating the amendments in bold type.

48. The executive summary was adopted on that understanding.

Concluding remarks on article 1

First paragraph

49. The first paragraph was adopted.

Second paragraph

50. Mr. KJAERUM said that a reference to the 1951 Convention relating to the Status of Refugees and the 1967 Protocol should be made in that paragraph, in accordance with the Committee’s standard practice.

51. The second paragraph, as amended, was adopted.

Third paragraph

52. Mr. THORNBERRY questioned the need for the phrase “although not conventional in nature”, given that it appeared to lessen the importance of the Declaration.

53. Mr. ABOUL-NASR considered that the phrase was useful since a declaration, unlike a convention, was not binding.

54. Mr. THORNBERRY suggested that the phrase should be deleted because it was clear that the text was a United Nations declaration, which was a commonly understood concept. He proposed using the full title of the Declaration, namely, “the General Assembly Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities”.

55. Mr. de GOUTTES proposed replacing the word “instrument” by “declaration” or “text”, given that the Declaration was not an instrument.

56. The CHAIRMAN said that while the United Nations definition of human rights instruments included declarations, the term “instrument” could be amended in the present instance.

57. Mr. AMIR proposed replacing the phrase “remains an important instrument” by “remains important”.

58. Mr. AVTONOMOV proposed including the Committee’s General Recommendation No. 23 on the rights of indigenous people, particularly in the light of the fact that it had been adopted during the International Decade of the World’s Indigenous People, as proclaimed by the General Assembly.

59. The CHAIRMAN, supported by Mr. Lindgren Alves, agreed with that proposal, and further proposed that reference should be made to the Committee’s three General Recommendations on indigenous people, discrimination against Roma and discrimination against non-citizens. Those texts provided clarification of the definition of racial discrimination and the scope of application of article 1 of the Convention.

60. Mr. PILLAI proposed that the first paragraph should be redrafted to include a mention of the Committee’s General Recommendations, given that reference had already been made in that paragraph to the vulnerable groups in question.

61. The third paragraph, as amended, was adopted on that understanding.

Concluding remarks on article 2

62. The concluding remarks on article 2 were adopted.

Concluding remarks on article 3

63. Mr. VALENCIA RODRÍGUEZ proposed the addition of a phrase in the second sentence to make it clear that minority and ethnic groups often chose to self-segregate.

64. Mr. THORNBERRY, supported by Mr. Kjaerum and Mr. Avtonomov, expressed concern at such a statement, given that States parties could interpret it as encouragement to take resolute action against individuals and groups. Self-segregation was a different matter that could, if necessary, be dealt with elsewhere. He proposed including a specific reference to housing and education in the second sentence.

65. Mr. CALI TZAY said that he could not agree with the proposal made by Mr. Valencia Rodríguez since in the majority of cases segregation was the result of government policy, not a voluntary choice by groups such as indigenous people.

66. The CHAIRMAN confirmed that the paragraph, including the reference to housing and education, was in line with the Committee's standard wording on that subject.

67. The concluding remarks on article 3, as amended, were adopted.

Concluding remarks on article 4

First paragraph

68. The CHAIRMAN, supported by Mr. Kjaerum, proposed amending the first part of the sentence to read "The Committee reiterates that article 4, subparagraphs (a) and (b), are compatible with the right to freedom of opinion and expression, and freedom of assembly and association, and urges States parties ...". The existing sentence related only to article 4 (a) of the Convention. An amendment was needed since a number of States parties had formulated reservations to the effect that they could not take measures and enact legislation to comply with article 4 (b) because they had to ensure freedom of assembly and association. The Committee should urge States parties to withdraw such reservations and to enact legislation that would comply with article 4 (a) and (b).

69. Mr. LINDGREN ALVES, while supporting the proposal, requested that the explanatory phrase "the prohibition of the dissemination of all ideas based upon racial superiority or hatred" should not be deleted, given that it would assist people who were not familiar with the Convention.

70. The CHAIRMAN agreed, on condition that a similar phrase was included explaining the content of article 4 (b).

71. Mr. de GOUTTES said that such a solution would result in a very long paragraph. For the sake of brevity, it should be stated that subparagraphs (a) and (b) contained prohibitions, thus prompting the reader to consult the full text of the Convention.

72. The CHAIRMAN said that every effort would be made to find wording that met all requirements. Given that the substance of the paragraph would not be altered, he proposed that the paragraph should be adopted.

73. The first paragraph was adopted on that understanding.

Second paragraph

74. Mr. THORNBERRY proposed that in the third sentence the word "could" should be inserted before "constitute". The last word of the paragraph, "instrument", should be replaced by "Convention".

75. Mr. BOYD expressed reservations about absolute acceptance of article 4. At the end of the first paragraph of the concluding remarks on article 4, he would have added the phrase “where necessary to eradicate existing or imminent identifiable, serious and pervasive discrimination” in order to balance the scope of article 4 against the concepts of freedom of expression, opinion, assembly and association. While recognizing that his was a minority view, he felt it necessary to state it for the record.

76. The CHAIRMAN said that the phrasing of the first paragraph was in line with the general philosophy of the Committee and had been adopted in accordance with the wishes of a number of States.

77. He took it that the Committee wished to defer a decision on the second paragraph of the concluding remarks on article 4.

The meeting rose at 1.05 p.m.