



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

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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Seventy-second session

SUMMARY RECORD OF THE 1866th MEETING

Held at the Palais Wilson, Geneva,
on Monday, 3 March 2008, at 10 a.m.

Chairperson: Ms. DAH

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The meeting was called to order at 10.50 a.m.

FOLLOW-UP TO THE WORLD CONFERENCE AGAINST RACISM, RACIAL DISCRIMINATION, XENOPHOBIA AND RELATED INTOLERANCE (continued)
(CERD/C/72/Misc.7)

1. The CHAIRPERSON, speaking on behalf of the entire Committee, thanked Ms. Prouvez and her team for their excellent work over the weekend in drafting the text of the Committee's replies (CERD/C/72/Misc.7) to the OHCHR questionnaire, prepared pursuant to decision PC.1/10 of the Preparatory Committee of the Review Conference.
2. Ms. PROUVEZ (Secretariat), drawing attention to document CERD/C/72/Misc.7, emphasized several points made in the replies, including the relevance of the Committee's studies E/CN.4/2004/WG.21/10 and Add.1 and A/HRC/4/WG.3/7. Paragraph 3 requested that those studies should be submitted to the Preparatory Committee and to the Review Conference. She pointed out that, in paragraphs 10 and 11, the relevant statistics had yet to be added. The secretariat had included the lists of States parties whose reports were overdue in those paragraphs in order to encourage them to submit their reports. Paragraph 23 included a reference to the Committee's guidelines on follow-up to concluding observations and recommendations, since many States parties were unaware of the existence of that document.
3. Mr. DIACONU proposed that, in paragraph 13, the phrase "an empty exercise" should be replaced by the words "more difficult", since the former was too severe. The suggestion in paragraphs 15 and 20 that four optional protocols should be adopted was excessive. Optional protocols did not constitute a remedy for deficiencies in the Convention and its implementation, since they themselves required ratification. He proposed that, in paragraph 24, the following wording should be added at the end of the last sentence: "not only race in its traditional meaning, and colour, but also descent and ethnic or national origin".
4. The CHAIRPERSON said that the suggestion in paragraph 15 had in fact been to adopt a single optional protocol on the issue of visits. The secretariat would amend the paragraph in order to clarify that point. The optional protocol proposed in paragraph 20 was relevant to all the human rights instruments that provided for the possibility of communications from individuals. That proposal had already been submitted to the other relevant treaty bodies.
5. Mr. AVTONOMOV, referring to paragraph 20, noted that the Human Rights Committee's approach to individual communications differed significantly from that of CERD. He therefore suggested that the recommendation for an optional protocol on communications should be formulated in milder language, particularly in the light of the Committee's doubts about the wisdom of establishing a single treaty body.
6. Mr. LAHIRI recalled that he did not agree with the Committee's attitude to the issue of caste in its general recommendation 29 and was not comfortable with the submission of that document to intergovernmental groups, in particular the Review Conference. He therefore suggested that paragraph 3 be deleted. Likewise, he suggested that, in paragraph 28, the words "and requests their submission for consideration to the Durban Review Conference" should be deleted. Those documents should be discussed at the first level of intergovernmental review, when States that did not agree could express their views.

7. As to article 14 of the Convention, given the relatively few communications received, he wondered if that article needed to be given so much emphasis in the report. Lastly, with regard to paragraph 15, he welcomed the Chairperson's explanation that in fact there would be only one optional protocol dealing with all three issues. The issue of an optional protocol would pose problems but he did not oppose that proposal.

8. The CHAIRPERSON pointed out that the documents referred to in paragraph 3 and those relating to article 14 of the Convention had been transmitted to the Preparatory Committee in September 2007. States parties would have an opportunity to express their views at the Review Conference itself.

9. Mr. LAHIRI enquired whether the documents had been submitted for consideration at the Review Conference or merely by the Intergovernmental Working Group.

10. Ms. PROUVEZ (Secretariat) said that in September 2007, following a call for contributions from the Preparatory Committee, the then Chairperson of CERD, Mr. de Gouttes, had submitted to the first meeting of the Preparatory Committee a letter which included an annex drawing the attention of the Review Conference to the Committee's General recommendations 28, 29, 30 and 31, which had been adopted since the Durban Conference. The reference to those documents in paragraph 3 was therefore redundant in that they had already been submitted for consideration at the Review Conference.

11. Mr. LAHIRI said that if the documents in question had already been submitted to the Preparatory Committee, paragraph 3 could be deleted as he had suggested. His objection was to the submission of the documents directly to the participants at the Review Conference; he would prefer that the matter be dealt with first by the Preparatory Committee.

12. The CHAIRPERSON recalled that when the Committee had met with the representative of the Office of the High Commissioner, Mr. Dougan-Beaca, to discuss preparations for the Review Conference, she had asked whether the submissions made by the Committee to date had been taken into account. The Committee had stressed that those submissions should be reviewed before it undertook to respond to the current questionnaire. Paragraph 3 simply recalled the work done by the Committee since the Durban Conference.

13. Mr. LAHIRI suggested that, if the documents had so far been submitted to the Preparatory Committee only, then in paragraph 3 the words "as well as to participants of the Durban Review Conference for their consideration" should be deleted.

14. Mr. de GOUTTES said that it was important for the Committee to recall its work since the Durban Conference and remain consistent in its actions. While he understood the reservations expressed by Mr. Lahiri, those reservations were not shared by the Committee as a whole. He considered that paragraph 3 should be retained.

15. With regard to paragraph 15 he confirmed that the intention had been to propose only one optional protocol of a procedural nature dealing with all three points.

16. Paragraph 20 could perhaps be redrafted, but it was important that the Committee reiterate its position with regard to a single body for individual communications. Such a body would eliminate inconsistencies in jurisprudence among the treaty bodies, ensure a more coherent approach to communications and increase awareness of the situation of complainants.

17. He supported Mr. Diaconu's suggested amendment to paragraph 24. In paragraph 26, in order to clearly explain the Committee's position with regard to violations involving a link between racial and religious discrimination, he suggested adding the following sentence at the end of the paragraph: "The Committee takes this opportunity to recall that it has jurisdiction only if the religious discrimination is combined with racial discrimination, situations involving only a violation of the right to freedom of religion falling under the mandate of the Human Rights Committee."

18. He welcomed the references in paragraph 28 to General recommendations 29, 30 and 31, and the specific mention in paragraph 32 of the problem of racial profiling, a very topical subject, which had been highlighted in the European Commission against Racism and Intolerance General Policy Recommendation No. 11 on combating racism and racial discrimination in policing. Lastly, he suggested that the list of disadvantaged groups in paragraph 32 should include indigenous peoples and the Roma.

19. Mr. KJAERUM said it was important that the Committee's submissions highlight developments in its work since the Durban Conference. While he understood the concerns expressed by Mr. Lahiri, it was important to refer general recommendation 29 to the Review Conference as it reflected the Committee's long-standing practice with regard to the issue of caste. As to Mr. Avtonomov's concerns about a single body for individual communications, he said that the advantages of moving to a single body would outweigh any disadvantages; the Committee's approach to communications involving racial discrimination might even be considered to be more sound than the approach to communications adopted by the Human Rights Committee. A single body would have a higher profile and greater prestige. Its decisions would carry more weight, thus better serving the interests of complainants and making a greater contribution to the development of human rights jurisprudence.

20. Mr. PROSPER said that the Committee's submissions should recall its work and agreed positions, which participants at the Review Conference would then be free to discuss; it would not be appropriate for the Committee to reopen discussion of positions already adopted at the current time. He expressed concern that if the reference in paragraph 15 to an evaluation visit/inquiry procedure applied to individual complaints as well as the general situation in a State party, the Committee might in the future be overwhelmed by requests for visits to deal with such complaints.

21. Mr. AMIR considered that the wording of paragraph 26 was inappropriate, since the Committee did not address questions of religious hatred. The reference should either be deleted or the Committee should decide to include discrimination on grounds of religion in its work with States parties. In the event that the Committee decided not to address issues of religious discrimination, wording could be added as proposed by Mr. de Gouttes to the effect that the question of religion was within the purview of the Human Rights Committee, and not CERD.

22. Mr. THORNBERRY said it would be inappropriate to suggest that some members were uncomfortable with some of the Committee's recent work. The Committee had done positive work to broaden the understanding of racial discrimination. Members should be pleased with their contributions over recent years, which had been intellectually rich and had expanded the ideas behind the 2001 World Conference, and had translated them into practical action.
23. General recommendation 29 was not specific to any particular country and was couched in courteous terms. It invited Governments to consider whether any forms of descent-based discrimination could exist, while commending the efforts of Governments that had tried to address that phenomenon. He agreed with the suggestion that if any member was not happy with the Committee's work, his or her view should be reflected in summary record.
24. The statement in paragraph 12 of the draft replies that no progress had been made in the withdrawal of reservations since 2001 was bleak. He suggested mentioning that some States parties, such as Fiji, were reviewing their reservations. The term "reservations dialogue" could be incorporated, to indicate the ongoing nature of the withdrawal process.
25. Turning to paragraph 24, he said that referring to "race in its traditional meaning" would be inappropriate; he wished to retain the original wording of that paragraph. On the subject of religious discrimination, he said that intersectionality between freedom from discrimination and freedom of thought, conscience and religion came within the purview of the Committee under article 5 of the Convention. The Committee could therefore address issues of religious discrimination provided that the discrimination was rooted in racial issues.
26. Mr. AVTONOMOV said that the early-warning and urgent-action procedure had not been sufficiently reflected in the draft replies. Since the procedure was relatively new, and guidelines on it had been adopted only in 2007, it deserved greater mention in the present document. While he was not against any of the Committee's work, he was not entirely convinced that the Committee would not be marginalized by the establishment of a single body to deal with individual communications. The Committee already had two Optional Protocols, and a third general optional protocol on communications could cause confusion. The Committee must decide which Optional Protocol to quote in its concluding observations. Although the issue was pressing, it still required further consideration.
27. Mr. CALITZAY welcomed the draft, which he said provided a historical outline of the development of the Committee's work. Although the issue of race and religion would be discussed at length at the Committee's seventy-third session in August 2008, he believed that religious discrimination was generally rooted in racial discrimination. Regarding country visits, he drew attention to document E/CN.4/2004/WG.21/10, which contained the Committee's views on the implementation of the Convention and its effectiveness, and clearly stipulated the conditions for country visits. Part II.E of that document said that in order to enhance the dialogue between the Committee and States parties and facilitate the practical implementation of the Convention, country visits might be envisaged in cases where the Committee, in consultation with the State party, considered that such visits would further the objectives of the Convention.

28. Mr. KEMAL said that the Committee's response to question 3 on States parties' compliance with their reporting obligations should include a reference to the delay between submission of reports by States and their consideration by the Committee. Although many States were behind in their reporting schedule, those that met their obligations often faced considerable delays before their reports came before the Committee. Such delays meant that reports became outdated and resulted in Committee members and States having to do extra work to compile additional information. The Committee's own inability to consider States parties' reports in a timely manner should be mentioned in the replies, in order to give States the possibility to consider how that problem could be addressed.

29. The CHAIRPERSON said that the question of delays in the consideration of States parties' reports would be discussed at the Committee's next session.

30. Mr. de GOUTTES agreed with Mr. Avtonomov that further information should be added to paragraph 14 on the early-warning and urgent-action procedure, including information on different crisis indicators. The procedure deserved to be highlighted, and the fact that it had already had positive results should be mentioned.

31. Mr. PETER said that he could endorse paragraph 3 since it took into account the Committee's established doctrine. As to paragraph 7, he suggested that the secretariat should change the wording to indicate that, even though universal ratification had not yet been achieved, the Committee was encouraged by the increase in the number of States parties to the Convention. That was more positive than expressing its regret that 100 per cent ratification had not been achieved.

32. With regard to paragraph 15, only one optional protocol should be adopted. The proposed optional protocol should be divided into two parts: one to address procedural aspects and the other to address new forms of racism. The Committee performed the function of a think-tank on contemporary forms of racism, racial discrimination, xenophobia and related intolerance. As such, it possessed a store of knowledge on existing forms of racism that were not covered explicitly in the Convention. An opportunity should be given to States parties and to the principal stakeholders to specify which forms of racism they thought should be addressed by the proposed optional protocol.

33. He agreed that there was a close relationship between religion and racism and, consequently, he could agree to the wording of paragraph 26. The final document containing the Committee's replies should be shorter and more concise than the current draft and should be presented in a format that would ensure easy understanding and identification of the Committee's recommendations.

34. The CHAIRPERSON recalled that the draft replies under consideration had been based not on proposals by the secretariat but rather on a compilation of Committee decisions that had been taken in the period since the 2001 World Conference.

35. Mr. THORNBERRY said that he echoed Mr. Peter's support for the wording of the last sentence of paragraph 26. With regard to the substantive issues raised by Mr. Peter, on the other hand, it was his understanding that the Committee's view was that the interpretation of the Convention as it currently stood was probably sufficient, and that there was no identifiable need for a substantive optional protocol. The Committee had often noted that its progressive interpretation of the Convention had served to expand the sense of the Convention, thereby enabling it to keep pace with modern developments. At the same time, he was aware that Committee members might wish to reconsider that view.

36. Mr. de GOUTTES, clarifying a point made earlier concerning the last sentence of paragraph 26, said that he had merely wished to recall that, on the basis of a long-standing interpretation of ICERD, the rights set out in article 5 had not been established by ICERD but rather by the International Covenant on Civil and Political Rights. The purpose of ICERD was, inter alia, to establish the obligation of States parties to prevent racial discrimination in the exercise of those rights. He suggested that the Committee should reiterate that distinction in the form of a footnote to paragraph 31, given the importance of respecting the separate spheres of competence of the two treaty bodies concerned.

37. Mr. EWOMSAN said it was at the national level that racial discrimination could be fought most effectively. Thus, one of the Committee's chief tasks was to encourage States parties to take legal, administrative and pedagogical measures in order to eliminate all forms of racial discrimination. He supported the comments made by Mr. de Gouttes. He was not opposed to the development of an optional protocol, but felt it was necessary first to ensure that States parties complied with the Convention itself.

38. Mr. AMIR, referring to paragraph 26, said that the problem facing the Committee was to determine whether to leave matters relating to religion to the Human Rights Committee or to consider that racism that led to religious hatred should be treated as dual discrimination.

39. Mr. KJAERUM said that when the Committee addressed anti-Semitism or Islamophobia, it did so because they were linked to discrimination against a particular ethnic or racial group. In those cases, there was a close relationship between religion, culture and national and ethnic origin. A campaign of hate speech against members of the Baha'i faith in Iran, on the other hand, was religious persecution, not racism, and therefore did not fall within the scope of ICERD but rather within that of the International Covenant on Civil and Political Rights. It made sense to have such a division of labour between CERD and the Human Rights Committee.

40. Mr. EWOMSAN said the problem was complex owing to the fact that religion was a social phenomenon that often gave rise to cultural conflicts. It was when there was dual discrimination that the Committee was competent to take up the question of religion. Yet, even in the case of Islamophobia, for example, there was not always a clear link to a particular ethnic or racial group, since Islam was a universal religion. The fact that freedom of religion must be linked to racial discrimination in order to fall within the Committee's competence did not diminish the importance of that right.

41. Mr. ABOUL-NASR said that he could endorse the draft replies as they stood. He suggested that, if there were no specific proposals for amendments to the draft, the Committee should proceed to its adoption.
42. The CHAIRPERSON said that the secretariat had noted and would incorporate the various contributions, proposals, and editorial changes suggested by members. She thanked the secretariat for its success in producing a faithful record of the Committee's work since the Durban Conference. She took it that the Committee wished to adopt the draft replies to the questionnaire, as amended.
43. It was so decided.

The meeting rose at 1 p.m.