

**INTERNATIONAL
CONVENTION
ON THE ELIMINATION
OF ALL FORMS OF
RACIAL DISCRIMINATION**



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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Eleventh Session

SUMMARY RECORD OF THE TWO HUNDRED AND FORTY-FIFTH MEETING

Held at Headquarters, New York,
on Thursday, 17 April 1975, at 3.35 p.m.

<u>Chairman:</u>	Mr. SOLER
later:	Mr. HAASTRUP
<u>Rapporteur:</u>	Mr. SAYEGH

CONTENTS

Consideration of reports, comments and information submitted by States parties under article 9 of the Convention (concluded)
(f) Third periodic reports of States parties due in 1974 (concluded)
Organization of work of the twelfth session

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES
UNDER ARTICLE 9 OF THE CONVENTION (concluded)

(f) THIRD PERIODIC REPORTS OF STATES PARTIES DUE IN 1974 (concluded)

United Kingdom (CERD/C/R.70/Add.34) (continued)

Mr. SAYEGH noted that at the previous meeting Mr. Partsch had supported the views expressed in the report of the United Kingdom (CERD/C/R.70/Add.34) concerning the relevance of article 29, paragraph 2, of the Universal Declaration of Human Rights to the application of article 4 of the Convention. He doubted whether any State party to the Convention would argue that the just requirements of morality, public order and the general welfare in a democratic society had no bearing on the obligations laid down in the Convention. However, that limitation could be applied equally to such freedoms as those of expression and association when the latter encroached on the right to freedom from racial discrimination. Moreover, article 29, paragraph 2, of the Universal Declaration could not be invoked as a limitation on the freedom of expression.

Referring to article 30 of the Universal Declaration, he doubted whether the idea of the destruction of a right was tantamount to, or synonymous with, that of the limitation of a right. In his view, article 30 referred to the total destruction, the disestablishment or the non-recognition of a right by a State party, and not to the limitation of a right. Moreover, if the Committee accepted the thesis that the concept of the limitation of rights was subsumed under that of the destruction of a right, the whole purpose of article 29 of the Universal Declaration would become doubtful and it would be difficult to reconcile articles 29 and 30 if the limitations envisaged under article 29 were synonymous with the destruction of rights and freedoms prohibited in article 30. In that connexion, he pointed out that while article 5, paragraph 1, of each of the International Covenants on Human Rights repeated the language of article 30 of the Universal

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Declaration, the paragraph in question also included the words "or at their limitation to a greater extent than is provided for in the present Covenant"; that represented an admission that the destruction referred to was not synonymous with limitation. It should also be noted that the right of a State to limit the exercise of the rights proclaimed in the Universal Declaration was not derived from the Declaration itself but from the introductory part of article 4 of the Convention, which stated without qualification that States parties "undertake to adopt immediate and positive measures designed to eradicate all incitement to, or acts of" racial discrimination. The undertaking in question preceded, and therefore was not governed by, the clause concerning due regard for the principles of the Universal Declaration, which governed only the remainder of the article. In that connexion, he said he agreed with the view expressed by Mr. Ingles to the effect that the aforementioned undertaking required the eradication of all incitement to, and acts of, racial discrimination, regardless of whether or not the incitement actually gave rise to acts of racial discrimination

Mr. ORTIZ MARTIN said that, while the report of the United Kingdom was satisfactory from almost every point of view, the interpretative statement contained in paragraph 24, to the effect that each State party to the Convention retained the right to determine what sort of legislative measures it would take to implement article 4, was fraught with the most serious consequences. He noted that international law had been constantly evolving as a result of the work of the United Nations, and that the Committee had been established to supervise and ascertain the implementation of the Convention. To fulfil its task, it had been entrusted with certain powers, including, in particular, that of interpreting the provisions of the Convention. Each State party also exercised the right of interpretation at several levels. The problem was therefore to determine the extent of the interpretative powers of the Committee. In his view, the Committee had the characteristics of a court and functioned as such in the exercise of its powers; that role was of decisive importance for the life of the Committee and the emergence of a new international legal order. In the circumstances, he was deeply disturbed,

(Mr. Ortiz Martin)

by the implications of the interpretative statement by the United Kingdom, which could lead to a chaotic situation in which each State retained the right to interpret article 4 as it saw fit. It raised problems of fundamental importance, since it involved determining whether the Committee or each State party had competence to define the scope of article 4 of the Convention. He therefore felt that the Committee should give serious consideration to the United Kingdom's statement and to the questions of interpretation which it raised.

Mr. PARTSCH, referring to article 29, paragraph 2, of the Universal Declaration of Human Rights, said that he did not deny that racial discrimination was a matter of public order. However, the wording of article 5 of each of the two International Covenants on Human Rights showed that the destruction of a right, on the one hand, and the limitation, or virtual destruction, of a right, on the other, were regarded as of equal importance. The Universal Declaration and the International Covenants dealt with the limitation of rights in different ways. The Universal Declaration contained only a general clause embodied in article 29, while the International Covenants contained specific articles relating to the limitation of rights. For example, while article 19, paragraph 1, of the International Covenant on Civil and Political Rights stated that "Everyone shall have the right to hold opinions without interference", paragraph 3 of that article indicated that any limitation of that right must not only be motivated by respect for the rights or reputation of others and by the protection of national security or public order, but must also be provided by law and be necessary. It was clear, therefore, that there existed a limit to the limitations spelled out in article 5, paragraph 1, of the two Covenants.

Mr. ABOUL-NASR drew attention to the fact that the Universal Declaration of Human Rights was a declaration of intention, and not a binding legal document, and that it had been for that reason that the International Covenants had been adopted by the General Assembly. With reference to the reservation expressed by the United Kingdom regarding the implementation of article 4 of the Convention, he pointed out that the Committee was bound by that reservation, which had been made by the United Kingdom when it had ratified the Convention. In that connexion, he

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(Mr. Aboul-Nasr)

drew attention to article 20, paragraph 2, of the Convention, which stated that "a reservation shall be considered incompatible or inhibitive if at least two thirds of the States Parties to this Convention object to it", and noted that the United Kingdom reservation had been accepted without objections.

Mr. DAYAL said that, since the Committee had taken the view that it was a clearing-house of ideas, it could not avoid making a comparative assessment of the reports submitted to it. He therefore drew attention to the parallel between the situations in the United Kingdom and the Netherlands in matters relating to race relations, and the differences in the way in which the two countries dealt with those situations. In that connexion, he noted that the report of the United Kingdom was the only one which referred to a category of persons as "coloured", and said that the description of a group of persons by reference to their pigmentation had racist connotations which should be avoided. In that respect, the language adopted in the report of the Netherlands was more appropriate, since it referred to immigrants from the former Dutch colonial empire as Surinamese, Antilleans, Moluccans, and so on. He therefore expressed the hope that a similar nomenclature would be adopted by other States parties when dealing with such problems. He also considered it noteworthy that Netherlanders of Indonesian stock who had immigrated to the Netherlands in the 1950s had been described as ideally suited to assimilation, whereas the Netherlands had subsequently found it difficult to assimilate migrant workers who, as Europeans, had greater ethnic affinities with the Dutch population. The difficulties arose from the fact that the migrant workers generally came with the intention of returning to their own countries, whereas the earlier immigrants had come to stay.

Referring to what had been described as the phenomenon of "Powellism", he noted that a party which had campaigned in the 1974 elections for the Hague Municipal Council under the slogan "The Hague must stay white and safe" had not returned a single candidate (CERD/C/4, para. 3 (d)). It would be useful if the United Kingdom would provide the Committee with information on political parties in

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(Mr. Dayal)

that country which were covered by article 4 and other articles of the Convention. In that connexion, he pointed out that other countries had already provided the Committee with information on parties of a racist nature.

Referring to the comments concerning the United Kingdom's interpretative statement regarding its obligations under article 4 of the Convention, he noted that there appeared to be general agreement that it was not the exclusive prerogative of a State party to interpret article 4 of the Convention. In decision 3 (VII), the Committee had expressed its views concerning the obligations of States parties under article 4 and had called on States parties to indicate whether specific legislation had been enacted to implement its provisions, and if not, to inform the Committee of the manner in which existing laws satisfied that requirement. The report of the United Kingdom stated that no specific legislation had been enacted, but it was not clear whether there existed previous legislation which fully met the requirements of article 4; it would be useful if the Committee could be provided with information on that point. It would also be interesting to know whether such bodies as the Race Relations Board and the Community Relations Commission co-operated in dealing with problems of race relations in the United Kingdom.

He expressed his agreement with the comments made by Mr. Valencia Rodriguez at a previous meeting of the Committee concerning the establishment of a racial balance in employment, and wondered whether it was necessary to provide for exceptions in that field. He had similar doubts on the subject of charities. Further information on those questions would be appreciated.

In conclusion, he said he was pleased to note that the Race Relations Board was giving serious consideration to the problem of "passive" discrimination, and expressed the hope that it would be given greater powers to deal effectively with that phenomenon.

Mr. INGLES said that no definite position could be taken with respect to the United Kingdom's interpretative statement until the International Court of Justice had given its opinion. He was, however, more interested in the effect of the statement. According to article 20, paragraph 2, of the International Convention, at least two thirds of the State parties to the Convention must object

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to a reservation in order for it to be considered incompatible or inhibitive. In the present case, no such objections had been raised. It would be seen from article 20 of the Convention that States parties that made reservations would be bound by rules different from those governing the States parties which had not made reservations. Such a situation would be intolerable. Consequently, the interpretative statement should be applicable to all States parties and not just to the United Kingdom.

Mr. CALOVSKI said that if a State party felt that it had the right to determine what further legislative measures it would take to implement article 4, as stated in paragraph 24 of the United Kingdom report, it should be under the obligation to prove that the measures it had already undertaken were sufficient to meet fully all the obligations assumed under article 4. If the Committee found that the measures were not sufficient, it could so inform the State party and the latter would be obliged to enter into a dialogue.

Mr. DAYAL agreed that more information was required on United Kingdom immigration policies to see if there was any discrimination that fell within the purview of the Convention. He pointed out that the original intention behind article 9 of the Convention, under which States parties were required to report on legislative, judicial, administrative or other measures, had been to ensure that States parties registered advances simultaneously along the entire front. It would be interesting to know whether any periodic review was carried out in the United Kingdom to ensure that simultaneous advances were made on all fronts.

The CHAIRMAN, speaking in his personal capacity, expressed appreciation for the comprehensive report of the United Kingdom. With regard to the obligations under article 4 of the Convention referred to in paragraph 22 and subsequent paragraphs of the report, he said that account should be taken of the reservations the United Kingdom had made when signing the Convention and of sections 6 and 7 of the Race Relations Act. Difficulties had arisen more than once in the past concerning the interpretation of article 4, particularly with regard to its scope.

The reasons for such difficulties were twofold. On the one hand, the Universal Declaration of Human Rights contained a great many general principles

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(The Chairman)

and, in a way, was a moral code designed to serve as an ideal and a guide for subsequent legislation. Difficulties arose when an attempt was made to put those principles into practice in legislation for, in real life, no principle was absolute but had to be limited in order not to conflict with other equally valid principles. Even the right to life had in certain cases to be qualified. It was clear therefore that, while extolling the value of non-discrimination and equality, the Committee must also take account of the other rights with which that right might conflict.

On the other hand, whenever an attempt was made to punish an offence, there were two principles that could not be violated. The first was the principle that the law establishing a penalty for a particular action must predate the action and, moreover, must be precisely worded so that no judge could depart from the definition and include under the law actions which it was not intended to cover. The second principle was the principle of objectivity, in that modern penal law tried to observe freedom of conscience and of speech and established penalties for overt actions, not for inner thoughts.

The Race Relations Act contained provisions which he found very prudent and which seemed reasonable in a country like the United Kingdom, particularly as the Government had been so open in its report and had dwelt on the bad as well as the good points. The Committee should not favour the establishment of prior censorship since it was preferable to maintain the principle of freedom and risk the publication of discriminatory material rather than to preclude the possibility of any material being published that ran counter to the views of the Committee. It was hard to draw the line between theory, on the one hand, and propaganda and dissemination of ideas, on the other.

Finally, he had no special comments to make with regard to paragraph 22 and the following paragraphs in the United Kingdom report. He congratulated the United Kingdom representative on the excellence of the document.

Mr. SAYEGH recalled that the United Kingdom had made three reservations and four interpretative statements, the latter in connexion with articles 4, 6, 15 and 20 of the Convention; it had not made a reservation with respect to article 4, as was clear from document CERD/C/R.72.

Mr. Haastrup took the Chair.

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Mr. INGLES said that he saw no differences between an interpretative statement and a reservation.

Mr. SAYEGH said that the United Kingdom had made a distinction between the two, both when signing and when ratifying the Convention. Moreover, whereas reservations were recognized in the Convention, interpretative statements were not. They therefore did not have the same legal force.

Mr. ABOUL-NASR said that the Committee had never, in fact, reached final agreement on the difference between reservations and interpretative statements.

Mr. DAS (Deputy Director, Division of Human Rights) pointed out that States parties were entitled to submit written reservations and declarations to conventions where the Secretary-General acted as depositary. The Secretary-General was sometimes obliged to ask States parties whether they wished their statements to be circulated under article 20 of the Convention concerning reservations. He cited the example of States which had submitted interpretations of article 4 when ratifying the Convention and which had stated in reply to the Secretary-General's inquiry that their statements should be regarded as declarations and not as reservations. The Secretary-General's functions as a depositary were limited and it was not for him to construe the views of States.

Mr. VALENCIA RODRIGUEZ pointed out that the 1969 Vienna Convention on the Law of Treaties contained definitions of reservations and interpretations. Although the Convention had not yet come into force, the Committee could be guided by the principles contained therein and the discussion that had led to their adoption.

Mr. LAMPTEY said that the Deputy Director of the Division of Human Rights had not said whether the United Kingdom declaration had been treated as a reservation. The Vienna Convention would confirm the view that declarations were not reservations.

Mr. PARTSCH said that the Vienna Convention distinguished between reservations for which provisions were made in any given treaty, and instruments that were relevant only when the other parties to a treaty gave their consent.

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Mr. DAS (Deputy Director, Division of Human Rights) said that the declarations and reservations made at the time of signature or ratification had been reproduced in document CERD/C/R.72. No further reservations had been received since then. In the case of the United Kingdom, the Secretary-General had transmitted the reservation and declarations and no objections had been raised to the United Kingdom statements by any State party under article 20 of the Convention.

The CHAIRMAN pointed out that it required a two-thirds majority of States parties to decide whether a reservation was valid or not. Since the time of the United Kingdom reservation and declarations, the membership had risen from 28 to 82. The Committee could therefore bring the matter to the attention of current States parties.

Mr. SAYEGH, supported by Mr. LAMPTEY, said the fact that there were no objections to the declarations was irrelevant. The Convention made no provision for opinions or declarations.

Mr. DAS (Deputy Director, Division of Human Rights) said that there had been no objections raised either to the reservation or to the declarations. It was of course true that States were under no obligation to comment on declarations or interpretations. He pointed out that, pursuant to article 20, paragraph 1, of the Convention, the United Kingdom reservation had been circulated to all States eligible to become parties to the Convention and not only to States parties at the time.

Mrs. WARZAZI said it seemed that the United Kingdom had chosen a formula that lent itself to various interpretations. The representative of the United Kingdom must explain whether the declaration was intended to be a reservation or not.

Mr. MACRAE (United Kingdom) said that he was not in a position at that moment to contribute usefully to the discussion.

The CHAIRMAN suggested that the Committee might wish to defer further discussion until it had been able to make a thorough study of the material submitted. A representative of the United Kingdom could then provide a definite answer and make further comments at the next session.

It was so decided.

Mr. Macrae withdrew.

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ORGANIZATION OF WORK OF THE TWELFTH SESSION

Following a procedural discussion in which Mr. PARTSCH, Mr. SAYEGH, Mr. INGLES, Mr. DAS (Deputy Director, Division of Human Rights), Mr. CALOVSKI and Mrs. WARZAZI took part, the CHAIRMAN suggested that the Committee should expect to consider three reports a day for seven working days at the beginning of the twelfth session and that the Secretariat should be requested to inform States parties accordingly. The Committee could adjust its tentative programme according to the final number and form of the reports received.

It was so decided.

The meeting rose at 5.45 p.m.