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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Forty-ninth session

SUMMARY RECORD OF THE 1160th MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 7 August 1996, at 10 a.m.

Chairman: Mr. BANTON

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The meeting was called to order at 10 a.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 5) (continued)

Eighth periodic report of the Republic of Korea (CERD/C/258/Add.2) (continued)

1. At the invitation of the Chairman, the delegation of the Republic of Korea took seats at the Committee table.

2. Mr. Joon-Hee LEE (Republic of Korea) recalling the comments of the country rapporteur, Mr. Diaconu, and other members on the lack of any specific reference to race or racial discrimination in the Constitution and other legislation of the Republic of Korea, said that the criteria cited in those instruments were merely examples. Racial discrimination was strictly prohibited in accordance with the principle of equality enshrined in the Korean Constitution and other relevant laws, even if it was not mentioned specifically.

3. With regard to possible contradictions between the Convention and domestic law and the status of the Convention under Korean domestic law, he said that, if provisions of domestic law contradicted those of the Convention, the general principles of laws including the lex posteriori rule or the principle of the precedence of special law, would apply. The provisions of the Convention were further protected by the Korean Constitution, which guaranteed and confirmed the fundamental and inviolable human rights of the individual.

4. Members had raised a number of questions concerning paragraph 14 of the report (CERD/C/258/Add.2), which dealt with article 2 of the Convention. He reiterated that the existing laws were an effective means for prevention and prosecution of acts of racial discrimination. Different spheres of activity were governed by different laws: for example, article 5 of the Labour Standards Act banned discrimination on the grounds of nationality and articles 307, 309 and 311 of the Penal Code laid down penalties for acts of defamation and insult, including those of a racist nature.

5. No cases of alleged racial discrimination had ever been brought before the courts. For that reason, the Republic of Korea considered that there was no compelling need for new legislation.

6. The Committee had inquired about the "existing practices" for the protection and promotion of human rights referred to in paragraph 14 of the report. The Government provided human rights training for government officials engaged in the administration of justice and had appointed a human rights officer in every police station in the country. A centre for the investigation of alleged human rights violations had been established in May 1993. Complaints centres for foreign workers had been established in every immigration control centre: in 1995 they had dealt with 1,722 complaints, covering unpaid wages, compensation for injury and medical treatment. The Ministry of Justice actively publicized all the international human rights instruments by publishing the texts and organizing seminars and an annual human rights week.

7. Regarding the implementation of article 4 of the Convention, he said that the Convention was already part of Korean law and could therefore be directly invoked in the courts. The Government therefore saw no compelling necessity to adopt new domestic legislation. However, it did not exclude the possibility of adopting new legislation in the future in order to reflect the provisions of the Convention more effectively. His country was taking steps to improve its implementation of the Convention, as shown by its plans to establish a national human rights institution and its intention to make the declaration provided for in article 14, paragraph 1 of the Convention.

8. With regard to the number of foreign schools in the Republic of Korea, he had some more recent figures than those given in paragraph 30 of the report. There were now 36 Taipei Chinese schools, with 3,594 students: that figure was 517 less in than 1992, and three schools had closed. There were 13 American schools with 5,240 students, 2 British and 2 Japanese schools and 1 German school. Eighteen foreign schools provided secondary education. Foreign schools were run and financed entirely by the foreign community concerned.

9. Members had noted that, while the number of foreigners, particularly Filipinos, in the Republic of Korea had increased substantially, the number of foreign schools had not shown a corresponding increase. That could be explained by the fact that most of the newcomers were workers and trainees who were not accompanied by children.

10. The employment of foreign workers was not permitted except in certain occupations. However, foreign workers who were legitimately employed enjoyed the same legal protection as Korean workers. Illegal foreign workers were subject to deportation under Korean law, but were nevertheless entitled to the minimum legal protection, against non-payment of wages, for example. Special measures adopted in February 1994 ensured that foreign workers who had suffered occupational injuries since February 1991 would receive compensation on equal terms with Korean workers. In cases of non-payment of wages or physical assault which were duly reported to a regional labour office, foreign workers were entitled to compensation for loss or damage on the same basis as Korean workers.

11. The Republic of Korea had adopted an "industrial technical training system for foreigners" in 1991. The directives referred to in paragraph 24 of the report requested employers to take into account the special situation of foreign trainees in respect of training contracts, health and safety and compensation for industrial injuries. The Government was considering a system of work permits to legitimize the employment of foreign manual labourers and provide them with appropriate legal protection.

12. With regard to the remedies available to individuals whose rights were infringed by government agencies, he said any cases of racial discrimination would be dealt with under the normal procedures of the Korean legal system: however, no such cases had ever been brought to court. Incidentally, the terms "individuals", "persons" and "citizens" in the report should be taken to mean all people, regardless of citizenship.

13. While there had never been institutional discrimination against children of mixed parentage in the Republic of Korea, it was true that they had suffered from a certain degree of public prejudice in the past. However, people were much more tolerant now. The Government provided financial support for the living expenses and education for Koreans of mixed parentage.

14. The ethnic Chinese community in the Republic of Korea was protected in accordance with international law and treaties in the same way as everyone else in the country. The principle of jus sanguinis did apply in Korea, but it was relatively simple to obtain Korean nationality: persons eligible for naturalization included those who had resided in the Republic of Korea continuously for more than five years, who were over 20 years old and able according to the laws of his own country, who maintained good conduct, who had their own means of support, or who were stateless or due to lose their existing citizenship.

15. The statistics concerning foreign nationals residing in the Republic of Korea (para. 11 of the report) differentiated between Taipei Chinese and Chinese from the People's Republic of China because the latter group had not been listed in the statistics until 1993.

16. The declaration provided for in article 14, paragraph 1 of the Convention would be made in the very near future.

17. His delegation felt the consideration of its report had been an informative and valuable exercise. His country would do its utmost to continue the effective implementation of the Convention, his delegation would willingly provide in writing any other information requested by the Committee.

18. Mr. GARVALOV thanked the representative of the Republic of Korea for his replies. However, he was still not reassured about the situation of the ethnic Chinese and Japanese in the Republic of Korea. The representative had referred to a naturalization procedure by which foreign nationals could gain Korean citizenship: however, that surely left scope for discrimination, since ethnic Koreans were automatically entitled to citizenship, and non-citizens were ineligible for employment in the public service.

19. Mr. CHIGOVERA asked for a specific example of the way in which the Convention could be invoked before the domestic courts, since the Government had not passed any legislation specifically related to racial discrimination. For example, how would an individual or the State pursue a prosecution for alleged racial discrimination under article 4 of the Convention?

20. Mr. DIACONU (Country Rapporteur) thanked the representative for his replies. He noted that the ethnic Chinese and Japanese communities had lived in the Republic of Korea for decades and deserved to be treated on the same basis as ethnic Koreans. They certainly should not be treated as migrant workers. What exactly was their status?

21. He noted with satisfaction that the Government had not excluded the possibility of adopting new laws to reflect the provisions of the Convention. Such laws would be particularly valuable in improving the implementation of

article 4 of the Convention. He welcomed the frank and constructive dialogue which had taken place and the goodwill shown by the Korean delegation.

22. Mr. ABOUL-NASR asked whether the Chinese community and other distinct ethnic groups in the Republic of Korea wished to retain their own ethnic identity or to become assimilated into the Korean population.

23. Mr. Joon-Hee LEE (Republic of Korea) said that, as far as he was aware, the ethnic Japanese residents of the country had experienced no particular problems. He would research the matter further and provide the Committee with written information if it so wished. Most of the ethnic Chinese community wished to retain their own nationality rather than taking Korean nationality. They were protected under international law and treaties, like all other foreign nationals. He did not believe that their status had been a serious social issue. His country would provide more details in its next periodic report if the Committee so wished.

24. In respect of possible conflicts between the Convention and domestic legislation, he said that, when the Government was considering acceding to an international instrument, it first checked its domestic legislation for possible conflicts and, if any were detected, decided whether to lodge a reservation to the article concerned or to amend its domestic law, either before accession or immediately afterwards. His delegation was aware of the Committee's views concerning the Republic of Korea's implementation of article 4 of the Convention, and had passed them on to the relevant authorities. The Committee must realize that amending fundamental national legislation such as the Constitution or Penal Code was a long and complicated process. Nevertheless, he would once again convey the Committee's comments to his Government.

25. The CHAIRMAN thanked the representative of the Republic of Korea for the goodwill shown by his delegation, and said that the Committee had thus completed the first part of its consideration of the eighth periodic report of the Republic of Korea.

26. The delegation of the Republic of Korea withdrew.

Eighth to twelfth periodic reports of Bolivia (CERD/C/281/Add.1; HRI/CORE/1/Add.54) (continued)

27. At the invitation of the Chairman, Mr. Lema Patiño, Mr. Quispe Callisaya, and Mr. Suárez Avila (Bolivia) took places at the Committee table.

28. Mr. LEMA PATIÑO (Bolivia) said that from 1825 until 1952, Bolivia's mixed-race (*mestizo*) minority group had ruled the country and its mostly indigenous population along semi-feudal lines. After 1952, the system had changed radically and indigenous populations, along with the rest of the population, had been given the right to vote, and had benefited from agrarian and education reform.

29. However, Bolivia remained a poor country in which illiteracy rates were high and basic services were often lacking. Although that led to a certain kind of discrimination, it was not based on race but born of poverty. In

fact, none of Bolivia's institutions or legislative provisions tolerated or accepted racism. Since 1952, Bolivia had signed the major international instruments dealing with human rights, discrimination and indigenous peoples.

30. Serious unemployment had prompted many people who had formerly worked in the mines to move to the country, which had meant that the production of coca leaves had increased. Bolivia was in constant contact with the High Commissioner for Human Rights and had provided satisfactory explanations of human rights violations that had taken place during the Government's efforts to stamp out the production of coca leaves.

31. Combating discrimination in a country like Bolivia was an ongoing task and relied heavily on the willingness of Government and society to cooperate fully. In recent months, a certain amount of progress had been made in the fight against discrimination, in the penal code for example. The need to criminalize racism and other forms of discrimination had been recognized, although Bolivian legislation did not provide for punishment for racism or racist acts as such. To that end, Bolivia would welcome technical assistance from the relevant United Nations bodies, and a comparative study of legislation providing for sanctions against racism would be of great practical value. Bolivian legislation provided for equality and rejected any form of discrimination.

32. Bolivia recognized that there were circumstances which called for the urgent criminalization of racism, for example in cases of genocide or in societies where racial discrimination was part of an ideology. Bolivia had been spared the horrors of genocide, had never harboured racist ideologies and was free of racist organizations or sects. However, discrimination in its most subtle, and none the less violent, forms did exist. It therefore recognized the need to be able to call on its Penal Code.

33. With regard to the elimination of discrimination in administrative posts, it was clear from the Foreign Service Act, a copy of which would be made available to the Committee, that staff were appointed on the basis of professional merit and ability.

34. On the question of the hierarchy of laws, the Constitution was the supreme legislative instrument, followed by laws passed by Parliament. International instruments approved by the National Congress had the same status as national laws. Any conflict between laws of equal status was settled by the courts. The priority of the International Convention on the Elimination of All Forms of Racial Discrimination over other laws of equal status was guaranteed, being one of the few such instruments with the status of law.

35. As to whether the Convention could be invoked in a court of law, he said that under Bolivian legislation the provisions of the Constitution concerning fundamental freedoms and such instruments as the Universal Declaration of Human Rights and the Convention, could be applied without supplementary legislation.

36. With regard to education and bilingualism, the Educational Reform Law (Law No. 1565) which had been promulgated in 1994 was aimed at strengthening

the identity of indigenous peoples as well as the national identity as a multi-ethnic and multi-cultural nation. Education was recognized as both a right and a duty of all Bolivians. Indigenous peoples' education boards in various parts of the country would participate in formulating and supervising the implementation of education policy, with particular regard to bilingualism. A multi-lingual teacher training college had been established in Riberalta. Education was considered monolingual when instruction was given in Spanish and another indigenous language was taught, and bilingual when the teaching was given in one of the indigenous languages with Spanish as a second language. The Educational Reform Law did not cover university education, the reform of which would be a matter for the following administration.

37. The Popular Participation Act recognized indigenous and rural organizations and laid down procedures for attaining legal status, so that they could conclude contracts, control the funding of community projects and so on. Following the elections of December 1995, more than 40 per cent of municipal councillors and mayors were members of indigenous communities.

38. With regard to indigenous legislation, a legislative strategy had been adopted as part of the 1994 constitutional reform process to establish a new legal order reflecting Bolivia's multi-ethnic and multi-cultural society. As a result all laws, with the exception of the procedures established in Law No. 1257, had to provide explicitly for the rights of indigenous peoples. The 1994 constitutional reform had finally established them as peoples with their own identity and culture who played a central role in the country's social, economic and political life.

39. The Popular Participation Act, defined indigenous peoples as communities predating colonization with their own history, structure, language and culture and rural communities as the basic units of the rural social structure consisting of nuclear or extended families which shared a territory in which they pursued their economic, social and cultural activities. All definitions in recent legislation had been inspired by the Indigenous and Tribal Populations Convention, 1989, of the ILO, which Bolivia had ratified in 1991.

40. The rapporteur had not made reference in his report to the Law on Domestic Violence which had been passed in 1995 and was consistent with the Convention on the Elimination of All Forms of Discrimination against Women. It was of particular benefit at the present time to indigenous women living in urban areas who could report abuses to the relevant offices, but efforts were being made to extend its scope to the rural areas.

41. Consideration was currently being given to a National Land Institute and Land Bill which would establish an efficient institutional structure to manage and introduce very modern land resources, ensure sustainable development and guarantee the rights of the indigenous populations. The recently adopted Forestry Act recognized the exclusive right of the indigenous communities to exploit the forests on their land. Indigenous communities were also granted a preferential right to concessions for the exploitation of forest resources and to use the forests in a traditional way without further authorization.

42. Other legal reforms included the establishment of a subsecretariat for Human Rights within the Ministry of Justice to promote human rights and

guarantee the implementation of international treaties and conventions. Laws had been passed abolishing imprisonment and corporal punishment for debt, and prohibiting the imprisonment of elderly people and juveniles for minor offences. In its campaign against drug trafficking, the Government had, through a bail bond law, eliminated the unconstitutional aspects of Law No. 1008 on controlled substances, and special offices had been opened to defend and promote the human rights of people in areas in which coca cultivation was being eradicated.

43. With regard to criminal procedure reforms, the Ministry of Justice had approved a reform bill which was currently being examined by various bodies. The new procedure would promote recognition of the customary law of the indigenous peoples, including the right to use their own languages in courts of law and in other legal matters. A public rural defence service had also been established to provide legal defence for prisoners who did not have the services of a lawyer.

44. More recently, legislation had been passed in the area of maternal and child health providing for free medical care for all women during childbirth and for the child up to the age of five. Article 60 of the Constitution had also been amended, to allow the people more direct participation in elections to parliament, by removing the need for candidates to be party members. That change was expected to enhance the participation of women in political affairs.

45. A pensions scheme was being established which would cover all Bolivians over the age of 18.

46. With regard to environmental issues, the recent law on administrative decentralization granted greater participation in the environmental study approval process to the departmental and municipal authorities, in which the indigenous populations were represented.

47. With regard to the Zarate-Wilka case, the sentence passed by the judge might well have been based on the major crime of terrorist assassination, although racism had undoubtedly been a factor influencing the decision.

48. In May 1996 in Paris, the Bolivian Government had been given the full backing of the international community for its rural development plan designed to improve the conditions of rural populations.

49. The CHAIRMAN, referring to the reform of penal legislation in Bolivia, said that States parties almost inevitably had to implement article 4 of the Convention through their penal code, but had a greater choice of means of implementing article 5. Particularly where discrimination was subtle, it had frequently been found more appropriate to legislate under the labour code or the civil code.

50. Mr. LECHUGA HEVIA (Country Rapporteur) welcomed the new measures in Bolivia and expressed the hope that the Committee would be kept informed of any new measures as they were adopted.

51. The Bolivian delegation withdrew.

THIRD DECADE TO COMBAT RACISM AND RACIAL DISCRIMINATION (agenda item 8) (continued)

Draft general recommendation concerning the rights of refugees and persons displaced on the basis of ethnic criteria (CERD/C/49/Misc.3)

52. Mr. WOLFRUM, introducing the draft recommendation, said that he had attempted to take into account the concerns expressed by Mr. Sherifis, Mr. Aboul-Nasr and Mr. Shahi. The Committee had not dealt with the situation of refugees in the past, but he felt that the issue was relevant, since the right to return to one's country was enshrined in article 5 (d) (ii) of the Convention. In operative paragraph 1 of the draft, he had added the stipulation that any such return should be voluntary. In operative paragraph 2, he had reflected Mr. Sherifis' point that refugees and displaced persons had the right to reclaim their property or receive compensation for its loss. Operative paragraph 3 stated that refugees and displaced persons had the right of participation in public affairs and access to public services on their return to their homes, since those rights were often denied in practice.

53. The CHAIRMAN suggested that the last sentence of operative paragraph 1 should be amended to read: "... such return shall be voluntary and unhindered".

54. Mr. van BOVEN said that as a matter of principle, it would be wise to consult the Office of the United Nations High Commissioner for Refugees (UNHCR) over the draft general recommendation and ensure its support. There was some doubt as to whether the substance of the text was compatible with general recommendation XX (48) on article 5 of the Convention. It should also be made clear that operative paragraph 3 related to article 5 (c) of the Convention.

55. Mr. ABOUL-NASR, supported by Mr. DIACONU, agreed that the Committee should consult UNHCR before proceeding with the draft general recommendation. Every effort should be made to avoid the temptation to issue recommendations on every individual aspect of racial discrimination.

56. Mr. CHIGOVERA said that the section of the draft general recommendation from the second sentence of operative paragraph 1 to the end of operative paragraph 2 dealt with matters that did not fall within the competence of the Committee.

57. Mr. RECHETOV said that there was always a host of United Nations bodies dealing with issues, such as Burundi, on which the Committee had adopted or intended to adopt a general recommendation. It would be impossible to consult each and every one of them whenever a general recommendation was on the agenda. The Committee needed to deal with the question of refugees if it wanted to move ahead in finding solutions to ethnic conflicts. There was room for improvement in the wording of the proposed text, but it would be quite wrong to object to the principle of a general recommendation on refugees.

58. Mr. WOLFRUM suggested that the member of the Committee appointed to liaise with UNHCR should approach that organization and find out if there was

any objection to the general recommendation. However, as a general rule, the Committee should not tailor its work to suit other United Nations bodies. The draft general recommendation was fully within the Committee's mandate in that it referred to "the displacement of persons on the basis of ethnic criteria". Hopefully, with a few changes, the text could be adopted by consensus.

59. Mr. de GOUTTES said that he had raised the issue of refugees, the protection of displaced persons and the return of their property with the High Commissioner for Human Rights. The High Commissioner had stressed the importance of the question and asked to be kept informed of the Committee's discussions and decisions in that regard. The text before the Committee should be supported.

60. Mr. GARVALOV said that he would endorse the text if it were amended slightly, particularly to include a reference not just to "military conflicts" but also to non-military conflicts, which also forced many people to flee their homes.

61. Mr. SHERIFIS said that UNHCR should be consulted or informed about the draft general recommendation through the liaison officer. The text did need to be revised before a final decision could be taken.

62. Mr. RECHETOV suggested that the text refer to ethnic conflicts in the first preambular paragraph, either instead of or in addition to "military conflicts". It should also find room to refer to the return of refugees and their property.

63. Mr. DIACONU said that operative paragraphs 1, 2 and 3 could apply equally to all refugees, whatever the reason for their situation. If the general recommendation was to be of any use at all, it had to deal specifically with people who had become refugees as a result of ethnic problems.

64. The CHAIRMAN said that the Committee would take a final decision on the draft general recommendation at a later date.

PREVENTION OF RACIAL DISCRIMINATION, INCLUDING EARLY WARNING AND URGENT PROCEDURES (agenda item 4) (continued)

Draft recommendation on Burundi (CERD/C/49/Misc.2/Rev.2) (continued)

65. Mr. WOLFRUM, said that the revised draft incorporated the suggestions made by the Committee but had undergone no changes of substance.

66. Mr. RECHETOV proposed that "voluntarily" should be replaced by "unhindered" in the fifth operative paragraph.

67. Mr. ABOUL-NASR, referring to the fourth operative paragraph, asked how the Committee's request would be transmitted to the Security Council and whether it would be contained in a separate letter to the Secretary-General. With reference to the seventh operative paragraph, he sought clarification of the statement in parentheses that the agreements of the Arusha Regional Summit were now fully endorsed by the OAU. Lastly, the statement in the final

operative paragraph was somewhat platonic, since the Committee was aware that the United Nations did not have the funds for such a force. With those comments, he expressed his support for the draft resolution.

68. Mr. SHAHI, replying to Mr. Aboul-Nasr's question about OAU support for the Arusha agreements, referred him to the statement by the President of the Security Council dated 24 July 1996 (S/PRST/1996/31) explicitly mentioning the full support of the Organization of African Unity for those agreements. The joint communiqué of the second Arusha Regional Summit also contained a clear reference to the OAU's full endorsement of the Arusha initiative. He was aware that the United Nations had no funds for a peace force, but President Clinton had stated that if a peace force were sent to Burundi, the United States of America, while not participating in ground forces for peace-keeping, would provide logistic and financial support. He drew the Committee's attention to a letter from the Secretary-General to the President of the Security Council (S/1996/591) stressing the need to press forward with the ongoing contingency planning for a multinational force, the main concern being to prevent another genocide. Mr. Aboul-Nasr's concerns might be met by rewording the paragraph to read: "Recommends that such a force should receive the financial and logistic support of the United Nations".

69. Mr. LECHUGA HEVIA said, with reference to the fourth operative paragraph, that, like Mr. Aboul-Nasr, he was unclear about the manner in which the Committee would address the Security Council through the Secretary-General. In fact, he questioned the need for the paragraph, which seemed to be asking the Security Council to do something it had already done. Moreover, an international tribunal was already in existence.

70. Mr. van BOVEN asked whether the proposal referred to in the penultimate operative paragraph was a proposal by the Secretary-General; if so, that should be clearly stated. If not, he would welcome some clarification, which could be reflected in the summary records. As a matter of principle, he was in favour of retaining the fourth operative paragraph reaffirming the determination of the international community to prosecute and punish perpetrators of crimes against humanity. The international tribunal that had been set up had been established for Rwanda and the complex question of extending its mandate to include Burundi could not be taken for granted.

71. Mr. RECHETOV endorsed Mr. van Boven's comment about the need to retain the fourth operative paragraph.

72. Mr. SHAHI said in reply to Mr. van Boven's query about the author of the proposal to send a peace force to Burundi that, although the Secretary-General had explicitly referred to the need for a multinational force in his letter to the President of the Security Council (S/1996/591), it was not he who had initially made the proposal, but rather the first Arusha Summit. He did not believe there was any need to specify its origin.

73. Mr. GARVALOV said that it had emerged from the meeting of the chairpersons of treaty bodies with the Secretary-General in June 1995 that when a treaty body wanted information to be transmitted to the Security Council, the request should be sent under separate cover to the Secretary-General. As he remembered, that procedure had been followed by the

Committee in the past. Drawing attention to the third operative paragraph, he said that the Committee should realistically ask itself whether there were at present enough independent, unbiased judicial authorities in Burundi to conduct an efficient investigation. On the question of the proposal to dispatch an international force, he was not in favour of mentioning the Secretary-General as being the author of the proposal, but suggested changing "international" to "multinational" which had been the wording used by the Secretary-General.

74. Mrs. ZOU said that Mr. Wolfrum had informed her that the judicial authorities referred to in the third operative paragraph were the authorities of Burundi. That raised the question of whether the judicial authorities in Burundi were in a position at the moment to conduct a fair investigation. Mr. van Boven, for his part, had alluded to the possibility for the mandate of the international tribunal on Rwanda to be extended. The text should specify which judicial authorities were meant.

75. Mr. de GOUTTES said that the previous two speakers' point concerning the third operative paragraph was well taken. In order to meet their concerns, the wording of the paragraph should perhaps be filled out to make it clear that the Committee was asking for urgent measures to be taken to ensure the proper functioning of the justice system so that the judicial authorities could conduct an efficient investigation into the massacres and other acts of violence as crimes against humanity.

76. The CHAIRMAN said that he read the wording of the draft as being sufficiently flexible to cover such an eventuality as that provided for in a recommendation of the international commission of inquiry concerning the genocide in Rwanda to the effect that judicial personnel from other countries, who would not be accused of the same kind of partiality as domestic personnel, might be engaged by the State authorities to undertake such investigations. That being said, he would not object to wording along the lines of that suggested by Mr. de Gouttes.

77. Mr. RECHETOV expressed misgivings about the reference to crimes against humanity, since it was not clear whether it meant crimes designated in domestic legislation as crimes against humanity or whether it implied that the international community was determining that the crimes in question constituted crimes against humanity.

78. Mr. WOLFRUM, recapitulating members' proposals and comments, pointed out to Mr. Rechetov that, where returning refugees were concerned, "unhindered" did not convey the same meaning as "voluntarily". For clarity's sake, he suggested "of their own free will". On the subject of transmission to the Security Council through the Secretary-General, Mr. Garvalov had rightly recalled the appropriate procedure, for which there was a precedent. He confirmed Mr. Shahi's observation that the agreements of the Arusha Summit had been endorsed by the OAU, specifying that the relevant decision had been taken by the OAU Assembly of Heads of State and Government meeting in Yaoundé, Cameroon, in July 1996. He took it that there was no objection to changing "considers" to "recommends" and "shall" to "should" in the final operative paragraph. As to the question of the possibility of a tribunal, he pointed out that the existing tribunal's functions were limited to certain events in

Rwanda and that changing its mandate would mean changing a Security Council decision, which was no simple matter. It was an option, but was not for the Committee to decide. The paragraph had been worded in such a way as not to prejudge any action, or otherwise, by the Security Council. Regarding the peace force, he quoted paragraph 14 of the joint communiqué of the second Arusha Regional Summit on Burundi, which, inter alia, endorsed the possibility of a multinational peace force. He would be in favour of using the word "multinational" - as used by the Secretary-General - rather than "international".

79. In order to meet the concerns of Mr. Garvalov and Mrs. Zou, and in line with Mr. de Gouttes' suggestion, he proposed that the wording of the third operative paragraph should be amended to read: "Urges that measures be adopted to enable Burundian judicial authorities to conduct an efficient investigation", the rest of the sentence remaining unchanged. As to Mr. Rechetov's doubts about the interpretation of the term "crimes against humanity", he felt that international law provided ample clarification of the term. Lastly, he specified that any necessary minor editorial changes would be made by the secretariat.

80. Mr. SHAHI asked whether "Burundian authorities" might not be more acceptable than "judicial authorities" in operative paragraph 3. Crimes against humanity were amply defined in the Convention on the Prevention and Punishment of the Crime of Genocide. The Secretary-General had referred in his letter to the President of the Security Council to a "multinational force", but he would not object to the insertion of the word "peace".

81. Mr. de GOUTTES said that it was preferable to keep the term "judicial authorities" to indicate the importance the Committee attached to the functioning of justice.

82. The CHAIRMAN said he took it that the Committee wished to adopt the text as amended and subject to minor drafting changes, on the understanding that it would be issued as a resolution and not as a general recommendation of the Committee.

83. It was so decided.

The meeting rose at 1 p.m.