UNITED
NATIONS

CER

International Convention on the Elimination of all Forms of Racial Discrimination

Distr.
GENERAL

CERD/C/SR.1056
26 September 1996

ENGLISH
Original: FRENCH

COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Forty-fifth session

SUMMARY RECORD OF THE 1056th MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 10 August 1994, at 3 p.m.

Chairman: Mr. GARVALOV

later: Mr. SHERIFIS

CONTENTS

GE.94-18420 (E)

The meeting was called to order at 3.05 p.m.

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

Tenth, eleventh and twelfth periodic reports of Spain (CERD/C/226/Add.11) (continued)

1. At the invitation of the Chairman, Mr. Gonzalez de Linares and Ms. Vevia Romero (Spain) took places at the Committee table.

2. Mr. WOLFRUM asked why the information provided by the representative of Spain at the 1055th meeting, which was so detailed, had not been submitted to the Committee in writing. He refused to consider the oral report as a report submitted under article 9 of the Convention. An oral report was not suitable for study and the considerable checking that was required. It therefore did not facilitate effective performance of the Committee's tasks. He looked forward to a complete written report from Spain by March 1995.

3. Mr. van BOVEN said that he wholeheartedly endorsed Mr. Wolfrum's remarks.

4. Mr. FERRERO COSTA (Country Rapporteur for Spain) thanked the Spanish delegation which, by responding point by point to the questions raised by the Committee and himself at the 1054th meeting, had demonstrated its desire for dialogue and cooperation. He hoped the very structured information provided orally to the Committee would be included in the next periodic report and that all the documents that had been mentioned would be submitted to the Committee, as the representative had promised. He also hoped that the thirteenth periodic report would be prepared in conformity with the Committee's guidelines, which would facilitate its consideration.

5. He briefly reviewed the questions on which the Committee wished to obtain further information: the ethnic composition of the population of Spain as a whole, and of the foreign population residing in the country, in particular; the relationship between the central administration and the Autonomous Communities, especially Catalonia, in all areas in which discrimination might arise; "positive discrimination", which had been mentioned by the representative; progress made in executing the Gypsy Development Plan and measures taken in favour of the Gypsy community; government policies towards the populations of Ceuta and Melilla; the decision of the Constitutional Court suspending articles 8.2 and 34 of the Rights and Freedoms of Aliens in Spain (Organization) Act of 1 July 1985, which specified the rights and freedoms enjoyed by foreigners in Spain; the "principle of reciprocity" called for in article 9 of the same Act; the new laws adopted in recent years concerning foreigners and relevant policies and measures of practical application; the new law on the right of asylum, which linked the concepts of asylum and refugee; specific examples illustrating the follow-up given by the People's Advocate to complaints of racial discrimination; the contents of the annual reports presented by the People's Advocate and by the corresponding institutions in the Autonomous Communities; the existence and legal nature of associations or political parties condoning racism; legal provisions allowing such associations to be outlawed and their leaders punished; measures taken to

give effect to article 5 of the Convention; court practices with regard to racial discrimination, including the cases of Lucrecia Pérez, Alcalde de Mancha Real, Violetta Friedman and Otto Remer; any other judicial decisions dealing with racial discrimination; action taken to give effect to article 7 of the Convention; and, especially, measures taken to deal with the alarming rise in racism and xenophobia.

6. With regard to all those questions, information should be provided on policies implemented and practical measures taken by the Government to give effect to the provisions of the Convention; it was not enough to describe legal provisions. The Committee should also be provided with all the legal texts which had not yet been sent to it, such as the law on the right of asylum, mentioned by the representative of Spain at the 1055th meeting. Like all members of the Committee, he hoped that Spain would make the declaration under article 14 of the Convention.

7. He thanked the delegation once again for all the additional information it had furnished and hoped that the important dialogue which had been renewed between Spain and the Committee would continue.

8. Mr. VALENCIA RODRIGUEZ thanked the representative of Spain for the substantial amount of information she had given to the Committee orally. It would certainly have been preferable for it to have been provided in writing, but at least it would appear in the summary record of the Committee's meetings and would be reproduced in the next periodic report of Spain, as several members of the Committee had requested and as the representative had promised. What was important was that the dialogue and spirit of cooperation between the Government and the Committee had been strengthened.

9. Mr. de GOUTTES said that the Committee could not reproach the delegation for the length of its oral replies; it itself had asked for them. He welcomed the exceptional effort made during the course of the previous night in preparing all the replies and hoped that the next periodic report would show evidence of similar conscientiousness. Since the reform of the Criminal Code would be debated in Parliament, he asked the delegation and, through it, the Government to inform the parliamentarians of the requirements of article 4 of the Convention with regard to offences that should be covered by the Criminal Code, and of the recommendations and observations made by the Committee during the three meetings it had devoted to the report of Spain.

10. Ms. VEVIA ROMERO (Spain) thanked the Committee for its suggestions, which her delegation accepted wholeheartedly. Her oral replies at the 1055th meeting were not intended to replace a written report, but to renew dialogue and to reply to the questions raised at the 1054th meeting. In reply to a comment by Mr. Rechetov, the qualification for joining the Catalonia police force - knowledge of Catalan - was an example of "positive discrimination", since it would clearly be more appropriate to require that candidates know both Catalan and Spanish perfectly. Knowledge of Catalan alone was, however, what was called for by article 36 of the Juridical Regime (Public Administrations) Act, of which she would provide a copy.

11. The transfer of responsibilities to the various Autonomous Communities was governed by articles 148, 149 and 150 of the Constitution. She read out

the text of article 150. Those transfers had in fact given rise to conflicts in some Communities - the Basque country and Catalonia - more than in others. Such conflicts came under the jurisdiction of the Constitutional Court. Spain's next report would contain information on that subject obtained from the data centre of the Constitutional Court.

12. She would have preferred not to talk about terrorism in the Basque country, since she did not believe that the Committee was the most appropriate forum to deal with that subject. The definition of terrorism was contained in articles 174 bis (a) and (b) of the Criminal Code. The penalties called for were maximum-term imprisonment for perpetrators of terrorist acts and medium-term imprisonment for their accomplices.

13. Several members of the Committee had asked whether there were racist or xenophobic organizations in Spain and whether such groups were illegal. Any organization that openly encouraged racism and xenophobia would be covered by article 173 of the Criminal Code, which defined an "illegal association" as one that condoned or promoted racial discrimination. However, illegal activities could be hidden behind a legal façade. If an inquiry revealed that an association was engaging in such activities, it would be subject to the full force of the law. Replying to Mr. Sherifis's question on the amendment to article 8, paragraph 6, of the Convention, she said that her Government was determined to complete the process of accepting the amendment.

14. She recognized that, in the absence of a written report, the Committee could not prepare its observations properly, as Mr. Wolfrum and other Committee members had observed. That regrettable state of affairs - which was due to neglect - would be remedied. She thanked Mr. Ferrero Costa for his remarks on the willingness for dialogue shown by the Spanish delegation. She had taken note of all the questions on which additional information and explanations had been requested. The replies would appear in Spain's next periodic report. The delegation would leave with the Committee all the documents it had referred to at the 1055th meeting and would send it all the legal texts requested, including the new law on asylum and the new Criminal Code, once it had been adopted in its final form. She would also endeavour to send to the Committee the annual report of the People's Advocate. In March 1995 she planned to submit a report containing as much information as possible on all the questions of interest. She thanked the Chairman and members of the Committee for the attention they had paid the report of Spain.

15. The CHAIRMAN, expressing the unanimous views of the Committee, said that the inadequacy of the twelfth periodic report of Spain had been offset by the volume of information contained in the report of Mr. Ferrero Costa and by the substantial nature of the oral replies provided by the delegation. The Committee regretted that none of that information had been furnished in writing and looked forward to considering the thirteenth periodic report at its next session, with the hope that it would be prepared in accordance with the Committee's guidelines. He stressed the importance for the Committee of continuing dialogue with the Government.

16. The delegation of Spain withdrew.

Israel: information requested under article 9, paragraph 1, of the Convention

17. The CHAIRMAN said he had met with the representative of Israel, who had made contact with him; it emerged from that meeting that Israel was not refusing to cooperate with the Committee, although he believed that the Government had its own opinion as to the Committee's competence, an opinion which was succinctly stated in the notes verbales that had been addressed to the United Nations Office at Geneva. That opinion held that the matter under consideration lay solely within the competence of the Jerusalem-based security and police forces, which could not send a representative to the Committee at present due to the peace process under way with the Arab countries. He regretted the absence of a delegation from Israel and hoped that in considering the question on the agenda the Committee would adhere strictly to the framework defined by its decision 1 (44).

18. Mr. van BOVEN (Country Rapporteur for Israel) said that he regretted the absence of an Israeli delegation. The Committee had always based its working methods on a dialogue with States parties. The reasons given by Israel were not at all convincing. As far as he knew, it was the first time in 20 years that Israel has chosen not to attend a meeting of a human rights body dealing with the issue of the occupied territories. He was disappointed that Israel's self-interest carried greater weight for that country than the Convention.

19. Mr. Sherifis took the Chair.

20. Mr. van BOVEN presented his observations in accordance with Committee decision 1 (44) on the urgent report requested of Israel. He wished first to deal with the question of the competence of the Committee. On 7 March 1994, the Committee had expressed its shock at the appalling massacre committed by Israeli settlers against Palestinian worshippers praying at the Tomb of the Patriarchs in Hebron on 25 February 1994. In accordance with article 9, paragraph 1 (b), of the Convention and with reference, in particular, to article 5 (b), the Committee had requested the Government of Israel to send it an urgent report, no later than 30 June 1994, on measures taken to guarantee the safety and protection of Palestinian civilians in the occupied Palestinian territory and to bring to an end the illegal action of Israeli settlers and to disarm them.

21. On 31 March 1994, the Permanent Representative of Israel to the United Nations Office at Geneva had informed the Secretary-General of the United Nations that the Israeli Government would set up a commission of inquiry on the Hebron massacre and had stated that, as a matter of courtesy, and without regard to the question of the Committee's competence, a copy of the commission's report would be submitted to the Committee. On 30 June 1994, the Deputy Permanent Representative had sent the Secretary-General an English translation of the introduction, conclusions and recommendations of that report, the original of which ran to more than 300 pages and had been published in Hebrew. The Government had also sent a memorandum of understanding on the establishment of a temporary international presence in Hebron, which had been signed in accordance with Security Council resolution 904 (1994). Furthermore, through a letter dated 11 July 1994, the Deputy Permanent Representative had sent the Committee secretary a communiqué dated 26 June 1994 on steps taken by the Government in response to the commission's report.

22. It should be noted that in his note verbale of 31 March 1994, the Permanent Representative of Israel had stated that the report of the Commission of Inquiry would be sent to the Committee as a matter of courtesy and without regard to the question of the Committee's competence in the matter. That raised the question of whether the Committee was competent to deal with practices and policies pertaining to the territories occupied by Israel. The issue had been extensively discussed by the Committee during its consideration of Israel's fifth and sixth periodic reports, on 15 August 1991 (see CERD/C/SR.929-930). Members of the Committee had then expressed the opinion that the Israeli-occupied territories, particularly the population living in those territories, came within the scope of the Convention, inasmuch as Israel was a party to the Convention and exercised de facto jurisdiction over them. Members of the Committee had cited article 3 of the Convention, by which States parties "undertake to prevent, prohibit and eradicate all practices (of racial segregation and apartheid) in territories under their jurisdiction". All the relevant instruments were intended to protect people, and States that had ratified those instruments were duty-bound to grant such protection to all persons under their control. Israel was therefore legally bound to implement the Convention in the occupied territories, and the Committee, as supervisory organ was competent to examine the extent to which Israel was fulfilling that obligation.

23. A note verbale addressed by the Permanent Representative of Israel to the Secretary-General on 8 August 1994 questioned the competence of the Committee to deal with isolated criminal acts committed by individuals. He drew attention to article 2, paragraph 1 (d), of the Convention, under which "Each State party shall prohibit and bring to an end, by all appropriate means, including legislation as required by circumstances, racial discrimination by any persons, group or organization". The prohibition of racist acts by individuals fell within the scope of the Convention, and the Committee, as monitoring body, should ensure that that obligation was taken seriously by States parties. Furthermore, all the human rights instruments, including the Convention, had a preventive function, and the Committee should put that function into concrete shape in close cooperation with States parties. It was in that context that the urgent request addressed to Israel for a report should be considered. The Committee along with the Israeli commission of inquiry and other Israeli authorities, believed that further incidents such as the murderous act in Hebron should be avoided at all costs.

24. It would seem that two legal regimes coexisted in the occupied territories, one for the Palestinians and the other for the Israelis. From the standpoint of criminal law, that meant that the Palestinians in the occupied territories were subject to local or military law, while the Israelis were subject to Israeli law, which guaranteed them the freedoms and rights not fully available to Palestinians. That system, which was based on national or ethnic origin, raised serious issues with regard to the principle of equality before the law and the basic principles of the Convention.

25. He then turned to the question of the commission of inquiry. Even before the Committee had adopted its decision 1 (44), the Israeli Government had decided to create a commission of inquiry on the massacre at the Tomb of the Patriarchs in Hebron. The Commission had been constituted at a very high level under the chairmanship of the President of the Supreme Court,

Mr. Meir Shamgar, and had begun its hearings on 8 March 1994. He had had access to excerpts from the report in English, as well as to a mission report by the International Commission of Jurists (Sir William Goodhart and Mr. Peter Wilborn, 7-10 March 1994, published on 29 March 1994) and to a report by Betzelem, the Israeli Information Centre on Human Rights in the Occupied Territories. The excerpts from the report of the commission of inquiry contained the major findings of the commission as well as a number of recommendations and an epilogue. According to the report, the assailant had acted alone, without any accomplices or assistants in preparing and executing the massacre. He did not have any evidence that would permit him to question the report's findings, but he believed that it was possible to place the act in a much broader context, against the background of the Israeli policy of establishing Jewish settlements in the occupied territories. According to the excerpts from the report, the commission had no reliable proof of how the assailant had entered the Hall of Isaac in the Tomb of the Patriarchs. One thing was certain: the absence of inspection and control measures around the holy shrine. He then commented on the opening paragraphs of section 8 (initial appraisal of the situation), which stated that there was no reason for expecting a Jewish attack on Muslims but that there was every reason to fear an attack by Hamas. Those statements raised the question of whether the whole issue of security in Israel, particularly in the occupied territories, was not considered exclusively in terms of threats from Palestinian groups. The Israeli intelligence services were particularly vigilant in that regard. The problem of security should be considered in the context of article 5 (b) of the Convention, which recognized "the right to security of person and protection by the State against violence or bodily harm, whether inflicted by Government officials or by any individual group or institution".

26. The findings of the report strongly emphasized the question of carrying weapons inside the Tomb of the Patriarchs. It was stated that in recent years the Israelis had been permitted to bring weapons into the Tomb. The assailant had presented himself as a reserve officer of the Israeli army. It would be useful to raise the broader issue of Jewish settlers carrying weapons in the occupied territories, which was mentioned at the end of Committee decision 1 (44). According to the recommendation of the commission of inquiry the carrying of weapons should be prohibited inside the Tomb of the Patriarchs but the wider question of the arming of the settlers had not yet been resolved. The commission had also made recommendations to the effect that Muslims and Jews should be completely separated inside the Tomb of the Patriarchs in terms of both time and space. According to the communique from the Israeli Cabinet dated 26 June 1994, the commission's report had been adopted by the Cabinet, which had committed itself to strengthening security provisions so as to comply with the recommendations. The Committee would like Israel to give more detailed information on the follow-up to be given to those recommendations.

27. He quoted a passage from the epilogue of the commission's report, as follows: "The massacre at the Tomb of the Patriarchs in Hebron was a base and murderous act which cost the lives of innocents, bowed in prayer to their Creator. This was an unforgivable act which caused inconsolable grief to the families of the victims, the dead or the wounded, some of whom were permanently disabled. The massacre was one of the harshest expressions of the Jewish/Arab conflict." The commission stated that it had also investigated

the circumstances surrounding the massacre and some general issues that might be indirectly linked to the tragic incident. It emphasized the lessons to be learnt so as to avoid a recurrence of similar criminal acts. He supported that statement but felt that the circumstances surrounding the massacre should not be underestimated.

28. The report of the commission had not been meant as a reply to Committee decision 1 (44). The commission had existed before the Committee took its decision, and its inquiry concerned only the incidents at Hebron. While he appreciated the fact that excerpts of the report had been sent to the Committee, he regretted that the State party had not complied with the request for a report on measures taken to guarantee the safety and protection of Palestinian civilians in the occupied territories and to bring to an end the illegal action of Israeli settlers and to disarm them. The crime at Hebron was very probably, according to the conclusions of the commission of inquiry, the act of one person only. However, the report of Betzelem showed that the massacre was one link - and indeed the most severe one - in a chain of violent acts perpetrated by settlers against Palestinians, including frequent use of firearms which for the most part went unpunished. As Betzelem stated, it was not a question of an isolated incident, but was part of an overall context of violence mentioned also by the United States Department of State Country Report of 1993; according to that report, Israeli settlers who endangered security were treated far more leniently than Palestinians guilty of similar offences.

29. The mission report of the International Commission of Jurists described in great detail the context of settler violence. The Israeli settlements in the occupied territories were not only illegal under international law, particularly article 49 of the Fourth Geneva Convention; they also constituted a threat to peace and security in the region. In its report, the International Commission of Jurists pointed out that the situation was particularly tense in Hebron because of the presence of Jewish settlements in the very heart of a Palestinian city: the illegal establishment of settlers, some of whom belonged to such anti-Arab groups as "Kach" and "Kahana Chai", in the midst of an agglomeration of more than 100,000 Palestinians, was the source of daily conflicts ranging from harassment to murder. On that subject, he welcomed the fact that those two groups had been declared terrorist and outlawed. The International Commission of Jurists mentioned several measures taken to ensure the protection of the settlers, whereas, the safety of the Palestinians was not addressed by any comparable measures; it laid particular importance on the fact that the settlers were armed and that the Israeli forces did not react when the settlers committed violent acts. That led one to believe that there was a double standard in the occupied territories, not only with regard to the legal regime applied to each, but also as concerned respect for the most basic principles of the Convention.

30. Regarding the applicability of the Convention, he recalled that when, following the appalling massacre at Hebron the Committee had asked Israel to send it an urgent report on measures taken to protect the Palestinians and bring to an end the illegal action of Israel settlers, it had of course had in mind the peace process under way between Israel and the Palestine Liberation Organization (PLO) and it had had good reason to hope that that process would lead to the peaceful coexistence of Palestinians and Jews under conditions of

justice and respect for human dignity. The Committee feared that policies and practices contrary to the basic principles of the Convention might add to suffering and pose an obstacle to the peace process itself. Would it be naive to state that the Convention should constantly be borne in mind by all those involved in the Middle East peace process? In that regard, attention should be drawn to the broad scope of the phrase "racial discrimination", as defined in article 1, paragraph 1, of the Convention.

31. In its decision 1 (44), the Committee had referred explicitly to article 5 (b) of the Convention, under which States parties undertook to protect individuals, groups or institutions against all forms of racial discrimination: the Committee was still awaiting a report from Israel on measures taken in that regard. Article 4 of the Convention was equally pertinent. It was true that the Israeli authorities condemned terrorist acts such as the one in Hebron and that they hoped that measures would be taken to avoid a repetition of such incidents. It was also true, however, that a climate of racial discrimination and hatred was being fostered by some people, particularly, in the settlements: the Committee wished to know what Israel was doing in legal and practical terms to implement article 4 of the Convention. That implementation should not pose any problem in so far as the Israeli Criminal Code, according to the Government itself, was applicable to Israeli civilians in the occupied territories. Two extremist movements had reportedly been outlawed already, and he hoped that additional measures of that sort would soon be taken.

32. Article 6 of the Convention stated that all victims of racial discrimination should be able to seek just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination. The right of victims to reparation was fully guaranteed by international law. In its report, the commission of inquiry found that the massacre had caused inconsolable grief to the families of the victims: had those families received, and were other victims of acts of violence receiving, the just and adequate reparation or satisfaction to which they were entitled?

33. Under article 7 of the Convention, it was the duty of States parties to adopt immediate measures in the fields of teaching, education, culture and information, with a view to combating prejudices which led to racial discrimination and to promoting understanding, tolerance and friendship among nations and racial or ethnic groups: how was Israel fulfilling that obligation, and most importantly were such measures being taken in the occupied territories, particularly in the Jewish settlements?

34. Mr. ABOUL-NASR said that Mr. van Boven's analysis was quite thorough. He had nothing to add, especially given that the documents sent by Israel to the Committee did not actually constitute a report, but consisted basically of excerpts from the report of the commission of inquiry. He had no confidence in that sort of inquiry; it brought to mind a previous commission of inquiry, created by Israel after a massacre in Lebanon and which had concluded that Ariel Sharon was undeniably guilty yet he had remained in his post and was now one of the country's most prominent political figures.

35. Israel had not found it necessary to send either a report or a representative to the present meeting of the Committee. Certainly, some

documents, not without interest, had been sent to the Secretary-General, along with a note verbale in which the representative of Israel stated that the information was being submitted purely out of courtesy, as he questioned the Committee's competence in the matter. Mr. Aboul-Nasr would refrain from commenting on those documents, as he considered that the Committee had not received a reply from Israel. He would limit himself to two comments: first of all, the place where the massacre at Hebron had occurred bore the name of the Mosque of Ibrahim both in Security Council resolution 904 (1994) and in Committee decision 1 (44). It was even more logical to retain that designation, given that it was Muslim worshippers who had been massacred there. As was apparent from the second paragraph of Israel's note verbale received by the Secretary-General on 11 April 1994, Israel contested the applicability of the Convention in the occupied territories. If the Convention was not applicable, and if, as had often been asserted by the Israeli authorities, the Fourth Geneva Convention of 12 August 1949 was not applicable either; if neither prior legislation nor Israeli legislation was in force there, the question arose as to what laws were applicable in those territories. It was not enough to state that they were under military administration, and in any case the Security Council, through its resolution 904 (1994), had reaffirmed the applicability of the Fourth Geneva Convention "to the territories occupied by Israel in June 1967, including Jerusalem".

36. The Israeli authorities were hostile to the use of the terms "settlement" and "settlers", which were, however, used by the Security Council itself, including in the above-mentioned resolution, which had been adopted without a vote. What name should be used for the perpetrator of the massacre at Hebron, and what name for those who threw flowers on his tomb, if not settlers? He was well aware that the Israeli authorities had strongly disapproved of the massacre and he was grateful to them for that; what he reproached them for was for not having taken the necessary steps to ensure that such acts never recurred. They could not help but recur as long as armed settlers settled in areas completely unknown to them, whereas non-Jews were not authorized to bear arms: Mr. van Boven had correctly stressed that inequality.

37. Regarding the international presence in Hebron, on 9 August he had heard on the BBC that its on-site team in the zone had reported that the Israeli authorities had prevented them from doing their jobs properly: the Committee should arrange to get a copy of that broadcast which had been widely disseminated and was of great interest to it. What could the Committee in fact do? It should first of all express its regret that it had not received a real reply from Israel and that Israel's representative had not seen fit to come before the Committee. Secondly, it should reaffirm its competence in the matter. Thirdly, it should recall that the Israeli authorities were bound to ensure the protection and well-being of all the inhabitants of the occupied territories in accordance with the provisions of the Fourth Geneva Convention, and that the authorization given to the settlers to bear arms, as well as their very presence, violated international law and constituted an obstacle to the peace process.

38. Mr. de GOUTTES said that he had listened with great interest to the previous speakers. He also regretted the absence of the Israeli delegation; given the importance of the events currently taking place in the region and

the turn of events in the negotiations with the PLO, Israel should have had the courage to send a representative to a meeting where the climate would probably have been much better than at previous meetings devoted to that country. The reply given to the Committee's request for information following the massacre at Hebron was inadequate. Certainly, the conclusions of the commission of inquiry, as well as the information supplied on the outlawing of extremist groups, mentioned by Mr. van Boven, and on the current state of negotiations were not without interest. Even if it did not anticipate a real periodic report, the Committee could nevertheless expect to receive replies to the important questions put to the Israeli delegation during the consideration of its report in August 1991. The first of those questions, which had already been mentioned by others, was that of the applicability of the Convention in the occupied territories. In 1991, the Israeli delegation had stated that Israel did not have to apply the Convention in the occupied territories because they were zones placed under military administration and in which Israeli law was not applicable; the Government, it had stated, nevertheless agreed to apply the rules of humanitarian law there de facto. The Committee had then replied that, without prejudice to the problem of the status of those territories, the Convention was applicable by virtue of its article 3, under which it was the obligation of States parties to prohibit all practices of racial segregation and apartheid "in territories under their jurisdiction". Furthermore, given that Israeli civil and criminal law applied to the Israelis living in the occupied territories, it should necessarily apply as well to the Palestinians residing there, under the principle of the equality of all before the law; after all, as Mr. Aboul-Nasr had observed, there was no other set of laws to apply to them.

39. Nothing authorized Israel to make a distinction between Israelis and Palestinians, as the provisions of the Convention were applicable to all persons in the territory of a State party. That had always been the viewpoint of the Committee, which determined whether complaints lodged against States parties by foreigners in their territories were admissible. As Mr. Aboul-Nasr had said, the Committee should reaffirm the applicability of the Convention in the present case. Recent information from reliable sources referred to discriminatory housing practices having occurred in the occupied territories; the demolition or confiscation of houses or lands, leading to a forced emigration of Palestinians. Given that such practices constituted serious violations under article 5 (e) (iii) of the Convention, the Committee should ask Israel to provide it with additional information on that subject in its next report.

40. Mr. Garvalov resumed the Chair.

41. Mr. WOLFRUM said that he also regretted the fact that Israel had not deemed it useful to pursue dialogue with the Committee; he should have expected it to take a different attitude in the present context, when hopes for peace were growing. In the absence of a representative of Israel, and without a report, the Committee would find it difficult to work effectively. Mr. van Boven had given a full and objective analysis of the available documents; he himself had learned a lot from Mr. van Boven's statement, to which he wished to add only a few points, in order to present matters in a somewhat different light. As Mr. de Gouttes had said, the Convention was applicable in the occupied territories and the competence of the Committee

was undeniable. Article 6 of the Convention made it the obligation of States parties to assure protection and remedies "to everyone within their jurisdiction". By all evidence, the inhabitants of the occupied territories were under the jurisdiction of the occupying Power and, under humanitarian law, they should all benefit from identical and equitable treatment. By virtue of article 9 of the Convention, the Committee was fully entitled to request further information from Israel.

42. Israel should have furnished specific information on the measures taken to guarantee security, to bring to an end the illegal action of Israeli settlers and to disarm them. Regarding the measures taken, he recalled what Mr. van Boven had said regarding the double-standard policy practised in the occupied territories, by which the threats and violations against the Palestinians were not the subject of inquiries as comprehensive as those concerning Israelis, and the two communities were not subject to the same laws. On administrative matters, the Committee had only scattered bits of information, from which it appeared that Jews, the number of whom was not stipulated, suspected of extremist acts that endangered public security had had arrest warrants issued against them or been confined to their homes and that individuals, again the number was not known, suspected of instigating violence were refused entry into the territories. In that regard, he believed that the zones surrounding the Mosque had been declared off-limits to initially all traffic, thereby restricting the freedom of movement of the Palestinians at Hebron in particular. A third measure - the cancellation of arms permits except for self-defence, which applied to certain persons who had been judged to be dangerous, and again the number was not given - meant that those persons had not been completely disarmed. Israel had taken a fourth step, which he welcomed: namely, to outlaw, albeit belatedly, the two extremist parties "Kach" and "Kahana Chai". All of that was very much in accordance with the provisions of article 4 of the Convention.

43. Under the circumstances, he proposed that the Committee should adopt a decision or resolution stressing five points: affirmation of the Committee's competence as concerned the situation in the occupied territories; affirmation of its right to ask specific questions; regret at being unable to address itself to an Israeli interlocutor and at not having received a reply to its questions; reminder of Israel's obligation under the Convention to ensure the security of the Palestinians in the occupied territories; and a request for information on the measures by which Israel intended to deal with the threat posed by settlements such as that of Hebron to peace and security in the occupied territories.

44. Mr. AHMADU said that he was not surprised at the absence of a representative of Israel, as that country had always refused to consider the situation in the occupied territories with the Committee, arguing that it was not part of the Committee's mandate; Israel, turning article 3 of the Convention into an abstraction, spoke of interference in its internal affairs. In fact, consideration of the situation of the territories under Israel's jurisdiction was clearly within the Committee's competence. The occupying army took its orders from a government, the very same Government that was supposed to report to the Committee. The Committee had asked some very clear questions, and instead of a detailed reply had received nothing but documents, including excerpts from the report on the massacre, but not the report itself,

and was expected to find the information requested on its own. Those documents referred to the condemnation of the acts at Hebron, expressed regrets and summarized some measures, such as the outlawing of the two extreme-right parties.

45. It was in the settlements in the heart of Muslim cities or holy places that the heart of the problem lay. Those settlements were peopled by a minority of privileged individuals who were armed and protected by the laws of Israel, whereas the majority of Palestinians were neither armed nor protected. By their own admission, the military and police forces of Israel gave priority to the safety of the settlers. Under the circumstances, no one should be surprised if incidents such as the massacre at Hebron recurred. It was time for the Legal Counsel of the United Nations or another person with similar authority to make it clear to Israel once and for all that the Committee was entitled to ask for an account of the situation in the occupied territories. He suggested first of all that the complete demilitarization of certain sensitive zones be considered and that the Committee subsequently inform Israel of its opinion on the situation in the occupied territories, through the Secretary-General, as Israel would certainly reply to him. The Committee could then send him a report dealing exclusively with that question.

46. Mr. DIACONU said that he agreed entirely that Israel was bound to apply the Convention in the occupied territories and that the Committee was entitled to ask it for additional information on measures the Government intended to take to end the illegal action of Israeli settlers, as those actions were racist. Israel had not made any statement when it had become a party to the Convention in 1979, that is, after having occupied the territories in question; it therefore had to apply article 5 (b) of the Convention. The Committee had been expecting another reaction, given that, even if Palestinians and Israelis continued to be at war, negotiations were under way, the occupied territories had become autonomous and Israel was becoming used to the idea that it would have to give them up.

47. The State of Israel was effectively responsible for the act that had occurred, as it had not taken the required steps to guarantee the security of the Palestinians in the occupied territories. It was responsible for the security of all the inhabitants of those territories, without exception. The Committee noted the measures that had been taken, but questioned whether they were adequate, because Israel's attitude towards the Palestinian population was always discriminatory, as the Palestinians were subject to a different legal regime - if they were subject to one at all. It was time for the Israeli authorities to admit that the occupied territories were occupied and not Israeli, and that they would soon be Palestinian. It was time for Israel to create new foundations for its relationships, because once the Palestinian State was created there would be minorities on both sides. He hoped the time was near when the question of the occupied territories would no longer be raised and that, once there was a Palestinian State, it would become a party to the Convention and would itself submit reports to the Committee. As to the separation of Christians and Muslims at the Tomb of the Patriarchs, in addition to being a lame way of combating terrorism, it was also a form of racial segregation, of the type condemned by article 3 of the Convention.

48. Mr. RECHETOV said that he agreed entirely with Mr. van Boven and the experts who had supported him regarding the applicability to Israel of both the Fourth Geneva Convention and the Convention on the Elimination of All Forms of Racial Discrimination with regard to the occupied territories. That analysis was part of the Committee's efforts to prevent a recurrence of incidents such as that at Hebron. Unfortunately, the Permanent Mission of Israel had not interpreted it in that way, but had had the old reflexes from the cold war. That was an obvious mistake, as the Committee had clearly demonstrated that it was concerned only with human rights violations - wherever they occurred, anywhere in the world. The Committee's request was not the result of any predetermined political position. It was a shame, when Israelis and Palestinians had effected as spectacular a change in their situation as had South Africa, and when some Israeli diplomats were showing great courage, that no representative of Israel had come before the Committee to present arguments and clarifications, and that the Committee had therefore heard only the analysis, albeit very objective, given by Mr. van Boven. The conclusion to be drawn from that state of affairs on the practical level was that a representative of Israel must come before the Committee in order to restore the necessary constructive dialogue.

ORGANIZATIONAL AND OTHER MATTERS

49. The CHAIRMAN informed the Committee that he had met with the High Commissioner for Human Rights, who had suggested that he address the Committee on the question of Burundi at 11 a.m. on Monday, 15 August. He had also met with the representative of Croatia, who had reaffirmed that country's willingness to pursue its cooperation with the Committee and who had high expectations of the mission to Croatia and its conclusions. The representative had told the Chairman of the difficulties faced by a country like his, where government machinery was not yet all in place, in providing the additional information requested by the Committee within the required time, and had asked if it would be possible to put off consideration of that additional information until March 1995 when it would also be considered in the light of document CERD/C/249 and the report of the mission. The Chairman asked if the Committee felt that Croatia had enough time to reply in August to the questions addressed to it, or whether it agreed to put off consideration of the additional information until March of the following year.

50. Mr. FERRERO COSTA said that Croatia should be dealt with in the same way as the Federal Republic of Yugoslavia (Serbia and Montenegro) and Bosnia and Herzegovina, given that all three of them were part of the former Yugoslavia, and the provisional agenda should not be changed, unless Mr. Yutzis, who was to report on the mission to Croatia, thought that Croatia deserved special treatment.

51. The CHAIRMAN said that the discussion of that question would continue at the next meeting.

The meeting rose at 6.10 p.m.