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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Thirty-third session

PROVISIONAL SUMMARY RECORD OF THE 765th MEETING

Held at Headquarters, New York,
on Thursday, 13 March 1986, at 10 a.m.

Chairman: Mr. CREMONA

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

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

Second periodic report of Sri Lanka (continued) (CERD/C/126/Add.2)

At the invitation of the Chairman, Mr. De Silva (Sri Lanka) took a place at the Committee table.

Mr. DE SILVA (Sri Lanka) said that he wished to respond to some of the remaining points raised by the members of the Committee. At the current meeting, he would not reply to the questions concerning the reasons why certain members of the Tamil minority community had resorted to violence, the historical background to that situation and the steps that the Sri Lankan Government had taken or proposed to take with a view to achieving a political solution. Those questions were so complex that he would prefer to submit a detailed report at a later stage.

With regard to the question as to whether the Sixth Amendment to the Sri Lankan Constitution could be repealed or modified, it must be borne in mind that that amendment was based on the fact that Sri Lanka was a unitary State. No unitary constitution could permit a secession of territory or the dismemberment of the State. Anybody who aimed to uphold the Constitution must disallow separatism, and anybody who wished to remain a member of Parliament must uphold the Constitution.

Another point raised by the Committee concerned the preservation of the cultural identity of the Tamils. A Ministry for Hindu Affairs and a Ministry for Muslim Affairs had been established, under a Tamil and a Moor cabinet minister, for the specific purpose of ensuring that the cultural traditions of the population groups concerned were maintained and fostered. Details would be provided in the following report.

A further question had dealt with the plight of civilians caught between the security forces and the terrorists. The terrorists located their camps in or initiated their action from populated areas and sometimes launched mortar attacks

(Mr. De Silva, Sri Lanka)

on army installations from behind the cover of civilian residences, or even places of worship. The security forces took every precaution to avoid civilian casualties. Certainly, there had been occasions when they had reacted to an attack on them in an irresponsible fashion. Fortunately, such reactions were not frequent and, where they had occurred, the Government had taken appropriate steps to deal with them. It should also be borne in mind that prior to the outburst of terrorist violence the Sri Lankan security forces had been performing a largely ceremonial role. It was in that context that the disciplining of the forces had been undertaken; in the recent past, instances of irresponsible behaviour on the part of the security forces had been extremely rare.

Where the question of civilian deaths was concerned, he wished to point out that most of the terrorists who operated in Sri Lanka wore civilian clothing. Once his weapon had been removed, any terrorist who had been killed as a result of action taken by the security forces looked no different from a civilian. While the Sri Lankan Government conceded that there had been unfortunate instances where civilians had been the victims of clashes between the security forces and the terrorists, it must be recognized that not all the people portrayed to the international community as civilian victims were genuine civilians.

With regard to the location of military camps, he wished to explain that the navy camp referred to by a member of the Committee was an installation that dated from before independence. The Army was located at Jaffna Fort, which had been built by the Portuguese in the sixteenth century. There had been army and navy camps at all the locations mentioned in the Committee for a very long time.

Mr. Banton had referred to the question of ethnic polarization. Sri Lanka did not in any way underestimate its ethnic difficulties, but the Government believed that in time the country would be able to return to the ethnic harmony that had prevailed earlier. The troubles in Sri Lanka were being caused by a small group of terrorists who were seeking to establish a mono-ethnic entity based on racism on a portion of the island. Naturally, there should be flexibility on both sides. However, the terrorists had stated that their demands were non-negotiable. The Minister of National Security of Sri Lanka had made an offer in the past 24 hours unilaterally to suspend the use of aircraft against terrorist targets, in the hope that the terrorists would de-escalate their violence.

(Mr. De Silva, Sri Lanka)

A member of the Committee had also asked whether the members of the Sri Lankan police force were underpaid, undertrained and understaffed. They were not underpaid, in comparison with similar public servants in Sri Lanka. However, they were certainly understaffed and steps had been taken to remedy that problem through recruitment. Training programmes were being conducted for new recruits.

He assured the members of the Committee that there was legislation that met the requirements of the Convention. He had in mind, for example, chapter III of the Constitution, entitled "Fundamental Rights", which was in conformity with article 5 of the Convention (CERD/C/101/Add.6, paras. 16 and 17). The rights dealt with in that chapter were justifiable by means of application to the Supreme Court. Human-rights violations had been alleged on many occasions, and in some instances it had been proved that there had in fact been violations. Moreover, there was a provision in the Constitution, dealing with the objectives of State policy, that required every member of the Government, including cabinet ministers, to ensure that the fundamental rights of Sri Lankan citizens were protected.

Sri Lanka was endeavouring to inculcate the principles of human rights in university students at all levels, including the doctoral level.

A number of the points raised by members of the Committee had concerned the outflow of refugees from Sri Lanka. There were in fact two inextricable problems. Firstly, for many years large numbers of Sri Lankans, from all the island's various communities, had been seeking economic benefits in Western Europe. Secondly, more recently some members of the Tamil community had been claiming that they were refugees fleeing from violence. Many Western States had considered the matter and in a number of instances had issued declarations stating that they did not believe that the situation in Sri Lanka was so dangerous as to justify according refugee status to members of the Tamil community who were in fact seeking greater affluence. Moreover, if genuine refugees were to be able to return in security, honour and dignity to their homes, the violence must cease and a political solution must be found. Pending a political solution, the Government had to take steps to protect civilians from terrorists who sought to evict them from their homes. Unfortunately that situation was regarded as a spiral of violence. It must be stressed that it was not the Government that had broken off negotiations and adopted intractable positions. The only issue on which the Government was not prepared to negotiate was that of the territorial integrity of Sri Lanka.

(Mr. De Silva, Sri Lanka)

Lastly, the Sri Lankan position on article 3 of the Convention, as set forth in Sri Lanka's initial report (CERD/C/101/Add.6, paras. 28-31), remained unchanged.

Mrs. SADIQ ALI noted that the replies given by the representative of Sri Lanka were objective. She was relieved to hear that the Government had made a unilateral declaration with a view to de-escalating violence.

She would appreciate additional information from the representative of Sri Lanka on the relationship between Buddhism, the Hindu caste system and the Sinhalese community.

Mr. DE SILVA (Sri Lanka) said that among the Sinhalese there were both Buddhists and Christians. On the other hand, among Sri Lankan Buddhists there were both Sinhalese and non-Sinhalese. The structure of Buddhism was the very antithesis of the caste system. In Sri Lanka, the caste system was a social phenomenon that was not based on any religious factor and was to be found among both Tamils and Sinhalese. The only area where it appeared to be of some relevance was that of the selection of a marriage partner.

Mr. de PIEROLA y BALTA welcomed the assurances provided by the representative of Sri Lanka, particularly those concerning fundamental human rights and the Sri Lankan position on the question of apartheid. In that connection, it would be useful to know whether Sri Lanka had discontinued all exports, particularly tea, to South Africa.

Mr. DE SILVA (Sri Lanka) said that Sri Lanka could not stand in the way of private trade with South Africa until the international community adopted economic sanctions against that country. However, the State did not maintain trade relations with the Pretoria régime.

Mr. KARASIMEONOV said that Sri Lanka should take steps to prevent private individuals from engaging in trade with South Africa.

He would welcome additional information about the decision of the Sri Lankan Supreme Court involving the Job Bank Scheme, which was referred to in annex V of the report (Wiekremasinghe Palihawadana vs. A. G. and others).

Mr. DE SILVA (Sri Lanka) said that, under the Job Bank Scheme, preference was given to members of a family in which nobody was employed. The term "class" used in connection with the decision in question actually referred to a form of classifying applicants.

The CHAIRMAN, speaking in his personal capacity, asked whether it would not be possible to control trading between Sri Lankan individuals and South Africa through import-export legislation.

Mr. DE SILVA (Sri Lanka) said that, if the Government used licensing as a form of control, it would be accused of discriminating among exporters. A compulsory economic embargo adopted by the United Nations would enable the Government to justify its actions on the basis of that embargo.

Mr. YUTZIS said that a distinction should be drawn between a violent situation and violent action. Of course, there were individuals or groups who unilaterally committed violent actions for psychological reasons. No State was entirely free of such isolated actions. However, in other instances violent actions occurred in response to a structural situation in the society. Historically, the Tamils had been in a situation of violence and had gradually been marginalized. In some areas, only 20 to 25 per cent of the Tamil population had the right to vote. The representative of Sri Lanka, although he had addressed the violent consequences of such a social situation, had not confronted the underlying causes of it. He suggested that, in a subsequent report, the Government should outline its plans for attacking those causes.

Mr. de PIEROLA y BALTA said that, according to its first periodic report (CERD/C/101/Add.6, para. 29), the Government had imposed a deterrent punishment on a private group of Sri Lankan cricketers for touring South Africa by banning them from participating in cricket tournaments for 25 years. It was difficult to understand why, if the Government could impose such a punishment on cricket players, it could not prohibit individuals from exporting tea to South Africa. That did not seem to him to be a consistent policy.

Mr. KARASIMEONOV said that he was not convinced by the representative's explanation as to why it was impossible for the Government to prohibit Sri Lankan citizens from trading with the South African régime, in view of Sri Lanka's clear-cut anti-racial policy and excellent record in its endeavours to isolate South Africa. He asked the representative to transmit the Committee's apprehensions to his Government with the aim of encouraging it to find ways and means to stop even limited relationships with the South African régime.

Mr. DE SILVA (Sri Lanka) said that he categorically rejected the statistics cited by Mr. Yutzis concerning the percentage of Tamils who could vote. Sri Lanka had had universal adult franchise for many years. The only persons who had previously been unable to vote were "stateless" persons, a situation which had since been rectified. The true situation was that a minority of Tamils, who had been unable to impose their wishes on the majority of the Tamil population, sought to impose them by the bullet rather than by the ballot. He pointed out that the Chief Justice, the Attorney General and three cabinet members were all Tamils.

With regard to the punishment of the cricket players, he said that the players had not been banned from playing cricket with their friends, only from representing Sri Lanka officially. The Government could not restrict individual's private behaviour to that extent. Paragraph 29 of Sri Lanka's previous report was not clear in that regard. However, he would communicate the concern of the members of the Committee to his Government, which would consider what steps could legally be taken to prevent further trade.

Mr. YUTZIS said that, if he understood correctly, the representative had claimed that the Tamil groups were carrying out an armed strategy with no basis of support in the community. He wished to know, then, how they survived and what their sources of funding were. He was sorry to have to insist on the questions; their purpose was merely to show the Committee's interest in Sri Lanka, its report and the lives which were at stake.

Mr. ABOUL-NASR said that under article 9 of the Convention, it was clear that the Committee could make suggestions and general recommendations based on the examination of the reports and information received from the States parties. If members of the Committee used statistics from other sources, they should speak on their own behalf. In fact, no one could speak on behalf of the Committee except the Chairman, who could do so only after the members had taken a decision to that effect. The Committee was not a tribunal of justice conducting an interrogation. It was limited to encouraging the representatives of the States parties to continue the dialogue with it and to offering its views about how the Convention should be implemented. He expressed the hope that the Committee would discuss the questioning procedure and agree upon appropriate ways to address questions.

Mr. YUTZIS said that the Committee was supposed to deal with the question of discrimination against ethnic groups, and every member had a right to ask for information in that regard. He felt that his questions were relevant to the objectives of the Committee. Moreover, United Nations documents had been used as sources in the past.

Mr. KARASIMEONOV agreed with Mr. Aboul-Nasr that the Committee should not interrogate or humiliate the representatives of States parties and should not refer to documents which had not been submitted by the Government. However, he wondered why, when Mr. Partsch had referred to such documents during the consideration of Bulgaria's report at the current session, Mr. Aboul-Nasr had not reacted in the same way.

Mr. ABOUL-NASR said that he had not referred specifically to Mr. Yutzis's comments, but rather to the discussions of the past few days. He had spoken out previously against the use of outside material.

Mr. PARTSCH agreed to a certain extent that some Committee members had been putting their questions to reporting States in the name of the Committee, whereas they should have done so on their own behalf. Under article 3 of the Convention, the Committee invited States parties to provide certain information. That invitation could be accepted or rejected. There was no legal basis for Mr. Karasimeonov's observations.

Mr. DE SILVA (Sri Lanka), responding to a question raised by a Committee member, said that bank robberies, local contributions and the narcotics trade, funded terrorist activities, weapons and supplies procurement, and training.

The CHAIRMAN announced that the Committee had concluded its consideration of the second periodic report of Sri Lanka.

Mr. De Silva (Sri Lanka) withdrew.

Seventh periodic report of Denmark (CERD/C/131/Add.6)

At the invitation of the Chairman, Mr. Hoppe (Denmark) took a place at the Committee table.

Mr. HOPPE (Denmark), responding to questions which had been raised by Committee members, said that foreigners in Denmark were registered according to nationality and not ethnic group. The three categories mentioned in paragraph 11 of the report reflected Denmark's treaty obligations, and were applied in determining the legal status of foreigners entering Denmark.

(Mr. Hoppe, Denmark)

Resident foreigners had both the right to vote and stand for election. Three foreigners had recently been elected to local councils. There was no discrimination against foreigners seeking Danish citizenship and residence. Citizenship requirements applied to all foreigners regardless of national origin. They included seven years minimum residence, knowledge of Danish, and parliamentary approval upon application. Annex V of the report provided details concerning the information in paragraph 12. Expulsion of foreigners was extremely rare, and the guideline for doing so was quite strict. Immigrants could be expelled for reasons of national security if they had repeatedly committed serious crimes, if they had been sentenced to six years in prison, or if they had entered the country illegally. Immigrants enjoyed the full protection of Danish law.

The effect of the Joint Programme of Action against South Africa was remarkable. At the moment only three Danish firms did business in South Africa.

With regard to paragraph 19 of the report, three court cases were on record which Denmark deeply regretted. The first two cases dealt with arms shipments to South Africa on Danish ships that had been leased to other countries. No arms had been shipped from Danish ports. In the first case, the Supreme Court had imposed a sentence of unconditional incarceration after it had deemed that the lower court's decision had been too mild. Following that, the penalty had been extended to four years, and had been imposed in absentia in the second case. The third case was still pending.

Denmark had never had diplomatic relations with South Africa at the ambassadorial level. Since the closing of its consulate-general in Johannesburg in 1985, there had been no Danish representation in South Africa. South Africa had a consulate-general in Copenhagen. Danish activities with South Africa could not be characterized as "relations".

Since 1980, no oil had been carried to South Africa aboard Danish ships. No Danish-produced oil had been exported to South Africa. Coal imports amounting to roughly 90 per cent of Danish imports from South Africa, were expected to be completely halted by spring, by virtue of a Government bill. It provided for an end to import-export trade with South Africa at the earliest possible date. Figures showed that the volume of trade with South Africa over the past few years

(Mr. Hoppe, Denmark)

was static. Total 1981 imports amounted to 1.25 billion Danish kroner, while the 1985 total was 1 billion Danish kroner.

The Danish Ministry of Industry was studying the extent of Danish investment in South Africa. Research had not yet been concluded, and more information would be provided in the next report. Most Danish companies had divested as a result of the Joint Programme of Action against South Africa.

Denmark provided humanitarian aid to oppressed South Africans, but did not support armed conflicts. To do so would contravene the United Nations Charter. Within the Nordic community, the European Economic Community, and the United Nations, Denmark strove to convince others to adopt its policy.

With respect to the cases mentioned in paragraph 44 (b) of the report, the lawyer for the petitioner had been responsible for not serving the writ on time. Since the case against the first person had been dismissed, and it had not been clearly established that the second person had made a defamatory statement independently of the first, the second person had been found not guilty. Another case pending concerned a television journalist interviewing youths who had made defamatory racial statements. The youths and interviewer had been prosecuted, as was the news programme's supervisory officer.

There were probably so few recorded cases of racial discrimination in Denmark because strong nationalism had never been a prevailing force, and the Danes were a pragmatic people who did not openly discriminate. Racist organizations were illegal by virtue of the law and constitution. There were no racist organizations to the knowledge of State authorities. Denmark fully complied with article 4 of the Convention.

With regard to Greenland, a considerable amount of information had been provided in Denmark's sixth periodic report. However, if the Committee so wished, further details could be given in the next report. In general terms, it could be said that socio-economic conditions and educational levels in Greenland were roughly the same as those in the rest of the Danish realm, and illiteracy there was unknown. No exact figures for the Eskimo population were available since, as had been pointed out, Danish citizens were not registered according to ethnic origin. Only rough estimates could be made, on the basis of the regular population censuses. The report mentioned that Greenlanders had been appointed as Supreme

(Mr. Hoppe, Denmark)

Court justices by way of illustration, in response to a question raised during the consideration of the sixth report regarding Greenlanders' representation at the higher levels of public office. By virtue of the 1953 Constitution, Greenland was as much a part of Denmark as Copenhagen. Since 1979, however, it had enjoyed home rule and exercised powers in respect of State affairs with the exception, inter alia, of constitutional and criminal law, foreign relations and national defence.

Concerning the right to work, as laid down in article 5 of the Convention, he could confirm that that right was indeed recognized in Denmark. As to legal remedies against any acts of racial discrimination, all persons had the full protection of the law and the opportunity to report such instances to the police and to initiate legal proceedings in the courts. Such proceedings were dealt with expeditiously.

Regarding article 7, one member of the Committee had drawn attention to the reference to "ethnic minorities" in paragraph 61 of the report. As had been made clear in the report (para. 6), persons were not registered in Denmark according to ethnic origin, and the term "national" should have been used in referring to such minorities. He regretted that the Committee had been misled in that regard.

Several questions had been asked more specifically about the situation of refugees and immigrants in Denmark. The children of such persons were given free education in Danish schools. The Government did not make special provision for the teaching of those children in their own native languages, but State-subsidized courses were available to them at minimal cost. Consulates representing the countries of origin of refugees did not operate special schools, chiefly because the individual national groups concerned were rather small. Institutes of education were open to immigrants and refugees on an equal basis with Danes, and access to higher education in general relied on ability and not economic means. Efforts were being made in the educational sector to promote racial tolerance, and, as he had pointed out in his introductory statement, the Government had adopted in 1985 a comprehensive programme to ensure proper treatment of refugees and their integration into Danish society. The programme dealt with all aspects of the question, including reception, education, housing and employment.

(Mr. Hoppe, Denmark)

Also in his introductory statement, he had referred to the dramatic increase in so-called spontaneous asylum-seekers. The latest statistics for 1985 showed that the number of refugees who had entered Denmark on their own initiative, rather than under the auspices of the Office of the United Nations High Commissioner for Refugees had reached some 8,000 by August, almost double the figure for the whole of 1984. Those refugees represented 35 nationalities, the main ones being Lebanese, Iranians, stateless Palestinians, Poles and Turks. In earlier years, many refugees had come from Chile and Hungary, and there was now also a large group of Vietnamese refugees who had arrived through the Rescue at Sea Resettlement Offers (RASRO) scheme. No preferential treatment was given to any one group of refugees. All cases were decided on the basis of need, not of country of origin. Lastly, the terms under which refugees were eligible for award of pension were described in annex V, paragraphs 29 to 31, of the report.

Mr. SHAHI sought clarification about the constitutional relationship between Denmark and Greenland, which the representative of the reporting State had described as an integral part of the Danish realm but which, unlike Denmark, had chosen to withdraw from the European Economic Community.

Mr. HOPPE said that Greenland was a case sui generis. When Denmark had joined the EEC in 1973, Greenland, which then did not have home rule, had also automatically become a member of the Community, whereas the Faroe Islands, which already had home rule, had indicated that it would not seek membership. He was not aware of any other precedent for a part of a country withdrawing from the EEC. That decision could only be explained in terms of the special relationship which existed between Greenland and continental Denmark.

Mr. YUTZIS sought further clarification of the terms under which pensions were payable to refugees. Denmark's fifth periodic report had referred to preparations under way to improve the provisions which had then existed and it would be useful to know more about the current requirements for the payment of such pensions.

Mr. HOPPE replied that the current arrangements were those described in annex V, paragraphs 29 to 31, of the report. Under the new Social Pensions Act, which had entered into force on 1 October 1984, pensions were paid to non-Danish citizens who had been permanently resident in Denmark for at least 10 years between the ages of 15 and 67. Of those 10 years, at least 5 had to be within the period immediately preceding the award of the pension.

The CHAIRMAN declared that the Committee had thus concluded its consideration of the seventh periodic report of Denmark.

Mr. Hoppe (Denmark) withdrew.

Eighth periodic report of Iraq (CERD/C/132/Add.2)

At the invitation of the Chairman, Mr. Ibrahim and Mr. Yonis (Iraq) took a place at the Committee table.

Mr. IBRAHIM (Iraq) said that his country's eighth periodic report had been drawn up in accordance with the Committee's revised general guidelines and contained details of legislative enactments and their application with a view to the elimination of racial discrimination on the basis of the provisions of the Convention. Throughout its long history, Iraq had diligently combated all forms of racism, and the revolution of 1968 had reaffirmed its natural role in the struggle against racism through the promulgation of legislation in accordance with the principle of non-discrimination. The international and domestic legal framework adopted by Iraq to that end was outlined in the international human rights instruments referred to in paragraphs 7 to 13 of the report and in the articles of the Constitution cited in paragraphs 14 and 15. Their provisions had been put into effect in all fields relating to civil, political, economic and cultural rights. Furthermore, as indicated in the report, Iraq's accession to the International Convention on the Elimination of All Forms of Racial Discrimination had made the provisions of that instrument an integral part of Iraqi domestic legislation, and application could be made to the Iraqi courts with a view to their implementation.

Part II of the report provided information in relation to articles 2 to 7 of the Convention, which indicated that Iraqi law strictly prohibited the practice of any form of racial discrimination. That applied equally to individuals, institutions and public authorities. Iraqi society was a harmonious one and the Government was encouraging ethnic and racial integration, the principle effects of which could be seen in marriage, residence, education and employment.

Iraq had acceded to the International Convention on the Suppression and Punishment of the Crime of Apartheid, whose provisions also formed an integral part of Iraqi legislation. His country regarded racial segregation as a crime against humanity and strongly condemned all forms of co-operation with racist régimes. In addition, Iraq was using all the means at its disposal to support the African liberation movements struggling against the régime in South Africa so that the

(Mr. Ibrahim, Iraq)

black majority could achieve full independence and exercise its right to self-determination.

National legislation, in particular article 36 of the Constitution and articles 200, 203 and 204 of the Criminal Code, treated racist propaganda and practices as punishable offences. Details of that legislation could be found in paragraphs 39 to 42 of the report. The legal principles that Iraq was following in its application of article 4 of the Convention were closely related to those governing the application of article 6 concerning the right of legal recourse. Accordingly, articles 4 and 6 were considered together in the report.

Details of the application of article 5 of the Convention could be found in paragraphs 45 to 98. That section of the report included information (paras. 96 and 97) about the cultural rights of the Turcomans and the Syriac-speaking community. With regard to the right to freedom of movement and residence and to leave and return to the country (paras. 63 to 65), it should be emphasized that the measures restricting travel which had been imposed during the Iranian aggression against Iraq applied to all citizens without distinction. Exceptions to those restrictions were made in certain cases - for example, in respect of persons requiring medical treatment abroad.

In conclusion, annex I of the report concerned Iraq's endeavours to eliminate discrimination against women. That annex referred to a summary of the report submitted by the General Federation of Iraqi Women to the World Conference held in Nairobi in July 1985. Annex II of the report discussed the question of autonomy in the Iraqi region of Kurdistan, including information requested during the consideration of Iraq's seventh periodic report. He invited the Committee to consider those two annexes as part of the report now before it.

The meeting rose at 1 p.m.