



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

Distr.  
GENERAL

CERD/C/SR.1681  
4 March 2005

Original: ENGLISH

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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Sixty-sixth session

SUMMARY RECORD OF THE 1681st MEETING

Held at the Palais Wilson, Geneva,  
on Friday, 25 February 2005, at 3 p.m.

Chairman: Mr. YUTZIS

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GE.05-40563 (E) 020305 040305

The meeting was called to order at 3.25 p.m.

FOLLOW-UP TO THE WORLD CONFERENCE AGAINST RACISM, RACIAL DISCRIMINATION, XENOPHOBIA AND RELATED INTOLERANCE (agenda item 7)

1. Mr. SOB (Office of the High Commissioner for Human Rights, Anti-Discrimination Unit) said that of the three follow-up mechanisms established under the Durban Declaration and Programme of Action - namely, the Intergovernmental Working Group on the effective implementation of the Durban Declaration and Programme of Action, the Working Group of Experts on People of African Descent, and the Group of Independent Eminent Experts, only two had addressed the issue of complementary standards. The Intergovernmental Working Group had benefited from the input of the Committee on the subject, and the presentations made by Mr. Sicilianos and Mr. Pillai had been greatly appreciated.

2. Mr. Pillai's presentation to the recent meeting of the Group of Independent Eminent Experts had also been instructive and persuaded the Group to overcome its reluctance to become involved in considering the issue of complementary standards. He hoped that the Committee would continue to help and advise that Group in the future.

3. Ms. BUTEAU (Anti-Discrimination Unit) said that the work being done on complementary standards had its source in paragraph 199 of the Durban Programme of Action, which recommended that the Commission on Human Rights should prepare complementary international standards to strengthen and update international instruments against racism, racial discrimination, xenophobia and related intolerance in all their aspects. The issue of complementary standards had subsequently emerged in the discussions of the Commission on Human Rights concerning its resolution 2002/68, in which the Commission had recommended that the Intergovernmental Working Group should prepare complementary international standards to strengthen and update international instruments against racism, racial discrimination, xenophobia and related intolerance. The Working Group had taken up the issue at its first session and had concluded that there should be an effective and thorough evaluation of existing international standards and instruments with a view to determining whether there was a need for complementary standards. The Working Group had invited the Committee to consider evaluating the implementation of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), and requested it to express its views on possible areas where complementary international standards might serve to strengthen the fight against discrimination. Other human rights treaty bodies had also been asked to submit their views, while the Office of the United Nations High Commissioner for Human Rights (OHCHR) had been requested to prepare a compendium on international standards to combat racism and present an analytical report on them.

4. At its second session in March 2004, the Intergovernmental Working Group, having received those documents from OHCHR, had discussed means of identifying any gaps and how the gaps might be remedied. In the course of those discussions, a broad divergence of views had emerged: some delegations had felt that it was necessary to identify possible deficiencies in existing international standards, whereas others had been of the opinion that the challenge lay in fully implementing the standards already in place. Other delegations had been in favour of considering an optional protocol to the Convention or revising the Convention. Yet others had maintained that existing instruments could be interpreted to take new challenges into account.

5. At its third session in October 2004, the Intergovernmental Working Group had adopted two recommendations regarding complementary standards. The first stated that the Working Group should focus its efforts on strengthening the implementation of existing international instruments by identifying gaps in international human rights law, with a view to preparing complementary standards to address them, and should conduct an in-depth assessment of the implementation of existing instruments, including suggestions on how to enhance implementation in the fight against racism. Complementary standards should strengthen existing norms and provide added value.

6. The second recommendation had called on OHCHR to organize a high-level seminar on the subject of the Internet and racism, xenophobia and related intolerance, with a view to assessing the possibilities and challenges posed by the use of the Internet to propagate material that incited racial hatred or acts of violence. It proposed concrete measures to be taken at the international and national levels in order to combat abuse of the Internet for the purpose of any form of racist manifestation. An important goal of the seminar would be to consider progress made in the implementation of the relevant provisions of the Durban Declaration and Programme of Action. The two recommendations were important because it was the first time that the Intergovernmental Working Group had decided to take action. The General Assembly had subsequently endorsed those recommendations and had thus given approval for the seminar.

7. The second group involved in the question of complementary standards was the Group of Independent Eminent Experts, whose mandate had been adjusted by the Commission on Human Rights, in its resolution 2003/30, to include that question. At its recent meeting, the Group had discussed the question and heard the views of Mr. Pillai. The Group had concluded that it could contribute by mobilizing political support for universal ratification of the ICERD and had discussed the possibility of preparing joint letters of appeal to Governments of countries which had not yet ratified it. The Group had also expressed concern about the small number of declarations made under article 14. The Group had further concluded that it was too early for it to take a stance on the need for complementary standards, but that it would maintain consultations with the Chairperson of the Intergovernmental Working Group and consider the question again at its next session.

8. Mr. SOB (Anti-Discrimination Unit) said that the report outlining the views of the Committee on the question of complementary standards (E/CN.4/2004/WG.21/10) had been placed before the Intergovernmental Working Group and made available to the Group of Independent Eminent Experts. The latter Group had felt that it would be helpful to be more specific concerning possible gaps; it had decided that it would begin by discussing education, which was one of the issues mentioned in the Durban Declaration.

9. The CHAIRMAN invited those members of the Committee who had attended the meetings of the Intergovernmental Working Group to review the situation for the Committee.

10. Mr. PILLAI said that he was the only member of the Committee who had had the privilege of attending all three sessions of the Intergovernmental Working Group. After a great deal of discussion, the Group had concluded that there should be an evaluation of existing standards before complementary standards were considered. The Committee had been asked to assist with the evaluation of the ICERD and had submitted a document detailing its views (E/CN.4/2004/WG.21/10). He and Mr. Sicilianos had presented that document to the Group.

11. He had noted thinking on similar lines when he had attended the meetings of the Group of Independent Eminent Experts: in particular, the Group had expressed concern about the lack of progress in achieving the aim of universal ratification, a target set in the Durban Declaration.

12. The Group had also raised the question of the non-fulfilment of obligations under the Convention. For example, 73 States parties were behind with their reports, 19 of them for more than 10 years. The quality of reporting also needed to be addressed. The purpose of the Convention was to ensure that States parties fulfilled certain obligations in the area of the elimination of racial discrimination, and that was possible only if the provisions of the Convention were implemented and seen by the international community to be implemented.

13. The third point highlighted by the Group had been the involvement of civil society. He had discussed the different levels of involvement of civil society in relation to the functioning of the Committee, and the role of national human rights institutions in highlighting the situations in various States parties. When asked to give examples of areas in which the Group could be involved in supporting the Committee's work, he had highlighted the following aspects: promoting universal ratification and implementation, and creating awareness of the Convention and the Committee's work.

14. Mr. SICILIANOS said that he and Mr. Pillai had been given a clear mandate to present the Committee's views at the third session of the Intergovernmental Working Group; those views had been contained in the written report they had submitted. He had spoken about the substantive articles of the Convention, while Mr. Pillai had discussed the Committee's procedures. He had stressed the Committee's exploitation of the potential of the Convention by progressively extending its field of application and broadly interpreting the definition of discrimination contained in article 1. He had given the example of the two most recent general recommendations on discrimination based on descent and non-citizens.

15. Articles 2-7 of the Convention had been drafted in such a way that it was possible for the Committee, when considering country reports, to ask delegations questions on a wide range of issues. Although the Internet was not mentioned in the Convention, it was covered by article 4 in particular. The Committee could therefore raise questions on measures being taken to combat the distribution of racist material on the Internet. Without excluding the possibility of a specific instrument relating to the Internet, the Committee's submission had made it clear that the issue could be dealt with under the existing Convention. When asked whether another optional protocol was required, he and his colleague had been reluctant to express a position, as the Committee had not included a response to that question in its written report. They had therefore replied that that was a decision for the States parties. The decision to hold a seminar on the subject of the Internet had been based on the Committee's submission, which had highlighted that issue.

16. Ms. JANUARY-BARDILL said that she was concerned about the amount of repetition in the discussions on complementary standards. Most of the recommendations contained in the Committee's submission had simply repeated what was already contained in the Durban Declaration and Programme of Action. It was not clear where the discussion was leading or what it had achieved to date. She would be interested to hear what the States parties had said about complementary standards, and what the various groups would contribute to the discussion on implementing the Convention.

17. Mr. AMIR asked whether countries involved in the Intergovernmental Working Group had been asked to implement an anti-discrimination programme through a national policy. One of the first elements included in general recommendations was an appeal to States to implement the provisions of the Durban Programme of Action. For example, when the Committee had recently asked the French delegation to discuss the Durban Programme of Action, it had replied that, although there was a national policy in place, it was not specifically linked to that Programme.

18. Mr. KJAERUM said that, not having attended the relevant meetings, he found it difficult to assess how the process was progressing. He wondered if there was anything the Committee could do to help move things along. He invited the members of the OHCHR Anti-Discrimination Unit to attend the Committee's thematic discussion on racism and genocide, which it was hoped would highlight both the role of the Committee and other mechanisms, and any gaps in international machinery.

19. Mr. SOB (Anti-Discrimination Unit) said that the Committee had contributed to the work of the Intergovernmental Working Group in response to a request by the Commission on Human Rights. The Committee's work had been appreciated, as it had made it possible to identify the role of the United Nations system as a whole in action to combat racism and racial discrimination. The Group was open to all States Members of the United Nations, including those that were not parties to the Convention, and for that reason there had appeared to be a reluctance on the part of one group of States, which felt that it did not affect them, to reopen the debate on the Committee. Some 20 Member States were not parties to ICERD; they tended to be States that were not prominent in the international community, either because they were very small, had been affected by internal conflict or were considered "outside the law". However, the majority of States that attempted to conform to their international obligations were parties to the Convention.

20. In 2005, OHCHR would submit six reports to the Commission on Human Rights on action to combat racial discrimination as a follow-up to the Durban Declaration. They included the reports of the Intergovernmental Working Group and the Working Group of Experts on People of African Descent, which would carry out its first country visit that year pursuant to its task of verifying compliance with the obligations entailed by action to combat racism.

21. Another report related to a meeting held in December 2004 in Brazil on health and racism, with the participation of almost all the Latin American and Caribbean States. That meeting had focused on international commitments and the facilitation of access of persons of African descent to health services.

22. There had been calls for the development of a racial equality index. In collaboration with UNESCO and UNDP, 15 human rights indicators had been identified. A group of field experts now needed to be assembled in order to group those indicators for the purpose of measuring racial inequalities in each country.

23. The Committee would be asked to contribute to a high-level seminar planned for the next session of the Intergovernmental Working Group with the objective of assessing whether complementary standards in the area of combating discrimination on the Internet were necessary.

24. Ms. BUTEAU (Anti-Discrimination Unit), referring to the question of complementary standards, said that during the first two sessions of the Intergovernmental Working Group there had been a sense that little progress was being made. Since then, however, the fact that the General Assembly had endorsed the recommendation on the organization of the high-level seminar indicated that the process was advancing. Regarding the mandates of the three mechanisms established under the Durban Programme, there was, indeed, scope for duplication. However, the Intergovernmental Working Group and the Working Group on Persons of African Descent had approached their mandates through thematic examination of various subjects, such as discrimination with respect to poverty, education and health, and were making every effort to avoid duplication.

25. Mr. ABOUL-NASR said that, as reservations made by States parties when acceding to the Convention constituted one of the major problems faced by the Committee, he would be interested to hear whether that issue had been raised at the meetings of the Intergovernmental Working Group and, if so, whether States parties had been asked to review their reservations.

26. Mr. HERNDL said that from that Group's report it appeared that the Committee had been one of the focal points of the discussion by States parties on complementary standards. However, it was not specified which States had suggested that the best way to deal with gaps in the Convention was not through the adoption of general recommendations, but through the formulation of optional protocols. The Committee should be careful when analysing that issue; if it adopted such an approach, action would be dispersed even more widely.

27. Another unspecified group of States had shared the Committee's view that the failure of States parties to implement the Convention lay at the root of all problems in that area. One participant had underlined the importance of country visits by the Committee, an issue which had been discussed by the Committee on numerous occasions. That would be another means of making the Convention a living instrument. He hoped that the traditional areas of competence of the Committee would not be diminished.

28. Mr. SICILIANOS said it was not the case that States parties had wished to discourage the drafting of general recommendations; rather they considered that existing general recommendations could be incorporated in an optional protocol to the Convention. The Committee's representatives at the intersessional meeting had not expressed an opinion on that suggestion, since it had not been within their mandate to do so.

29. Mr. PILLAI emphasized that the members of the Intergovernmental Working Group had by no means exceeded the boundaries of their mandate. He suggested that at the opening of future sessions of the Committee, the Chairman should give a brief overview of work done during the intersessional period.

30. Mr. SHAHI said that careful thought must be given to the question of drafting further optional protocols to the Convention. The Committee had adopted 30 general recommendations, which would be difficult to incorporate into a single optional protocol. The process would be extremely time-consuming, particularly if the other treaty bodies faced the same task.

31. Mr. HERNDL agreed that a decision on the addition of an optional protocol would require considerable discussion, since the Committee must decide who would draft such a document and what their mandate would be. Consideration must also be given to the long ratification process that would doubtless ensue.
32. Mr. SOB (Anti-Discrimination Unit) said that the final results of the Intergovernmental Working Group meeting did not necessarily reflect the full content of the discussions that had taken place.
33. Turning to the question of the meeting with the Group of Independent Eminent Experts, he said that reservations had not been discussed, since it was considered more urgent to promote universal ratification of the Convention. Reservations, which were submitted by States parties for compelling political reasons, could be discussed at future meetings if progress was made in encouraging ratification.
34. Ms. BUTEAU (Anti-Discrimination Unit) said that during the meetings of the Intergovernmental Working Group, the discussion on general recommendations had developed following questions on what status such recommendations held in the hierarchy of legal norms, and whether an optional protocol could be drafted on the basis of the Committee's jurisprudence. The question had also arisen as to whether general recommendations should be considered to be "soft law", since they were interpretations of an international convention.
35. The CHAIRMAN said that the Intergovernmental Working Group had expressed a general opinion that several existing standards had become outdated and that new standards were necessary. Treaty bodies must indicate the developments that were required.

The meeting was suspended at 4.55 p.m. and resumed at 5.15 p.m.

#### ORGANIZATIONAL AND OTHER MATTERS (agenda item 2) (continued)

##### Guidelines on an expanded core document and treaty-specific targeted reports, and harmonized guidelines on reporting under the international human rights treaties (HRI/MC/2004/3)

36. The CHAIRMAN said that much progress had been made since the submission of the initial proposal on the common core document. The next stage would be for each treaty body to express its position regarding the guidelines on an expanded core document and treaty-specific targeted reports, and harmonized guidelines on reporting under the international human rights treaties (HRI/MC/2004/3) at the following Inter-Committee Meeting and Meeting of Chairpersons, both of which would be held in June 2005. The Committee must therefore draft a proposal and a conclusion on the presentation of State party reports.
37. Mr. TURPIN (Secretariat) said that the guidelines on the expanded core document had been drafted by pooling the general requirements found in the reporting guidelines of each treaty body. Additional requirements had also been incorporated. The guidelines encouraged States to adopt a long-term strategy for meeting their reporting obligations by viewing the reporting process as a whole, rather than dealing with each periodic report individually. They contained an expansion of the original core document guidelines, and addressed the question of including information on substantive rights issues common to all or most of the treaties, such as

non-discrimination and equality. Thus far, a minimalist approach had been used, but further common requirements could be added to the list if the participants in the Inter-Committee Meeting so decided. The Committee was welcome to comment on the guidelines before the revised draft document was considered at the following Inter-Committee Meeting and Meeting of Chairpersons.

38. Mr. SICILIANOS said that although he was in favour of the guidelines on the expanded core document, he considered the third section on common rights information somewhat conservative. He wondered what could be added to that section in order to adopt a maximalist approach.

39. Mr. KJAERUM, supporting Mr. Sicilianos, said he was pleased that, despite the Committee's initial concerns that racial equality would receive less attention than other fundamental rights, the guidelines required substantial information on discrimination to be included in the expanded core documents. The Committee must discuss what additional common rights information it wished to be included. He believed that the new core documents would be particularly useful, since the Committee would be able to see how States addressed other forms of discrimination, such as that based on gender and disability, and also racial and ethnic discrimination. They would also be an effective means of encouraging Governments to review their anti-discrimination measures and consider how human rights issues were interrelated.

40. Mr. PILLAI, referring to the two charts on pages 9 and 10 and page 14 of document HRI/MC/2004/3, asked what type of information States parties were expected to provide under the congruent substantive provisions, on the one hand, and the treaty-specific document, on the other.

41. Mr. ABOUL-NASR sought clarification regarding the phrase "everyone within the State" in paragraph 59 of the document. Surely the phrase "every national" would be more appropriate, since the term "everyone" included foreigners too.

42. Mr. AMIR asked whether the guidelines were targeted exclusively at the seven human rights treaty bodies or whether coordination with any other bodies was envisaged.

43. Ms. CONNORS (Secretariat) said that she had attended several treaty body meetings where the guidelines had been discussed, and they had generally been viewed as a positive measure that would encourage States parties to comply with their reporting obligations. There had been similar reactions from the States parties, many of which had requested the support of OHCHR in their preparation of the expanded core document.

44. She agreed with Mr. Sicilianos that part III entitled "Guidance on the content of reports" was fairly minimalist. Both the Committee against Torture and the Committee on the Rights of the Child had pointed to the need for it to be fleshed out; input from the Committee would be welcome in that connection.



45. In reply to Mr. Kjaerum, she agreed that the guidelines threw into relief the work of the treaty bodies dealing with various forms of discrimination. It would therefore be advisable for them to give the secretariat ideas on how to expand section H entitled “Non-discrimination and equality”.
46. Concerning Mr. Pillai’s query, she said it was generally considered that the chart of congruence in the substantive provisions (pages 9 and 10) was too conservative and that more material should be included. As to the treaty-specific document, it should contain up-to-date and very specific information drawn essentially from the list of issues. The intent was to implement the guidelines within the basic framework of the general working methods of treaty bodies.
47. Due note would be taken of Mr. Aboul-Nasr’s point: there were, of course, differences in the terminology between one treaty body and another.
48. In reply to Mr. Amir, she said that the guidelines had been drafted to facilitate the task of States parties in complying with their reporting obligations in general, and that they had certainly done. Relevant information was provided in the appendices to the guidelines.
49. Mr. SICILIANOS said it was important to emphasize three points. First, the preparation of the expanded core document must be a manageable task for States parties. Secondly, the document must be regularly updated to take account of legislative or other significant developments; otherwise the work of all the treaty bodies might be placed in jeopardy. Thirdly, any right that was enshrined in five or more of the core treaties should be included in the chart of congruence on pages 9 and 10.
50. Mr. HERNDL said that since the International Covenant on Civil and Political Rights was the broadest of the core human rights treaties, it was worthwhile noting the views expressed by the Human Rights Committee during its preliminary discussion of the idea of a consolidated document at its eighty-second session in October 2004. Apparently the Committee’s reaction had not been very positive: the idea of a consolidated document had not been deemed a viable option, and the Committee had stated its preference for maintaining the established procedure of States parties submitting initial reports, to be followed by more focused reports.
51. Mr. THORNBERRY wondered whether the expanded core document might help the treaty bodies to understand each other’s work and jurisprudence better. Thus what had initially been a technical exercise would become a normative one, leading to the rapprochement of the seven treaty bodies that had become separate entities as international human rights law had developed over the years.
52. Ms. CONNORS (Secretariat) said that views had diverged within the Human Rights Committee during its very preliminary discussion of the idea of a consolidated document. The guidelines on an expanded core document would be discussed in greater detail at the Committee’s forthcoming session.
53. Through its support, the Treaties and Commission Branch of OHCHR ensured that the treaty bodies were made aware of the work of their counterparts. As the Chairperson of the Committee on the Rights of the Child had aptly phrased it, what was being sought was a unified system for the protection and promotion of human rights, not seven separate kingdoms.

54. The CHAIRMAN invited Mr. Valencia Rodríguez to report on the results of the working group meeting held to discuss the guidelines.

55. Mr. VALENCIA RODRÍGUEZ said that on 3 February several members had held an informal meeting to discuss the secretariat's guidelines on an expanded core document (HRI/MC/2004/3) based on his working paper (CERD/NONE/2005/1). The discussion had focused on the essential contents of the core document. First, the core document must provide details of the States parties' social and demographic features, with due regard for gender issues. Information should also be provided on the constitutional and legal framework, with particular reference to the independence of the judiciary. In that connection, he drew attention to appendix 4 of the guidelines, which contained a list of indicators of special interest to the Committee.

56. Secondly, the general framework within which human rights were protected should be described in detail, as indicated in paragraphs 48 and 49. Thirdly, information on relevant international instruments should be included, as outlined in paragraphs 58-77. The last part of core document should deal with States parties' efforts to publicize human rights instruments, giving details of corresponding budgetary allocations.

57. In conclusion, the working group had noted that although the guidelines had been made known to the other treaty bodies, they had not yet taken any decision on them. A core document along the lines suggested would certainly be very comprehensive, but States parties might find it difficult to comply with such requirements. It was to be hoped that the secretariat would draft a further version of the guidelines taking the views of the treaty bodies into account. To that end, he recommended that Committee members should study the contents of the guidelines and his working paper with a view to facilitating further discussion.

58. The CHAIRMAN thanked Mr. Valencia Rodríguez for having drafted the working paper and presiding over the working group. A good start had been made but much remained to be done. He therefore invited Committee members to reflect on the matter further, bearing in mind the Committee's forthcoming presentation at the Inter-Committee Meeting scheduled for June 2005.

The meeting rose at 6.05 p.m.