



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

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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Sixty-ninth session

SUMMARY RECORD OF THE 1785th MEETING

Held at the Palais des Nations, Geneva,
on Friday, 18 August 2006, at 10 a.m.

Chairperson: Mr. de GOUTTES

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CLOSURE OF THE SESSION

The meeting was called to order at 10.15 a.m.

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

Meeting of the inter-committee working group on reservations (HRI/MC/2006/5/Rev.1)

1. Ms. PHUONG (Secretariat) introduced the report of the working group on reservations convened by the fourth inter-committee meeting of human rights treaty bodies (HRI/MC/2006/5/Rev.1), which had met on 8 and 9 June 2006. No member of the Committee had attended the meeting. The working group had discussed the practice of each treaty body in relation to reservations by States parties to the international human rights treaties, as well as relevant developments in the work of the International Law Commission.
2. The working group had reached a number of conclusions and recommendations, which were included in the report. It had concluded that general treaty law was applicable to the human rights instruments, and that permitting legitimate reservations to certain provisions of those instruments could contribute to the objective of universal ratification. The treaty bodies were competent to assess the validity of reservations and the implications of a finding of invalidity of a reservation.
3. The working group had identified three possible consequences of an invalid declaration: the State concerned might be considered as not being a party to the treaty; it might be considered party to the treaty but the provision in question would not apply; or it might be considered party to the treaty without the benefit of the reservation. That decision depended on the intention of the State at the time it entered its reservation.
4. The fifth inter-committee meeting, also held in June 2006, had considered the working group's report and asked it to meet again. That meeting was currently scheduled for mid-December 2006.
5. Mr. SICILIANOS said that Ms. Phuong had been provided with a copy of the working paper prepared by the Committee on the occasion of its joint meeting with the International Law Commission in 2004 (see the Committee's report to the General Assembly in that year, document A/59/18, paragraph 11). She should also take into account the Committee's remarks on reservations in the concluding observations on the sixteenth periodic report of Yemen, adopted at the previous meeting (CERD/C/YEM/CO/16). The Committee systematically asked States parties which had lodged reservations to consider withdrawing them. It considered the article in question even when a reservation had been made: only one State party had ever raised an objection to that procedure. It also made recommendations on the substance of the reservation. The position which the Committee adopted was thus very flexible. It did not venture to pronounce on the validity or otherwise of the reservation, since it did not have the legal authority to do so.
6. Mr. ABOUL-NASR agreed that the Committee had no authority to pronounce on the validity of a State party reservation. Under article 20 (2) of the Convention, a reservation was considered incompatible if at least two thirds of States parties objected to it - the Committee was not mentioned.

7. Mr. VALENCIA RODRIGUEZ recalled a study on reservations to the Convention, prepared by former Committee members Mr. Diaconu and Mr. Rechetov in 1998 (see the Committee's report to the General Assembly in that year, document A/53/18, paragraph 501). The working group, like the 1998 study, had concluded that general treaty law relating to reservations was also applicable to human rights instruments. The Committee was the only treaty body with a specific procedure for dealing with reservations, but the other treaty bodies were free to state their views about any reservations to their respective treaties.
8. Mr. SHAHI noted that the International Law Commission had prepared a draft declaration on rights and duties of States in 1949. He wondered whether there were any plans to resume work on the declaration in the light of more recent developments.
9. The Committee had never yet declared a State party's reservations invalid. It asked States parties to withdraw their reservations, but it did not explain in detail why they were inappropriate.
10. Mr. PILLAI recalled that the Committee had submitted its views on reservations to the Intergovernmental Working Group on the Effective Implementation of the Durban Declaration and Programme of Action (see document E/CN.4/2004/WG.21/10). At its fourth session in January 2006, the Intergovernmental Working Group had encouraged States to withdraw their reservations to relevant international treaties, especially article 4 of the Convention.
11. Mr. THORBERRY asked about the agenda of the next meeting of the inter-committee working group on reservations.
12. Ms. PHUONG (Secretariat) said that the working group wished to refine its recommendations in the light of current discussions in the International Law Commission.
13. The Committee took note of the report of the working group on reservations convened by the fourth inter-committee meeting of human rights treaty bodies (HRI/MC/2006/5/Rev.1).

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 4) (continued)

Draft concluding observations concerning the sixteenth and seventeenth periodic reports of Denmark (CERD/C/DEN/CO/17)

Paragraphs 1 to 9

14. Paragraphs 1 to 9 were adopted.

Paragraph 10

15. Mr. ABUL-NASR said that, as far as he was aware, few States parties actually incorporated the Convention into their domestic legislation. He wondered whether it was appropriate to mention the issue in every set of concluding observations.
16. Replying to a question from Mr. SICILIANOS, Mr. KJAERUM explained that paragraph 10 reflected the approach of "practical dualism" which was practised in Denmark.

The Convention did not form part of Danish domestic legislation but was applied in practice by the courts. A parliamentary committee had proposed that it should be formally incorporated but so far the Government had declined to take action.

17. Mr. AMIR (Country Rapporteur) said that all stakeholders in Denmark, except the Government, preferred to see the Convention incorporated into domestic legislation. The Danish delegation had said that the Government was intending to reconsider the possibility. However, the delegation had also pointed out that such a step might actually be counterproductive: many of the legal decisions penalizing acts of racism and racial hatred would not have been possible if the Convention had been in force.

18. Mr. SICILIANOS suggested the following wording for the first subparagraph of paragraph 10: “The Committee, while acknowledging the practice of national courts of directly applying the provisions of the Convention”

19. Paragraph 10, as amended, was adopted.

Paragraph 11

20. Paragraph 11 was adopted.

Paragraph 12

21. Mr. PILLAI noted that, in paragraph 8, the Committee praised Denmark for improving educational facilities for Roma children, but in paragraph 12 it criticized the Government for its treatment of the same group. The two paragraphs seemed contradictory.

22. Mr. AMIR (Country Rapporteur) said that the situation had improved in one specific area, namely education. In general, the Committee required more information about the situation of the Roma population, which it requested in paragraph 12.

23. Mr. ABOUL-NASR asked whether the Danish Government’s decision not to recognize the Roma as a national minority had been raised during the discussion of the periodic report. If so, was it necessary to ask the question again in the concluding observations?

24. Mr. AMIR (Country Rapporteur) said that the Danish delegation had not provided all the required information, but had promised that it would appear in the next report.

25. Mr. THORNBERRY said that the only recognized national minority in Denmark was the German population of South Jutland. Even the Greenlanders were classified as an indigenous people. The Roma were considered to be immigrants and thus not eligible for the status of national minority.

26. Paragraph 12 was adopted.

Paragraph 13

27. Paragraph 13 was adopted.

Paragraph 14

28. Paragraph 14 was adopted with minor drafting changes.

Paragraph 15

29. Mr. SICILIANOS said that, in the second sentence of the concern part, the words “or non-citizens” should be inserted following “minority groups”. Likewise, in the second sentence of the recommendation part, the words “or non-citizens” should be inserted following the words “belonging to minorities”.

30. Mr. THORNBERRY said that if the Committee adopted the amendment it would appear to be making a distinction between minority groups and non-citizens. Although some States parties, including Denmark, were of the view that minority groups were by definition non-citizens, the Committee should exercise caution in addressing the issue.

31. Mr. SICILIANOS pointed out that the only minority group recognized by Denmark was the German ethnic minority in South Jutland. The Committee should however take all groups into account.

32. The CHAIRPERSON said the problem was that the State party recognized ethnic but not national minorities.

33. Mr. THORNBERRY said it might be sufficient to refer only to minorities and avoid the issue of what constituted a minority under relevant international standards.

34. Mr. PILLAI felt “minority groups” would be too generic; the text should reflect article 1 (1) of the Convention, which referred specifically to “national or ethnic origin”.

35. Mr. SICILIANOS reiterated that the Committee’s main concern was in fact the situation of non-citizens and that should be indicated in the paragraph. He could not accept wording that implied that minority groups could include non-citizens. That was not the position of Denmark or most States.

36. Mr. KJAERUM said that in Denmark “minority group” was used in relation to the Framework Convention for the Protection of National Minorities. It would be preferable to link the text more closely to the Convention on the Elimination of Racial Discrimination itself by deleting the words “minority groups” in the second sentence of the concern part and replacing them with “ethnic or national minority groups”. In the second sentence of the recommendation part the word “minorities” should likewise be deleted and replaced with “ethnic or national minority groups”.

37. Mr. THORNBERRY supported Mr. Kjaerum’s amendment and said that although some European countries took a restrictive view of the definition of minority that was not the position of the United Nations or the Commission on Human Rights.

38. Mr. SICILIANOS said that, in the light of Mr. Kjaerum's amendment, in the second sentence of the concern part the words "including those holding Danish nationality" should be deleted. It was still not clear to him, however, why the text could not specifically refer to non-citizens, bearing in mind that the Committee's general recommendation XXX dealt specifically with non-citizens.

39. Mr. KJAERUM explained that different treatment would be accorded citizens of Danish descent and those of non-Danish descent; for example, the criteria for reunification would generally prevent a citizen of non-Danish descent from bringing his family to Denmark.

40. Paragraph 15, as amended, was adopted.

Paragraph 16

41. Ms. JANUARY-BARDILL suggested that the phrase "while being aware that such situation originates in multiple factors" in the first sentence of the concern part was unnecessary and should be deleted.

42. Mr. THORNBERRY said that although the State party's report itself referred to "immigrants" and "descendants", he was somewhat troubled by the use of the word "Danes". Technically speaking, anyone who was a citizen of Denmark was a Dane, regardless of descent. The text however clearly referred to Danes of Danish descent and he suggested that the word "Danes" should be deleted and replaced with "persons of Danish descent".

43. Paragraph 16, as amended, was adopted.

Paragraph 17

44. Mr. KJAERUM said that, in the light of the amendments to paragraph 15, in the concern part and in the first sentence of the recommendation, the words "and national" should be inserted following the words "belonging to ethnic".

45. Paragraph 17, as amended, was adopted.

Paragraph 18

46. Paragraph 18 was adopted, with a minor drafting change.

Paragraph 19

47. Paragraph 19 was adopted.

Paragraph 20

48. Mr. THORNBERRY suggested that, in the recommendation part, the phrase "pay particular attention to the way in which indigenous peoples identify themselves" was too vague and should be replaced with "give appropriate attention to the principle of self-identification".

49. Mr. SICILIANOS said the Committee should be wary of opening a debate on the principle of self-identification.

50. Mr. THORNBERRY, supported by Mr. YUTZIS, said the treatment of the Thule people during the Cold War was a particularly grave example of situations where populations, usually indigenous populations, had been removed from their territory, yet the Danish courts had not given their arguments the weight they deserved. However, since the text recalled the Committee's general recommendation VIII on identification with a particular racial or ethnic group, his concern was at least implicitly addressed and he would be prepared to withdraw his amendment.

51. The CHAIRPERSON, supported by Mr. AMIR (Country Rapporteur), said the issue of self-identification could be the subject of a general debate at a later date. Given the reference to the Committee's general recommendation VIII, the current wording should be retained.

52. Paragraph 20 was adopted.

Paragraph 21

53. Paragraph 21 was adopted.

Paragraph 22

54. Mr. THORNBERRY suggested that the third line of the concern part should be reworded to read "from expressing and developing" rather than "to develop and express".

55. Paragraph 22, as amended, was adopted.

Paragraph 23

56. Paragraph 23 was adopted.

Paragraph 24

57. Mr. AMIR (Country Rapporteur) suggested that perhaps one of the paragraphs highlighted for follow-up should be removed, as four paragraphs seemed rather excessive.

58. Ms. DAH proposed deleting the reference to paragraph 22, which seemed less urgent than the others.

59. Paragraph 24, as amended, was adopted.

Paragraph 25

60. The CHAIRPERSON pointed out that that paragraph had been drafted taking account of the previous day's debate on the harmonization of dates for submission of reports.

61. Mr. SICILIANOS asked why the text had been highlighted in boldface type and whether the formulation used was the standard one used for all States parties.

62. Mr. THORNBERRY noted that in the concluding observations for Ukraine and Yemen, for example, reference had been simply to a “single report”, and not to a “comprehensive single report”.

63. Mr. AVTONOMOV agreed that in most cases the word “comprehensive” was not mentioned and he considered it superfluous.

64. Ms. BIDAULT (Secretariat) said that in its previous concluding observations on Denmark, over the course of several reporting cycles, the Committee had always requested that the State party should submit a report addressing the points raised in the concluding observations. As a result, in its last several reports, Denmark had reported only on certain sections of the Convention which had been raised in the concluding observations. The Committee usually requested an updated report after two years, and then a comprehensive report in the next cycle, and the time had come to request a comprehensive report from Denmark.

65. Mr. SICILIANOS said that, in view of the fact that new guidelines on targeted reports under the upcoming treaty body reform would be issued in the near future, the Committee should not send mixed signals to States parties and should therefore simply request a “single report”.

66. Mr. AMIR (Country Rapporteur) agreed with Mr. Sicilianos, and suggested that the paragraph should be aligned with that used for other States parties, and the word “comprehensive” deleted.

67. Paragraph 25, as amended, was adopted.

68. The draft concluding observations concerning the sixteenth and seventeenth periodic reports of Denmark as a whole, as amended, were adopted.

Provisional draft concluding observations concerning Seychelles (continued)

69. Mr. PILLAI (Country Rapporteur) reminded the Committee that the provisional observations would be sent as a confidential document to the State party for comment, on the basis of which concluding observations would be finalized.

Paragraph 1

70. Paragraph 1 was adopted.

Paragraph 2

71. Mr. PILLAI (Country Rapporteur) proposed splitting the paragraph into three separate paragraphs: the first ending after “under its review procedure”, the second up to “submit relevant information”, and the remainder making up the third paragraph.

72. Paragraph 2, as amended, was adopted.

Paragraph 3

73. Ms. JANUARY-BARDILL asked whether the term “national extraction” was the one commonly used by the Committee.

74. Mr. PILLAI (Country Rapporteur) agreed that it was more common to use “national origin”, and proposed changing the wording accordingly.

75. Paragraph 3, as amended, was adopted.

Paragraph 4

76. Mr. PILLAI (Country Rapporteur) clarified that the intention of the paragraph was not to propose that Seychelles should create new institutions, but rather that the State party should provide the existing mechanism, the Ombudsman, with sufficient resources to enable it to function as a national human rights institute.

77. Paragraph 4 was adopted.

Paragraphs 5 to 7

78. Paragraphs 5 to 7 were adopted.

Paragraph 8

79. Mr. PILLAI (Country Rapporteur) suggested deleting the end of the sentence from “providing, inter alia ...” onwards.

80. Paragraph 8, as amended, was adopted.

Paragraphs 9 to 16

81. Paragraphs 9 to 16 were adopted.

82. The provisional draft concluding observations concerning Seychelles, as a whole, as amended, were adopted.

REPORT OF THE COMMITTEE TO THE GENERAL ASSEMBLY AT ITS SIXTY-FIRST SESSION (agenda item 10) (CERD/C/69/CRP.1, CRP.1/Add.1-9 and CRP.2/Add.1-7)

83. Mr. THORNBERRY (Rapporteur) introduced the draft annual report of the Committee. He pointed out that the sections on the International Law Commission and the Special Rapporteur in Chapter I would be replaced by references to cooperation with the Special Rapporteur on contemporary forms of slavery and the Independent Expert on Minority Issues. In Chapter II, reference would also be added to the decisions on the United States of America and Suriname. The reference to consideration of the report of Israel would be deleted from Chapter III, and the cases of Malawi, Saint Lucia, Namibia and Seychelles would be moved to

Chapter V on the review procedure. A new Chapter VIII on general debates and Chapter XII on the reform of the human rights treaty body system would be added, and the numbering of other chapters adjusted accordingly. Annex IV would be changed to information on the case law adopted by the Committee, and the numbering of the other annexes also adjusted accordingly.

84. CERD/69/C/CRP.1 was adopted on that understanding.

Chapter I (CERD/69/CRP.1/Add.1)

85. Mr. THORNBERRY said that a reference would be added to the Committee's adoption of an amendment to rule 26 of its rules of procedure, by virtue of which Arabic would become one of its official languages. Two additional paragraphs would reflect the Committee's dialogue with the Independent Expert on minority issues and the address by the Treaty Implementation Team Leader of the Office of the United Nations High Commissioner for Human Rights (OHCHR) on the issue of treaty body reform.

86. Mr. AMIR said that preparing a separate document on the Committee's decision to make Arabic one of its official languages might enhance the chances of it being approved by the General Assembly.

87. Mr. THORNBERRY said that that point would be borne in mind.

88. Mr. KJAERUM, supported by the CHAIRPERSON, suggested complementing the list of officers of the Committee with the recently appointed Follow-up Coordinator, the Special Rapporteurs for Follow-Up on Opinions and the rapporteur of the working group on early warning measures and urgent action procedures.

89. Mr. ABOUL-NASR said that, for the sake of consistency with the practice of other treaty bodies, information on the new functions and the identity of office holders should be included in the main body of the text.

90. Chapter I was adopted on that understanding, subject to further amendments.

Chapter II (CERD/C/69/SRP.1/Add.2)

91. Mr. THORNBERRY said that a reference should be added to the Committee's decision 1 (69) on Suriname.

92. Chapter II, as amended, was adopted.

Chapter IV (CERD/C/69/CRP.1/Add.3)

93. Mr. THORNBERRY said that references to the Committee's dialogue with Australia and the Lao People's Democratic Republic and to the follow-up report submitted by France would be inserted in paragraph 2. The report by the Follow-up Coordinator on his visit to Ireland, which had been transmitted to the Irish authorities, would also be mentioned.

94. Chapter IV was adopted on that understanding.

Chapter V (CERD/C/69/CRP.1/Add.4)

95. Mr. THORNBERRY noted that additional references would be required to the Committee's resumed dialogue with Namibia, its adoption of confidential provisional draft concluding observations on Seychelles, and its decision to send a letter to Saint Lucia reminding the State party of its reporting obligations. Following the recent submission of a report from the Democratic Republic of the Congo, the list of countries whose reports were overdue would be amended accordingly.

96. Chapter V was adopted on that understanding.

Chapter VI (CERD/C/69/CRP.1/Add.5)

97. Mr. THORNBERRY said that paragraph 11 should be deleted.

98. Chapter VI, as amended, was adopted.

Chapter IX (CERD/C/69/CRP.1/Add.6)

99. Mr. THORNBERRY informed the Committee that Mr. Pillai had proposed adding a paragraph that read: "The Committee noted further that the population size in non-self-governing territories is larger than in some independent countries. The Committee stresses that enhanced efforts be made to generate greater awareness of the provisions of the Convention in non-self-governing territories, especially the procedures described in article 15."

100. Mr. AMIR said that he had taken cognizance of petitions submitted to a United Nations entity from the inhabitants of territories covered by article 15 of the Convention. He enquired whether the Committee deliberately decided to disregard such petitions, or whether its failure to take action indicated a lack of communication with other United Nations human rights mechanisms.

101. Mr. PILLAI said that, pursuant to article 15 of the Convention, the Committee should receive copies of petitions submitted to the United Nations and its specialized agencies. It was not competent to receive petitions in any other way. It might be useful to contact the United Nations agency concerned with the petitions mentioned by Mr. Amir to clarify that particular situation.

102. Chapter IX, as amended, was adopted.

Chapter XI (CERD/C/69/CRP.1/Add.7)

103. Mr. PILLAI recalled that the Intergovernmental Working Group on the effective implementation of the Durban Declaration and Programme of Action had highlighted the need for the General Assembly to pay greater attention to the Committee's reports and suggested adding a relevant reference.

104. Chapter XI was adopted on that understanding.

Chapter X (CERD/C/69/Add.8)

105. Chapter X was adopted.

Chapter VII (CERD/C/69/CRP.1/Add.9)

106. Chapter VII was adopted.

107. Mr. THORNBERRY said that a chapter would be added on the Committee's general discussions on double discrimination on the grounds of race and religion, held at its 1745th meeting, and on the situation in Lebanon, held at its 1763rd meeting. The statement on the situation in Lebanon issued on 11 August 2006 would also be included. A second chapter would be added on the Committee's exchange on treaty body reform, which would make reference to the fifth inter-committee meeting and the eighteenth meeting of chairpersons of human rights treaty bodies, the so-called "Malbun II" meeting, as well as to the proposal to establish a single body to deal with individual communications.

108. It was so agreed.

Annex I (CERD/C/69/CRP.2/Add.1)

109. Mr. THORNBERRY said that the Slovak Republic had accepted the amendments to the Convention adopted at the Fourteenth Meeting of States Parties and the list contained in section C would be amended accordingly. Also, the name "Serbia and Montenegro" in section B should be amended to "Serbia".

110. Annex I, as orally amended, was adopted.

Annexes II, V and VI (CERD/C/69/CRP.2/Add.2-4)

111. Annexes II, V and VI were adopted.

Annex VII (CERD/C/69/CRP.2/Add.5)

112. Mr. THORNBERRY said that the reference to concluding observations on Israel would be deleted. Conversely, reference would be made to the comments of Australia and the Lao People's Democratic Republic on the Committee's concluding observations and to the Committee's decision on Suriname.

113. Annex VII was adopted on that understanding.

Annex IV (CERD/C/69/CRP.2/Add.6 and 7)

114. Annex IV was adopted.

115. The draft report of the Committee to the General Assembly at its sixty-first session as a whole, as amended, was adopted, subject to further amendments.

PREVENTION OF RACIAL DISCRIMINATION, INCLUDING EARLY WARNING MEASURES AND URGENT ACTION PROCEDURES (agenda item 3) (continued)

Draft decision 1 (69) on Suriname

116. The draft decision was adopted.

Draft letters addressed to United Nations mandate holders and Permanent Representatives of States parties

117. The CHAIRPERSON drew the Committee's attention to a series of draft letters addressed to United Nations mandate holders and Permanent Representatives of States parties in follow-up to the Committee's discussions during its sixty-ninth session.

118. The draft letters, as a whole, were adopted.

CLOSURE OF THE SESSION

119. After the customary exchange of courtesies, the CHAIRPERSON declared the sixty-ninth session closed.

The meeting rose at 1.15 p.m.