

SUMMARY RECORD OF THE 327TH MEETING

held on Tuesday, 5 April 1977, at 10.30 a.m.

Chairman: Mr. KAPTEYN

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 3) (continued):

- (b) SECOND PERIODIC REPORTS OF STATES PARTIES DUE IN 1974; and
- (h) THIRD PERIODIC REPORTS OF STATES PARTIES DUE IN 1976 (concluded)

France (CERD/C/R.65/Add.11) (concluded)

1. Mrs. BALOUS (France) said that the many and varied questions put by the members of the Committee seemed to her to be clear evidence of the importance which members attached to her country's efforts to eliminate racial discrimination. A number of members had asked for statistics on the ethnic composition of France. Ethnically, the population was very mixed, and she feared that it would be quite impossible to provide such statistics.

2. A number of members had asked about the overseas départements and had requested further information about the living conditions of the populations. She would like some guidance as to the sort of information the Committee would like to receive in the next report from France. Mr. Valencia Rodriguez had inquired how the provisions of the Convention were implemented in those départements. She wished to explain that the overseas départements were part of France and that their inhabitants were French citizens; accordingly, the provisions of the Convention were applied in the same way as in other parts of France. Mr. Brin Martinez had shown particular concern about Guadeloupe and the political, economic and social and cultural rights enjoyed by its population. She wished to assure him that the population of Guadeloupe was treated on exactly the same footing as all other French citizens. She wished also to explain to Mr. Blishchenko that the statistical data on the demographic situation had been included merely as general information intended to enlighten the Committee on the relative situation of the inhabitants of those départements. Mr. Blishchenko had expressed the hope that the next report would provide legislative data on the overseas départements. She would transmit that request to her Government although she did not know how such data could differ from the information already provided in respect of article 4 of the Convention.

3. A number of members had found that the procedure for dissolving an association by decree of the President of the Republic was unduly lengthy. She agreed, but wished to explain that the procedure in question was an exceptional one; the normal and much more expeditious procedure was that envisaged in the Law of 1 July 1901, articles 3, 7 and 8 of which she read out. In view of the existence of that Law, it had not been deemed necessary to enact special measures under article 4 (b) of the Convention. In reply to the members of the Committee who had asked about the legislative provisions enacted by France in order to implement article 4 (a), she wished to refer them to the interpretative declaration by France, which should not be viewed as a reservation. France's conception of liberty did not allow it to consider opinions as offences, or to punish mere intentions. Only acts could be punished by the procedures set forth in the Laws of 1972 and of 1901. In reply to a question by Mr. Bahnev, she wished to inform him that the courts interpreted article 4 (a) in exactly the same way for individuals as for groups. Mr. Dayal had

expressed concern about associations which continued to operate although they had been declared illegal; when such associations were tracked down, they were punished with additional severity.

4. Mr. Blishchenko and Mr. Sayegh had asked about the implementation of articles 5 and 7 of the Convention. She wished to state that France scrupulously implemented article 5, since all persons of French nationality and all persons residing in France were entitled to enjoy the fundamental freedoms proclaimed in the Constitution of France, and those defined in the Declaration of 1789 and other basic instruments. In connexion with article 6, Mr. Blishchenko had referred to the right of an anti-racist association to institute proceedings on behalf of victims of racial discrimination. Mr. Bahnev had noted that under the 1972 Law, such an association must have been in existence for five years in order to be able to institute proceedings. She wished to point out that most of the associations concerned had been in existence for more than half a century.

5. In connexion with the second paragraph of the report, she wished to explain that in view of the strong feelings in France about the possible danger of violations of individual rights by the State, the French Parliament had decided to establish a commission to determine the limits which should be set on the collection of computerized information concerning private individuals.

6. She noted that Mr. Sayegh considered that France had been tardy in ratifying the Convention; she wished to point out that the delay had been due to the lengthy ratification procedure which existed in France. She agreed with Mr. Blishchenko that it would be helpful if the next report could give the countries of origin of the foreign population of France; and she would be grateful if he could indicate what else he would like to see in the next report. Mr. Devetak had rightly questioned her statement concerning special measures for the instruction of Yugoslav children in their own language; the courses being organized were in fact courses for Yugoslav workers in their national language.

7. Mr. Sayegh had requested details concerning sentences handed down by courts. Mr. Dechezelles had in his possession relevant documentation which might be of interest to the Committee.

8. Mr. DECHEZELLES drew the Committee's attention to a number of decisions handed down in recent years by the French courts, particularly the Paris Court of Appeal. He read out extracts from an article by Jacques Foulon-Piganiol which had appeared in the Recueil Dalloz in July 1975. <sup>8/</sup> The article, which was on efforts to combat racism, reviewed developments in French jurisprudence in that field.

9. The CHAIRMAN thanked the representative of France for her informative statement and her replies to the various questions raised. The Committee noted her intention of transmitting to her Government the requests for additional information, so that they could be taken into account when the Government prepared its next periodic report.

10. Mrs. Balous withdrew.

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<sup>8/</sup> J. Foulon-Piganiol, "La lutte contre le racisme", Recueil Dalloz, (Paris, Sirey, 1975), 26th cahier, Chronique XXV, p. 159.

(h) THIRD PERIODIC REPORTS OF STATES PARTIES DUE IN 1976 (continued)\*/

Morocco (CERD/C/R.88/Add.6)

11. At the invitation of the Chairman, Mr. Skalli (Morocco) took a place at the Committee table.

12. Mr. SKALLI (Morocco) said that he welcomed the opportunity to participate in the Committee's work. His Government's third periodic report (CERD/C/R.88/Add.6) contained replies to questions raised by the Committee at its ninth session during its consideration of the second period report of Morocco. Those questions concerned in particular the right of association, the Administrative Chamber of the Supreme Court and the effective application of the Convention, and particularly of its article 4.

13. The right of association was governed by the Dahir of 15 November 1958, enacted in application of article 9 of the Constitutional Act, which guaranteed to all citizens freedom of association and freedom to belong to any trade union or political organization of their choice. It further provided that there would be no limitation to the exercise of those freedoms except by law.

14. Article 5 of the Constitution affirmed the principle of equality of all Moroccans before the law; and in that constitutional context, the Dahir on the right of association regulated that right for all Moroccans without distinction. The sanctions provided for were based solely on the necessity for all persons to respect the substantive and formal requirements for the establishment of associations, and to give their activities a legal framework.

15. The Administrative Chamber of the Supreme Court was the tribunal of final recourse against any abuse of power on the part of the Administration. Any official of the Administration, or any persons having dealings with it, could appeal for the annulment of decisions or acts by the Administration which were not in conformity with the laws and regulations in force.

16. In replying to the first two questions raised, the report had dealt at least in part with the application of article 4 of the Convention. At the same time, it provided certain examples which left no doubt as to the position of the legislature with regard to the effective application of that article. It dealt in particular with the case of the Moroccan Jews, who were regarded as citizens in the same degree as other citizens of Morocco and who, like the Arabs, were also children of Abraham.

17. Recently, as a result of a certain situation prevailing in their own country, hundreds of thousands of people had recently found refuge in Morocco, which had in fact discriminated in favour of the refugees. From the point of view of economic, social and cultural rights, the refugees had been assimilated to Moroccan nationals; and, in addition, they had been given virtually absolute priority in fields such as employment in both the public and private sectors. The Moroccan people had accepted those sacrifices and others gracefully and enthusiastically, regarding them as a manifestation of brotherly solidarity with a people struggling to affirm its existence. It could thus be seen that the only differences in treatment practised by his country towards persons from other countries were differences that it accepted deliberately and actually to its own detriment.

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\*/ Resumed from the 320th meeting.

18. Such conduct indicated the extent to which the Moroccan people were influenced by the precept of Islam that all men were brothers. It was thus easy to understand why Moroccan society was an open and brotherly society, and why it abhorred and vigorously fought against colonialism, neo-colonialism, apartheid and all other forms of racial discrimination wherever they existed. Its attitude towards the racist régimes in southern Africa was therefore militant and unequivocal. In a message to the United Nations Special Committee against Apartheid, the Minister for Foreign Affairs of Morocco had recently referred to the emotion with which the International Day for the Elimination of Racial Discrimination was observed each year in memory of the Sharpeville massacre. He had further stated that the international community should shoulder its responsibilities and put an end to such crimes so that human dignity would no longer be affronted, and he had said that the Kingdom of Morocco would continue to give its total support to the just cause of the peoples of Azania, Zimbabwe and Namibia and to the activities of the Committee against Apartheid. The Moroccan Government and people thus unreservedly condemned the policy of apartheid and racial discrimination practised by the régimes of Pretoria and Salisbury, and it had voted for all United Nations resolutions on the subject. It considered the existing régime in Southern Rhodesia, and the occupation of Namibia by South Africa to be illegal. It maintained no relations with South Africa and supported all efforts to isolate the present régime in order to induce it to recognize the rights of the black majority. In the Organization of African Unity (OAU), Morocco had always given its full support, in all areas, to those who were fighting to regain their freedom and dignity. The report and the explanations he had given showed that racial discrimination was contrary to the principles and teaching of Islam, on which the Kingdom of Morocco was based, and was also contrary to Morocco's political convictions, to its concept of society and to the Moroccan temperament. Because racial discrimination was unimaginable in his country, the Constitution made no specific mention of it. Condemnation of racial discrimination formed part of the unwritten and immanent laws that were rigorously imposed both on society and on the conscience of individuals. It was therefore a matter of public order, and the Moroccan concept of public order in that respect was very broad. No case of racial discrimination had ever come before the Moroccan courts, and no additional measures were necessary to remove a non-existent scourge. Tolerance was taught to Moroccan children from an early age and had become a mode of life.

19. At the same time, racial discrimination was in fact condemned under Moroccan law by virtue of his Government's accession to all international conventions relating to it, and in particular by its accession to the International Convention on the Elimination of All Forms of Racial Discrimination, the provisions of which it had applied strictly and literally. Since the Moroccan Constitution expressly gave primacy to international law over internal law, the conventions to which Morocco acceded ipso facto formed part of Moroccan law which the courts were obliged to apply. The competent Moroccan authorities were at present studying the specific obligations arising from article 4 of the Convention, and he was confident that the steps to be taken in that connexion would give full satisfaction to the Committee. Provisions for the total implementation of the Convention would be incorporated into Moroccan positive law. His Government would continue to co-operate fully with the Committee.

20. The CHAIRMAN welcomed the additional information provided by the representative of Morocco.

21. Mr. NABAVI thanked the representative of Morocco for the additional information he had given, and welcomed the fact that in the United Nations and other international organizations, Morocco had consistently and unreservedly condemned

racial discrimination in all its forms. He had noted with satisfaction that the Government of Morocco was considering the necessary legislative provisions to give full effect to article 4 of the Convention and to meet the desires expressed by the Committee during its consideration of the second periodic report of Morocco. He had concluded from the introductory statement that the Moroccan Government agreed with the reservations expressed by the Committee during its discussion of that report. He hoped that the next periodic report would provide information on the steps taken to apply the provisions of article 41.

22. He had noted with satisfaction that the legal system of Morocco recognized the primacy of international law over domestic law and that the provisions of the Convention would thus become an integral part of Moroccan legislation.

23. He welcomed the statement to the effect that Moroccan Jews were treated on an equal basis with other Moroccan citizens.

24. The information given in the third periodic report, and the additional information provided by the representative of Morocco concerning the Administrative Chamber of the Supreme Court, fully answered the questions raised in that connexion at earlier sessions.

25. In its general recommendation IV, the Committee had expressed the desire that States Parties to the Convention should inform it of the demographic composition of the population in their countries, since that information was essential for obtaining an idea of the situation in reporting States. He hoped that the Moroccan Government would furnish such information in its next periodic report. Information should also be provided on the steps being taken to apply article 7 of the Convention.

26. Mr. VALENCIA RODRIGUEZ observed that the third periodic report of Morocco confirmed the information given in the two previous reports, particularly in the first periodic report, and provided some additional information.

27. Referring to the statement that the Convention had become an integral part of the internal public order of Morocco, from which no derogation was admissible, he asked whether a citizen could invoke article 4 (a) of the Convention to complain in the courts of any act of racial discrimination against him. He would be interested to see the precise text of the Penal Code which would give effect to article 4 (b). He would also like to have further clarification in a later report on article 8 of the Dahir of 15 November 1958 governing the right of association.

28. Referring to the information given concerning articles 353 and 360 of the Code of Civil Procedure, he said that it would be interesting to know whether the Supreme Court had quashed any legal judgements considered to be discriminatory on the ground of ethnic origin or other racial consideration.

29. Referring to the statement that the King of Morocco had decided to allow Moroccan Jews who had left their country to return to Morocco and enjoy all the rights guaranteed to all citizens under the Moroccan Constitution, he expressed satisfaction with the information on the guarantees enjoyed by Jews under article 220 of the Moroccan Penal Code and article 3 of the Moroccan Nationality Code.

30. He had noted with interest the provisions of the Dahir of 12 August 1913 on the civil status of aliens. He welcomed the additional information given in the statement by the representative of Morocco, which gave evidence of that country's consistent support for all action designed to combat racial discrimination and

apartheid in southern Africa. He hoped that the next periodic report of Morocco would provide detailed information on the steps being taken to apply the provisions of article 7 of the Convention.

31. Mr. BRIN MARTINEZ joined in thanking the representative of Morocco for the additional information he had provided, and noted with satisfaction the support of the Moroccan Government and people for the fight against racial discrimination. He welcomed the application of the Constitution of 10 March 1972 and the further steps that had been taken to strengthen its provisions. It was gratifying to see that the Moroccan Government had responded to the questions raised by the Committee during its discussion of the second periodic report of Morocco.

32. He associated himself with the comments of previous speakers on the need for information on the demographic situation in Morocco. The situation of Moroccan Jews as described in the report was gratifying, as was Morocco's condemnation of all forms of racial discrimination, including apartheid, and its support for United Nations resolutions on the subject.

33. He would like to have more detailed information on the manner in which constitutional reforms resulting from international agreements were applied, as well as information on the attitude of the Moroccan Government with regard to manifestations against public order. It would also be useful to know what measures were being applied against discrimination in the private sector.

34. Mr. DAYAL said that the information contained in the report under consideration and provided by the representative of Morocco confirmed his conviction that there was no racial discrimination in Morocco.

35. The fact that the provisions of the Convention were automatically integrated into the legislation of a country did not exempt that country from taking the necessary legal, administrative and other measures to implement its provisions. Moreover, the argumentation put forward on page 2 of the Moroccan report seemed rather obscure. The report stated, first, that the Moroccan Constitution implicitly recognized the primacy of international law over domestic law; but did that mean that the Convention automatically became an integral part of the internal public order from which no derogation was admissible? Similarly, it did not seem to follow automatically that article 4 of the Convention was being fully applied. It might therefore be useful for the Committee to have the text of the Dahir of 29 June 1935. It was also to be hoped that the concept of "demonstrations contrary to public order" would be considered further in future reports by the Moroccan Government, since that concept did not seem to him necessarily to cover demonstrations of a racist nature.

36. Mr. NETTEL said that the texts quoted in the report under consideration did not support the contention that the Moroccan Constitution implicitly - or, as the representative of Morocco had said, expressly - recognized the primacy of international law over domestic law. The quotation from article 31 of the Constitution appeared to show that the situation in Morocco was the same as it was in other countries - namely, that international law had to be reflected in national legislation, which then acquired constitutional status. The reference to derogation was misleading, since a national Constitution could be amended if the necessary formalities were carried out; and derogations from international law which had acquired constitutional status were therefore possible. He endorsed the view expressed by Mr. Dayal concerning the implementation of article 4 of the Convention. It was gratifying that the King of Morocco had demonstrated the concern of the Moroccan Government to apply the principle that everyone had the right to leave any country, including his own, and to return to his country.

37. Mr. BLISHCHENKO said that the Moroccan Government was quite clearly fulfilling all its obligations under the Convention. The present situation as described in the three periodic reports submitted by the Moroccan Government, as well as the history of the Moroccan people, showed that there was no racial discrimination in Morocco: the task in that country was therefore to eliminate the possibility of the emergence of racial discrimination.

38. Like other speakers, he had some misgivings concerning the references in the third report to the primacy of international law over domestic law. What was meant, surely, was the equality of certain international agreements with the provisions of the Constitution. It could not, therefore, be said that the Moroccan Constitution implicitly recognized the primacy of all international law over domestic law. With regard to the implementation of article 4, it was known that the Moroccan Government was studying the situation; indeed, in stating that the concept of "demonstrations contrary to public order" appeared to cover the concept of racial discrimination, that Government was indicating that there was a possibility that its study would reveal the need for special legislation to implement article 4. In his view, such legislation would be appropriate.

39. He welcomed the firm stand adopted by Morocco against racism and apartheid wherever they occurred, and particularly Morocco's accession to the International Convention on the Suppression and Punishment of the Crime of Apartheid.

40. Reference was made in the report to protection by the Supreme Court of the right to submit observations in one's own defence; but he would like to know whether that right was affirmed in Moroccan legislation or not and, if it was, in what form. He also wished to know whether all the rights enumerated in article 5 of the Convention were also affirmed in legislation.

41. It was gratifying to note that King Mohammed V had strongly opposed the application in Moroccan territory of anti-Jewish laws proposed by the Vichy Government, and that King Hassan had acted to allow Moroccan Jews who had left the country to return and enjoy all the rights of Moroccan citizens. He would like to know how Moroccans who did not regard themselves as belonging to any particular religious community were treated and whether Moroccans of the Jewish faith were regarded as being in a special situation. He would also like to know whether individuals belonging to the Jewish community who disseminated Zionist ideology were considered to be engaged in manifestations of racial discrimination.

42. Mr. BAHNEV noted that there was no racial discrimination in Morocco and that the Moroccan Government had taken a strong stand against all forms and manifestations of racism and racial discrimination wherever they occurred. He agreed with the views expressed by Mr. Dayal concerning the implementation of article 4 of the Convention, and felt that it would be useful for the Committee to have the text of the Dahir of 29 June 1935. The interpretation of the term "contrary to public order" given in the report appeared to be far too broad. In that connexion, he noted that the concept of "public order" had been given a far narrower meaning in the International Covenants on human rights.

43. It was to be hoped that the next report by the Moroccan Government would contain data on the ethnic structure of the population; but the submission of such data should not be regarded as an aim in itself. Its purpose should be to clarify the extent to which the human rights enumerated in article 5 of the Convention were being implemented throughout the population on a basis of equality. It was therefore to

be hoped that the data submitted would indicate whether there were any groups of the populations or regions for which special administrative or economic measures might be required in order to ensure that human rights were indeed being implemented on a basis of equality.

44. He would like to know whether personal status and succession in Morocco were governed by any laws which were not within the framework of the principles of Islam, and, if so, whether such laws applied to Moroccans.

45. Mr. PARTSCH agreed with Mr. Dayal and other speakers that the section of the report concerned with the primacy of international law over domestic law was confusing. The fact that reference was made to the Dahir of 29 June 1935 showed that the implementation of article 4 of the Convention did not follow automatically from Morocco's adherence to that instrument. He wished to know whether the clauses concerning equality before the law in the 1972 Constitution differed from those of the previous Constitution, which had contained no specific references to distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin. He also wondered whether the material submitted in the first report by the Government of Morocco concerning the implementation of article 5 of the Convention should be brought up to date as a result of the adoption of the 1972 Constitution.

46. Mr. SAYEGH expressed the hope that further information regarding the implementation of article 7 of the Convention would be submitted, since that article was mandatory and did not depend on the existence or otherwise of racial discrimination in the country concerned. Indeed, because of the nature of that article and the reticence displayed by many States Parties with respect to reporting on its implementation, he hoped that the Committee would adopt a decision requesting States Parties to submit special reports on its implementation.

47. Since the Moroccan Government was considering the possibility of adopting legislation to ensure the implementation of article 4 of the Convention, the information provided in that connexion in the report might soon be superseded and the Committee should therefore reserve judgement on the matter until the results of the Government's study were known. He did not, however, share the view expressed by Mr. Dayal concerning the passage in the report relating to the primacy of international law over domestic law. The report made it clear that when an international treaty was ratified by Morocco its provisions acquired equal status with the provisions of the Constitution, and therefore had the same degree of primacy over secondary law as the Constitution did. It could therefore be concluded that the Convention was indeed an integral part of the internal public order from which no derogation was admissible, since any constitutional amendment which involved a derogation from any provision of the Convention would be tantamount to a denunciation of the Convention by the Moroccan Government under article 21 of the Convention.

48. With respect to the action taken by the King of Morocco to enable Moroccan Jews who had left the country to return, he wished to know whether special measures had been required because the persons concerned had lost their Moroccan nationality. In that connexion, he recalled that a similar situation had been considered in the case of Iraq, when the Committee had been informed that Iraqi Jews who had gone to Israel had automatically acquired nationality and lost their Iraqi nationality, so that special legislation had been required in order to restore the rights of those who wished to return.



49. The CHAIRMAN, speaking in his personal capacity, supported the view expressed by Mr. Sayegh concerning the recognition in the Moroccan Constitution of the primacy of international law over domestic law. That primacy was also recognized in the Dutch Constitution and was not in dispute in Holland.

50. Mr. NABAVI also endorsed Mr. Sayegh's view that there was no contradiction in the statements made in the report concerning the implementation of article 4 of the Convention. The issue was not one of theory but one of interpretation, and it was unequivocally stated in the report that the interpretation of the Moroccan Government was that the provisions of the Convention had primacy over the provisions of domestic law.

51. Mr. DECHEZELLES agreed with that view. Under its legal and administrative system, which was akin to that of France, Morocco had taken a laudable stand against racial discrimination, and the strong opposition of King Mohammed V to the anti-Jewish laws proposed by the Vichy Government would never be forgotten by the people of France and Morocco. The provisions of Moroccan law concerning personal status and the powers of the Supreme Court in that sphere were unusual and deserved the Committee's commendation.

52. Mr. Skalli withdrew.

#### ORGANIZATION OF THE WORK OF THE SESSION

53. Mr. HOUSHMAND (Secretary of the Committee) said that he had contacted the appropriate services in Vienna and Geneva about the possibility of holding additional meetings and had been informed that, because the staff which had been brought to Vienna from Geneva was a skeleton staff, it would not be possible to have a full day of meetings on Saturday, 9 April 1977. It would, however, be possible to service one meeting on Saturday morning, if the Committee so wished. In addition, it would be possible to hold a night meeting during the third week of the session, but the summary record of that meeting would have to be prepared in Geneva later from the sound recording.

54. The CHAIRMAN said that he had been informed that a number of States Parties whose reports were due for consideration at the present session could not be represented in Vienna. The Committee could take up consideration of those reports at its present session or decide to discuss them at its sixteenth session in New York. The second alternative might be preferable since he understood that the number of reports scheduled for consideration at the New York session was not excessive. If the Committee decided to defer consideration of the reports of Upper Volta, Algeria, Mauritius, United Arab Emirates and Malta, it would in that way reduce its workload at the current session and would allow the States Parties concerned the opportunity of being represented at the sixteenth session, in New York.

55. Mr. BLISHCHENKO, supported by Mr. VALENCIA RODRIGUEZ and Mr. BRIN MARTINEZ expressed the view that the second course suggested by the Chairman would be the most satisfactory one. The Committee would not be obliged to meet on Saturday morning and it could, if necessary, hold a night meeting on Thursday or Friday of the final week.

56. Mr. PARTSCH said that he agreed with Mr. Blishchenko but hoped that no night meeting would be scheduled for Friday, 15 April 1977.

57. The CHAIRMAN said that if there were no objections, he would take it that the Committee wished to defer consideration of the reports of Upper Volta, Algeria, Mauritius, United Arab Emirates and Malta until its sixteenth session.

58. It was so decided.

The meeting rose at 1.5 p.m.