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COMMISSION ON HUMAN RIGHTS

SUB-COMMISSION ON THE PROMOTION AND PROTECTION OF HUMAN RIGHTS

Fifty-sixth session

SUMMARY RECORD OF THE 6th MEETING

Held at the Palais des Nations, Geneva,
on Friday, 30 July 2004, at 10 a.m.

Chairperson: Mr. SORABJEE

later: Ms. MOTOC
(Vice-Chairperson)

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The meeting was called to order at 10.10 a.m.

PREVENTION OF DISCRIMINATION:

- (a) RACISM, RACIAL DISCRIMINATION AND XENOPHOBIA
- (b) PREVENTION OF DISCRIMINATION AND PROTECTION OF INDIGENOUS PEOPLES
- (c) PREVENTION OF DISCRIMINATION AND PROTECTION OF MINORITIES

(agenda item 5) (continued) (E/CN.4/Sub.2/2004/29 and Add.1; E/CN.4/Sub.2/2004/30 and Add.1; E/CN.4/Sub.2/2004/31 and 45; E/CN.4/Sub.2/2004/NGO/1, 11, 16, 17, 18, 24 and 25)

1. Ms. CHUNG, congratulating Mr. Eide and Mr. Yokota on the quality of their working paper on the topic of discrimination based on work and descent (E/CN.4/Sub.2/2004/31), said that she endorsed all the recommendations contained in the document. She asked whether the authors intended to extend their survey to the Americas, where the situation was somewhat different from that in Africa and Asia. Given that discrimination based on descent and work was deeply rooted in tradition and culture, the survey should go beyond analysing legislative, judicial, administrative and educational measures. She recommended collecting additional information about awareness-raising measures and their effectiveness, in particular from civil society. Also, discriminated groups should not be treated merely as the victimized, but should be given a role to play in the fight against discrimination. The next report on the topic should take into consideration the situation of women and children, which were the most vulnerable groups.

2. Mr. GUISSÉ commended the authors on the report submitted which, as requested, contained examples from Africa. There, especially in West Africa, discrimination affected persons in particular occupations. It would be useful to analyse the root causes of that form of discrimination, as well as the reasons for its persistence, and to consider adopting legislation that prohibited such discriminatory behaviour and practices and provided for remedy, where applicable.

3. Ms. HAMPSON said that she was pleased that the working paper before the Sub-Commission included data on diasporas and she concurred with the recommendations contained in the document. She, too, thought it important to examine the impact of discrimination based on work or descent on particularly vulnerable groups, including women and children. It would be opportune to appoint a Special Rapporteur with the task of gathering additional information on the matter, in particular disaggregated data, and proposing solutions. India had provided examples of good practices in that regard, although implementation of the adopted measures was problematic. The Sub-Commission might draw upon Ms. Warzazi's experience with addressing the issue of female genital mutilation and promote dialogue within the societies concerned to avoid direct confrontation with Governments. It was unacceptable for States to invoke cultural traditions in order to shirk their responsibilities.

4. Mr. TUNON VEILLES said that he supported the recommendations contained in the working paper. He stressed the need to include in the study the situation in Latin American countries, in particular the ongoing discrimination against people of African descent and indigenous populations. He would be willing to contribute to the information-gathering process in that region; the role of NGOs was crucial in that regard.

5. Ms. DAES, introducing her final report as Special Rapporteur concerning indigenous peoples' permanent sovereignty over natural resources (E/CN.4/Sub.2/2004/30 and Add.1), said that indigenous land and natural resource issues were problems of the most urgent and fundamental nature that needed to be reviewed by both indigenous peoples and States. Consideration of the issue should be guided by the principles of self-determination, equality and non-discrimination contained in the relevant human rights instruments and by such fundamental values as the preservation of indigenous cultures, elimination of poverty, equality before the law, justice and the rule of law. There was a need for understanding the spiritual, cultural, social, political and economic significance of their lands, territories and natural resources to the survival and vitality of indigenous societies. The gradual deterioration in the situation of indigenous societies could mainly be traced to failure to recognize that significance.

6. The final report gave a brief history of the concept of permanent sovereignty over natural resources within the United Nations system, recalling that the United Nations had been the birthplace of that principle by virtue of the establishment of the Commission on Permanent Sovereignty Over Natural Resources in 1958 and the adoption, in 1962, of General Assembly resolution 1803 (XVII), which declared the right of "peoples and nations" to permanent sovereignty over their natural wealth and resources. The principle had become a general principle of international law through its inclusion in common article 1 of both International Covenants on Human Rights in 1966. The right to permanent sovereignty over natural resources had been recognized because it had been understood early on that, without it, the right of peoples to self-determination would be meaningless. However, the substance of the principle continued to be the subject of considerable debate.

7. The growing trend in international law and practice towards extending the concept and principle of self-determination to peoples and groups within existing States was encouraging. The term "sovereignty" was not used in an abstract and absolute sense but referred to legal control and management authority over natural resources, in particular as a constituent part of the exercise of the right to self-determination. Its use in relation to indigenous peoples did not place them at the same level as States, or place them in conflict with State sovereignty.

8. The principle of permanent sovereignty over natural resources must be applied to indigenous communities, because they were colonized peoples who suffered from the same unfair and unequal economic arrangements as other colonized peoples and must be protected against such unfair and oppressive arrangements. The right to permanent sovereignty was a collective right by virtue of which the State was obliged to respect, protect and promote the interests of indigenous peoples, regarded as communities, in the management and ownership of their natural resources. That "sovereignty" was said to be "permanent" because it referred to an inalienable human right of indigenous peoples arising out of the right to self-determination, the right to own property, the right to exist as a people, and the right to freedom from discrimination. The adjective "permanent" was also intended to place particular emphasis on the fact that indigenous peoples should not be deprived of their resources as a consequence of unequal or

oppressive arrangements, contracts or concessions. She drew attention to the main conclusions and recommendations contained in her report, in particular the recommendation to convene an expert seminar to give further attention to the many matters that had been noted as needing further research and consideration.

9. Ms. MOTOC commended Ms. Daes on her new report which, as previous reports, established a clear link between theory and practical issues and called for cooperation between both parties - States and indigenous peoples - in an attempt to reach a compromise. The operational approach adopted was praiseworthy and the annexes were highly relevant. Paragraph 71 of the report referred to the need to amend the draft United Nations declaration on the rights of indigenous peoples to include express recognition of the permanent sovereignty of indigenous peoples over natural resources. She asked how Ms. Daes envisaged the introduction of such an amendment, given the current state of the draft. She also requested clarification on the substantial developments in international law over the previous two years referred to in paragraph 53 of the report. She requested Ms. Daes to comment on the World Bank's reference in its Extractive Industries Review to "consulting" rather than seeking to obtain the "consent" of indigenous peoples.

10. Ms. WARZAZI said that Ms. Daes's dedication to the cause of indigenous peoples was outstanding. Her well-researched report gave, more than ever, a convincing account of the fact that, if correctly interpreted, international human rights instruments recognized indigenous peoples' right to enjoy and dispose freely of their natural resources. She fully supported the recommendations contained in the report.

11. Mr. YOKOTA said that Ms. Daes's final report was highly relevant and her excellent work over many years was appreciated by both experts and indigenous peoples around the world. The report would certainly prove most useful to the Working Group on Indigenous Populations. He himself had drafted a working paper on the heritage of indigenous peoples and human rights, which had been considered by the Working Group during its latest session. There had been a general consensus that indigenous heritage was closely linked to the principle of permanent sovereignty over natural resources and the principle of self-determination and that indigenous lands, territories and resources must not be exploited without free, prior and informed consent.

12. Mr. KARTASHKIN endorsed the statements made by other members of the Sub-Commission with regard to Ms. Daes's excellent report. He said that he concurred with her interpretation of the right to self-determination, which could be applied to both the internal and external levels, and supported the conclusions contained in the report, in particular the conclusion affirming that modern international law, based on international instruments and customary State practice, obligated States to recognize the collective right of indigenous peoples to lands and natural resources. He also endorsed the recommendations to amend the draft United Nations declaration on the rights of indigenous peoples to include express recognition of the permanent sovereignty of indigenous peoples over natural resources; to create an ad hoc committee with the task of studying, implementing and promoting that sovereignty; to convene an expert seminar to give further attention to the matters needing further research and consideration; and to urge States to take all necessary measures to implement the conclusions and guiding principles set out in the final report. He requested that the documents of the Sub-Commission be made available in Russian as soon as possible.

13. Mr. ALFREDSSON said that he deeply admired Ms. Daes's courage and unfailing sense of justice. He supported the recommendations contained in her final report, in particular the recommendation to convene an expert seminar to give further attention to the various issues raised. He did have reservations about one single point, namely the use of the term "permanent sovereignty"; it would be more constructive to refer to a "collective right" to lands and resources.

14. Mr. CHEN, thanking Ms. Daes for her outstanding work, said that indigenous peoples' permanent sovereignty over lands and natural resources was of paramount importance for their enjoyment of economic, social and cultural rights. There was a clear need to implement that right in both legal and practical terms and he fully supported the recommendations contained in the final report, in particular those respecting the creation of an ad hoc committee and the convening of an expert seminar to give further consideration to the matter.

15. Ms. HAMPSON, drawing attention to the recent problems resulting from military aircraft entering the airspace above indigenous territories, said that it might be necessary to address the issue of airspace usage, in addition to the question of terrestrial and underground resources. She agreed with Ms. Motoc's observation that it was not enough just to consult indigenous people, and said that it was necessary to obtain their free, prior and informed consent to activities being carried out in their territories. The Commission was encountering difficulties in reaching agreement on a declaration on the rights of indigenous peoples because certain States were reluctant to recognize the collective right of those populations and were apprehensive of the idea of indigenous self-determination. They seemed unable to distinguish between individual and minority rights, which were constitutional matters, and indigenous rights, which were of a supraconstitutional nature. They also confused the external and internal characteristics of sovereignty and failed to understand that the recognition of indigenous peoples' right to self-determination and their sovereignty over natural resources posed no threat to the external sovereignty of States.

16. Ms. Motoc, Vice-Chairperson, took the Chair.

17. Mr. DECAUX, speaking in reference to paragraph 46 of Ms. Daes's report, said that there was a substantive difference between the concept of sovereignty, which related to the State, and the concept of collective ownership. Respect for the economic, cultural and even spiritual dimension of indigenous peoples' relation to their lands was crucial. To combat persisting violations, it was important to promote not only the consultation of indigenous peoples, but also their participation in decision-making processes, or even their autonomy. The concept of solidarity in development should be taken into consideration to prevent the creation of new divisions between peoples. As an example, he raised the question whether the revenues generated by oil exploitation in the Algerian Sahara should benefit the millions of Algerian citizens or a few thousand local indigenous inhabitants.

18. Ms. KOUFA commended Ms. Daes on her ambitious, well-informed and persuasive report and endorsed the recommendations contained therein, in particular the convening of an expert seminar. She did, nevertheless, concur with the reservations formulated by Mr. Alfredsson on the use of the term "sovereignty".

19. Mr. PARY (World Peace Council) thanked Ms. Daes for her outstanding work in the area of indigenous peoples and expressed regret over her departure. Some experts had cast doubt on the need to grant indigenous peoples permanent sovereignty over their natural resources, which amounted to questioning those peoples' status as subjects of international law.

20. Ms. SPALDING (Women's Sports Foundation) said that she fully supported the recommendation to convene an expert seminar. It was important that indigenous peoples participated in such an event and that their views were taken into account.

21. Mr. Sorabjee resumed the Chair.

22. Ms. DAES said that she was deeply grateful to all speakers for their kind words. Solutions to the problems between indigenous peoples and Governments must respect the interests of both parties and contribute to reconciliation. She was aware that the issue of the right to self-determination still caused concern; it was thus important to remember that that right was understood as being exercised within the limits of existing States. In certain States which had already recognized that right, indigenous peoples did not call for secession but merely demanded the right to live with others in harmony, without discrimination, and to be shown respect for their traditions. The meaning of the concept of sovereignty used in relation to indigenous peoples was entirely different from the classic concept of State sovereignty; indigenous peoples must exercise that right within State boundaries in conformity with existing legislation.

23. It was deeply regrettable that the draft declaration had still not been adopted and she appealed to all parties concerned, in particular Governments, to show their willingness to finalize the document by introducing certain amendments. She fully supported the principle of solidarity, and its implementation was crucial. The problems resulting from airspace usage above indigenous territories must be discussed. She was hopeful that her report would be published and translated for the benefit of States, NGOs and indigenous peoples, and that her recommendation to convene an expert seminar would be approved.

24. Mr. BENGGOA introduced the report of the Working Group on Minorities on its tenth session (E/CN.4/Sub.2/2004/29 and Add.1) prepared by its outgoing Chairperson-Rapporteur, Mr. Eide. He said that, at its March 2004 session, the Working Group had focused on the situation of the Roma people, Afro-descendants, nomads, hunter-gatherers and pastoralists, and on religious intolerance, forced displacement and linguistic minorities. The complex and sensitive issue of "minorities and self-determination" had given rise to extensive debate. Mr. Kartashkin had briefed the Group on his participation in the thematic discussion on citizenship organized by the Committee on the Elimination of Racial Discrimination. The Working Group had also considered a paper prepared by Mr. Tom Hadden, which gave an interesting overview of the work accomplished by the Group in the 10 years since its inception. The complex and topical issues of secession, integration and multiculturalism addressed in the paper, in particular, had been discussed at length.

25. In its decisions and recommendations, the Working Group had decided to draft general comments on specific issues and to encourage the holding of regional seminars, and

recommended the organization of a seminar on the Roma people in cooperation with the Council of Europe. The Group had also recommended the establishment of a voluntary fund to support the participation of minority representatives in meetings, and he was pleased that that recommendation had met with the approval of the Commission and the Economic and Social Council. Time constraints made it difficult to give a full account of the rich discussions that had taken place at the Working Group's tenth session.

26. Mr. KARTASHKIN said that the work of the Working Group on Minorities was becoming more complex with each succeeding session; its main feature was the participation of representatives of States, NGOs, intergovernmental organizations and researchers. At its tenth session, the Group had decided to endorse the Commentary prepared by its outgoing chairperson, Mr. Eide, and to prepare general comments on the protection of minorities from forced assimilation, effective participation of minorities, the protection of places of worship and holy places, the protection of the rights of minorities in the field of education, land deprivation, and exclusion, and the question of autonomy vis-à-vis self-determination. Statelessness had also been addressed.

27. The Working Group had further submitted specific recommendations to the Sub-Commission. It had reiterated the importance of creating a voluntary fund to support the participation of minority representatives in its meetings and of proclaiming an International Year for Minorities. It had also recommended that the Sub-Commission should entrust one of its members with the task of preparing a working paper on the advisability of drafting an additional protocol to the International Covenant on Civil and Political Rights which would set out minority rights and remedies for violations thereof. Should that recommendation be approved, he would be prepared to take on the task.

28. Mr. DECAUX said that the seminar on the Roma recommended by the Working Group should also include the Sinti and should involve the Organization for Security and Cooperation in Europe (OSCE) and its Office for Democratic Institutions and Human Rights. With reference to recommendation 15 (i) urging Governments to consider establishing national human rights institutions "comprising persons of independence and ability", he said that it was not for the Working Group to establish its own criteria; instead, it should abide by the guiding principles relating to national institutions contained in General Assembly resolution 48/134. When inviting intergovernmental regional organizations to provide relevant information on their activities to the Working Group, in accordance with recommendation 16, key players such as the Consultative Committee of the Council of Europe and the OSCE High Commissioner on National Minorities should be borne in mind.

29. Proclaiming an additional Decade, as suggested in paragraph 11 of the Working Group's recommendations, might not be advisable. While at first sight the preparation of an additional protocol to the International Covenant on Civil and Political Rights, setting out minority rights, might seem useful, in reality there were too many sectional instruments in preparation already and drafting such a protocol would be a waste of time and energy.

30. Ms. MOTOC said that the present report made repeated reference to minorities that were at the same time indigenous populations and asked how the Working Group saw the relationship between those two categories. Certain indigenous populations, for example the Sami people,

opposed the idea of obtaining minority status for fear of having their rights infringed. She wished to learn of the Working Group's views on the issue of new minorities mentioned by Mr. Eide in his 2003 interim report.

31. Mr. BOSSUYT, addressing the issue of the negative or positive nature of States' obligations relating to minorities and the definition of the concept of minorities, said that if article 27 of the International Covenant on Civil and Political Rights were interpreted as containing only negative obligations, meaning that States should not interfere in the culture, religion and language of minority groups, it was irrelevant whether or not someone belonged to a minority. However, the definition of the concept of minorities became crucial when it came to determining which persons, by virtue of belonging to a minority group, were entitled to specific services enabling them to preserve and develop their identity. In education, for example, a State that recognized certain linguistic minorities as such assumed responsibility for providing education in minority languages.

32. There was no binding legal instrument that contained a definition of the concept of minorities. States had hitherto refused to agree on a general definition and were unwilling to allow an international body to determine which groups of persons within their national territory should be recognized as minorities. Granting a group minority status was a complex issue; both the historical context explaining the origin of the group in question and the socio-economic context determining the group's status in society must be taken into account. In the absence of a definition, the recognition of minorities was left to States themselves; such recognition could be granted unilaterally, bilaterally or multilaterally. Given that States favoured unilateral recognition, it was important to bear in mind the declarations made under the Framework Convention for the Protection of National Minorities. Those different elements were crucial to determining States' legal obligations and to formulating the envisaged additional protocol. In any case he shared Mr. Decaux' reservations with regard to such an instrument.

33. Mr. ALFREDSSON said that the promotion of a constructive dialogue between Governments and minorities in order to promote respect for minority rights and prevent violent conflicts was one aspect of the activities of the Working Group that should be strengthened. In that regard, it might be useful to draw from the experience of other international bodies, such as the OSCE High Commissioner on National Minorities or the Consultative Committee responsible for implementing the Council of Europe's Framework Convention for the Protection of National Minorities. Moreover, the Working Group should step up efforts to promote the incorporation of minority issues in the development programmes of United Nations agencies.

34. Mr. UHOMOBHI (Observer for Nigeria) said that the importance of the activities of the Working Group was beyond doubt. However, its reports should always be constructive and should not contain unfounded allegations. He particularly regretted the fact that the Rapporteur had reproduced information provided by an NGO calling itself the Ikwerre Movement for Justice, apparently without attempting to establish the accuracy of the content and he called on the Sub-Commission to dissociate itself from the paragraph in question. Nigeria, which was divided into over 270 linguistic and ethnic groups, had a federal structure to facilitate representation and the allocation of adequate resources to meet the needs of the different communities. The Ikwerre were adequately represented in their own administrative region and at the federal level. The problems highlighted in the report were related to development; they did not result from discrimination against the Ikwerre community and the Government was

taking measures to address those problems. If the Sub-Commission truly wished to assist the Nigerian Government, it should endeavour to tackle unfair international trade regimes, contribute to foreign debt relief, and combat corporate corruption.

35. Mr. ALMAGLY (Observer for Sudan) said that, instead of merely focusing on negative experiences, the Working Group should also consider positive experiences and good practices. Sudan was proud of the way in which its different ethnic minorities were treated and he wished to extend a formal invitation to the Working Group to hold a regional workshop in Sudan on minority issues; his country would provide logistical support for such a meeting.

36. Mr. BENGOA, replying to a question raised by Ms. Motoc, said that it was not always possible to make a clear-cut distinction between minorities and indigenous peoples and it was inevitable that some indigenous representatives would attend the meetings of the Working Group on Minorities. He informed the observers for Nigeria and Sudan that the report of the Working Group gave account of the discussions that had taken place during the session, including statements made by minority representatives on the situation in their country. The procedure envisaged for the next session should facilitate more constructive dialogue between minority groups and Governments. NGO communications, which were divided into three different sections, would be communicated to the Governments concerned prior to the session to enable them to prepare a detailed response. He would address the other issues raised during the following meeting.

37. Mr. KARTASHKIN, speaking in response to those States that had criticized the Working Group for focusing on negative experiences, said that it was generally the NGOs that called attention to issues of concern, while the Working Group endeavoured to take stock of countries' positive experiences. That approach had been adopted, for example, in the case of Finland and would apply to the other States concerned if they extended invitations to the Working Group.

The meeting rose at 1.05 p.m.