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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 7th MEETING

Held at the Palais des Nations, Geneva,
on Monday, 2 August 2004, at 10 a.m.

Chairperson: Mr. SORABJEE

later: Ms. HAMPSON (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, 32 and 45; E/CN.4/Sub.2/2004/NGO/1, 11, 16, 17, 18, 24 and 25)

1. Ms. HAMPSON, introducing her working paper prepared at the request of the Commission on Human Rights on the legal implications of the disappearance of States and territories for environmental reasons and its impact on the human rights of the resident population, in particular the rights of indigenous peoples, said that the territories concerned were located in the Pacific Ocean, the Indian Ocean and the Caribbean. They could be States, territories within States or dependent territories. The phenomenon did not affect all low-lying territories; if the Maldives, for example, was affected, there was no evidence that Diego Garcia was affected to the same extent. Conversely, it could affect certain territories that were not exclusively comprised of low-lying land. Any further report should include all island territories that would potentially need to be entirely or partially evacuated, irrespective of whether or not they were States. The Sub-Commission should request authorization from the Commission to send a questionnaire to all States that had islands within their national territory or under their jurisdiction in order to assess the extent of the problem. Another difficulty lay in determining whether the peoples affected were indigenous, given that certain indigenous island populations had gained independence.

2. The issue of States that ceased to exist without being replaced by successor States was without precedent in international law. It would therefore be useful to organize one or several seminars, with the participation of the populations concerned, to examine the practical and legal issues arising from such a disappearance. Given that third States had no legal obligation vis-à-vis endangered States, the task of tackling the problem fell to the international community as a whole. No organization was dealing expressly with the issue and initiatives taken to date were of a purely bilateral nature. The Prime Minister of Tuvalu had endeavoured to conclude an agreement with Australia and New Zealand whereby those countries would accept a certain number of Tuvalu citizens each year. However, Australia had refused and New Zealand, while agreeing in principle, appeared to treat the matter as a conventional immigration problem rather than as an environmental asylum problem. A further report on the matter should be submitted to the Sub-Commission and the Working Group in 2005. Obtaining information on the territories in question from Governments was crucial, and the

Sub-Commission might wish to request the Commission to facilitate the required access. In the meantime, urgent efforts must be made to bring the issue to the attention of the international community as a whole.

3. Mr. GUISSÉ said that it was a problem of alarming dimensions, since peoples would be disappearing at the same time as their homeland. The populations concerned might be unwelcome elsewhere and the question of their legal status was unresolved. The international community was faced with an unprecedented legal situation created by nature and human activity and must take immediate legislative, economic and social measures to prepare for facing up to that challenge.

4. Mr. SATTAR commended Ms. Hampson on having prepared a comprehensive report within a very short space of time. He pointed out that, as a result of rising sea levels, the delta region of Bangladesh was repeatedly subject to flooding and hoped that that circumstance would be taken into consideration in a subsequent study.

5. Ms. WARZAZI, endorsing the recommendations contained in Ms. Hampson's excellent paper, suggested that the next report should contain scientific information and take account of all territories and all populations, indigenous or otherwise, that were likely to be affected by climate change. It would be useful to raise awareness among larger neighbouring States of the plight of populations that would sooner or later be forced to leave their homelands.

6. Mr. KARTASHKIN said that the report raised a number of vital questions of international law requiring further examination, in particular the issue of citizenship. The question arose as to what status would be accorded to the former inhabitants of a vanished territory who had been forced to relocate elsewhere. Would they be treated as stateless or be naturalized in the new country on preferential terms?

7. Ms. HAMPSON, thanking the experts for their contributions, said that she had addressed the question of citizenship in paragraphs 10 and 13 of her paper, but had limited herself to formulating the various issues involved. She agreed with Ms. Warzazi on the need to take into account not only States, but also the territories and populations concerned, and to collect reliable and uncontested scientific information. Replying to Mr. Sattar, she said that the case of Bangladesh posed different problems and should be examined in the context of a study on the impact of environmental damage on human rights. The study entrusted to her had focused exclusively on persons who were forced to abandon their homes forever as a result of the disappearance of their State. The issue, as Mr. Guissé had pointed out, had a social, economic and human dimension and she hoped that for once humanitarian considerations would prevail.

General debate on the prevention of discrimination (continued)

8. Mr. BIRO said that, mainly owing to the activities of United Nations agencies and a number of regional intergovernmental institutions, an increasing number of States had come to realize that recognizing national minorities did not in itself pose a threat to their

territorial integrity. Each situation relating to minorities was unique and it was therefore neither possible nor desirable to apply one-fits-all solutions. The lack of a legally binding definition of the concept of “national minorities” had not impeded the application of the Framework Convention for the Protection of National Minorities or the activities of the Sub-Commission’s Working Group on Minorities. Agreeing on a number of fundamental principles was important, and that in no way diminished the usefulness of examining questions such as self-determination vis-à-vis autonomy from both a practical and theoretical point of view. Autonomy could take various forms, but it always required stable institutions and a sophisticated legal framework to prevent it from being hijacked for individual purposes. He supported the recommendation of the Working Group to appoint a special representative of the Secretary-General on minority issues; such a measure would certainly benefit the activities of both the Sub-Commission and the Working Group. Conversely, the recommendation to the Sub-Commission to appoint one of its members to prepare a working paper on the advisability of drafting an additional protocol on minority rights to the International Covenant on Civil and Political Rights concerned a purely intellectual exercise. It would be preferable to enhance the implementation of existing international instruments and to provide for remedies at the national or regional levels. Notwithstanding those observations, he firmly supported the conclusions and recommendations of the Working Group.

9. Ms. WADIBIA-ANYANWU said that the increase in popularity of extremist right-wing parties that proclaimed the supremacy of the white race and exploited the fear of the population had exacerbated the phenomenon of racism, racial discrimination and xenophobia against non-citizens, immigrants and minorities. The growing trend to justify discrimination with the fight against terrorism and the unwillingness of democracies to implement the Durban Declaration were also cause for concern. The upsurge of discrimination had been heightened by socio-economic changes occurring in different parts of the world, including Europe; it was thus important to promote public education and awareness campaigns and judicial reforms at both the national and international levels. Ms. Daes’s painstaking research and her interesting conclusions were commendable. She raised the question whether arguing for indigenous rights to land and resources in countries that had not been colonized, and whose entire population was thus indigenous, might fan secessionist politics and create social conflict. The working paper on discrimination based on work or descent was also praiseworthy. That phenomenon was truly alarming, as it dehumanized the victims and hampered development. The Sub-Commission should treat the issue cautiously and analyse the societies concerned closely and with empathy in order to put forward effective solutions.

10. Ms. CHUNG said that the 1948 Convention on the Prevention and Punishment of the Crime of Genocide had rarely been employed with preventive intent, namely to prevent the avoidable, in particular with regard to minorities. Genocide, which over the course of history had caused four times more deaths than wars, and which continued to decimate minorities in the twenty-first century, did not receive the attention it deserved. Situations that might lead to genocide must be identified at the earliest possible stage; the systematic denial of minority and indigenous rights was often a warning signal. The creation of the post of Special Adviser to

the Secretary-General on the Prevention of Genocide was a welcome development, and it was to be hoped that the Special Adviser would cooperate closely with the Sub-Commission and the Working Group on Minorities. The Working Group might consider placing the question of genocide and minorities on its agenda and inviting the Special Adviser to participate in its deliberations.

11. Mr. DIAS (Dominicans for Justice and Peace), also speaking on behalf of the Dominican Leadership Conference and Pax Christi International, said that, in Pakistan, the laws on blasphemy, which in some cases was punishable by death, and certain constitutional provisions discriminated against religious minorities. The Pakistan Catholic Bishops' National Commission for Justice and Peace had made a number of recommendations to the Pakistan Government, in particular, to establish an independent standing commission with legal capacity for religious and other minorities; to set up an independent and impartial commission of inquiry on the situation of religious minorities; to implement the recommendations of the commission of inquiry on women as a matter of urgency; to extend an invitation to the Special Rapporteur on religious intolerance to visit Pakistan to study the situation there; and to repeal legislative and constitutional provisions that discriminated against religious minorities.

12. Mr. RAJKUMAR (Pax Romana), also speaking on behalf of the UNESCO Centre of Catalonia, thanked Mr. Eide for his efforts to explore constructive solutions to minority issues. Although internal territorial disputes increasingly threatened international peace and security, globalization gave a new meaning to the right to self-determination, which must be redefined to take account of the broader context. The United Nations needed a theoretical framework which recognized the exercise of that right as a tool to prevent and resolve conflicts within States. It would be useful to draw on the experience gained with modern forms of self-determination based on, inter alia, social and cultural autonomy and autonomy in the administration of natural resources and education, which were gradually replacing territorial secession. The debate could be enhanced by transferring it from the informal context of working groups to the Sub-Commission itself. He hoped that Mr. Bengoa would submit an expanded version of his working paper on minorities to the fifty-seventh session of the Sub-Commission.

13. Ms. ARNESON (Lutheran World Federation), also speaking on behalf of the International Movement Against All Forms of Discrimination and Racism, said that the organizations she represented had repeatedly drawn attention to the plight of the Dalits and other pariah communities. She therefore welcomed the decision of the Sub-Commission and the Committee on the Elimination of Racial Discrimination to address the issue. The commendable working paper on discrimination based on work or descent revealed that a considerable part of humanity continued to suffer from that form of discrimination, in particular in southern Asia, and that it persisted in many diasporas. It could have extremely serious consequences and while some States, including India and Japan, had introduced measures to remedy the problem, those measures were in most cases not implemented. The Sub-Commission was the appropriate body to address the issue and, while certainly not in a position to resolve an age-old problem single-handedly, could draw attention to the magnitude and impact of the problem and propose

solutions. Hopefully, all its members would support the recommendation on the appointment of a special rapporteur to undertake a study on the elimination of discrimination based on work or descent.

14. Ms. EILAND (Women's Sports Foundation) said that her organization had been working for over 30 years to prevent all forms of discrimination by promoting basic human rights values through sports. In 2004, she had participated in several meetings, including the World Conference on Women and Sport in Marrakech and the Fifth International Workshop on Indigenous Children and Youth. In August, she would participate in the Minority Women's Health Summit in Washington. The role of sport in the promotion of human rights and the prevention of discrimination, which had been recognized by the General Assembly in its 2003 resolution on the Olympic Truce, could not be overstated. The Olympic Games provided a powerful opportunity to educate a broad sector of the world's population on humanitarian values and peace. The Women's Sports Foundation endeavoured to encourage young people and women, including those belonging to ethnic minorities and persons with disabilities, to participate in the joys and discipline of sports and to play a meaningful role both within their sports teams and in society and the world in general.

15. Mr. ABETSE (Franciscans International) drew attention to the plight of the Dalits, who continued to suffer from social, political and cultural discrimination and social exclusion, despite repeated appeals from United Nations treaty monitoring bodies and Special Rapporteurs, and in disregard of the provisions against discrimination contained in India's laws and Constitution. He appealed to the Sub-Commission to continue its endeavours to clarify the obstacles to the full implementation of existing domestic and international law; to identify the practices and methods of discrimination against Dalits and also against other minorities in Mali, Japan, Ethiopia, Pakistan, Burkina Faso, Kenya, Sri Lanka, Yemen, Senegal and Bangladesh; to exchange views with the Special Rapporteur on the right to education; and to strengthen cooperation with the International Labour Organization, the United Nations Educational, Scientific and Cultural Organization (UNESCO) and the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance. Franciscans International supported the appointment of a special rapporteur to undertake a study on the elimination of discrimination based on work and descent.

16. Ms. TSAKIMP NANKAMAI (Nord-Sud XXI) said that attention must be awarded to the situation of the Zapara, an Amazonian indigenous group living on the shores of the Conambo and Pindoyacu rivers, who faced the threat of extinction. Since the beginning of the twentieth century, the once over 20,000-strong Zapara community had been gradually reduced to an estimated 150 members living in Ecuador and some 100 living in Peru. One per cent of the Ecuadorian national territory, or 370,000 hectares was inhabited by 14 Zapara communities, who held official titles to only 270,000 hectares. The area currently populated by the Zapara was threatened by outside cultural influences and oil extraction activities. In May 2001, UNESCO had declared the Zapara culture part of the oral and intangible heritage of humanity. Unless the international community took action, an ancient culture would disappear.

17. Mr. PERLA (Seventh-Day Adventist Church) said that, 50 years after the adoption of the Universal Declaration of Human Rights, intolerance and religious persecution persisted and were on the increase. Legislation and policies in several Central Asian countries, in particular Turkmenistan, discriminated against religious minorities and could lead to the destruction of places of worship and the persecution of believers. The increasing complexity of procedures for the registration of religious organizations in Belarus was an obvious example of wilful discrimination. In Eritrea, the closure of churches by the authorities and the sometimes extremely violent persecution, which was tolerated, albeit not carried out, by the State, were cause for grave concern. All those who felt the right to impose their belief system on others should be reminded that all religions were minorities in some part of the world. He called on the Sub-Commission to condemn strongly all forms of discrimination against religious minorities.

[18.]

19. Mr. MALEZER (Foundation for Aboriginal and Islander Research Action) said that the proclamation of a second International Decade of the World's Indigenous People was desirable, since the significant progress made within the United Nations and the international community during the first Decade had failed to translate into concrete results for indigenous communities. The High Commissioner for Human Rights should be appointed coordinator for the second Decade and, in turn, should appoint an indigenous board to assist in organizing and coordinating the programme of action for the Decade. The Sub-Commission might wish to support the idea of dedicating each year to a particular topic. The Working Group on Indigenous Populations and the Permanent Forum on Indigenous Issues had an important role to play; the costs incurred by the participation of indigenous peoples in United Nations activities could be reduced if more States were willing to contribute to the United Nations Voluntary Fund for Indigenous Populations. Populations of States threatened with disappearance should be assisted in raising awareness of the magnitude of the problem and in identifying solutions. He expressed the hope that the World Health Organization (WHO) would include in its reports to the Sub-Commission more specific information on indigenous populations.

20. Mr. BALUCH (Interfaith International) said that the situation in the province of Balochistan, which was under the brutal occupation of Pakistani forces, was cause for grave concern. The nationalist policies pursued by the Pakistani Government promoted the sole development of Punjab, to the detriment of provinces inhabited by minorities. Balochistan was practically in a state of war: the people were deprived of their fundamental rights, including the right to life, resources were pillaged and nationalist leaders who advocated self-determination were persecuted. Interfaith International recommended the drafting of a new constitution that would accommodate the aspirations of the inhabitants of minority provinces by granting them autonomy and control over their natural resources.

21. Mr. LITTMAN (Association for World Education) said that the war crimes, including systematic rape, committed on a large scale by government-sponsored Arab militias in Darfur, Sudan, were part of a systematic attempt to destroy an indigenous African people - which amounted to genocide - through the elimination of chiefs and elders, who were key contributors to the transmittal of culture. In the light of the adoption of a relevant resolution by the United Nations Security Council, the Sub-Commission should outline rapidly the subsequent steps for the prosecution of the crime of genocide. The United Nations Development Programme had withdrawn three recommendations on religious freedom, including the apostasy

clause, from the Arabic version of the press release on its recent report on cultural liberty, because the compilers of the press release had considered that the issue remained highly sensitive in Muslim countries. He called on the Sub-Commission to examine the issue.

22. Mr. ABUBAKR MUHAMMAD (All for Reparations and Emancipation) said that the 250 million people of African descent living in the Americas did not benefit from collective protection of their human rights by the United Nations. He called on Member States to contribute to the funding of regional seminars on that issue organized by the Working Group on Minorities; the next seminar was scheduled to be held in Brazil.

23. Ms. SHARFELDDIN (International Organization for the Elimination of All Forms of Racial Discrimination) said that the deplorable situation in Palestine and Iraq had led a group of former United States diplomats and retired generals to sign a petition condemning the United States Government's misguided and racist policies. The United States administration was dominated by an extreme right-wing ideology that served the aims of international Zionism. It had used the events of 11 September 2001 as a pretext for its violent attacks on the Arab and Muslim regions with the aim of strengthening Israel's expansion and gaining control over the region's oil resources. Concurrently, it had launched a biased media campaign to recast national resistance movements as terrorist organizations. She was confident that the Sub-Commission experts and the NGOs would openly and firmly condemn those who had brought racism and corruption to a region that was the birthplace of civilization.

24. Ms. RUPRECHT (International Institute for Peace) said that when democratic nations shelved democratic ideals in the pursuit of immediate strategic objectives, it became extremely difficult to chastise or advise States that had been built on policies of discrimination. Terrorism, which was always an expression of real or imagined resentments, must be condemned everywhere. However, it could not be fought by creating new resentments and by developing a ghetto mentality. The only way to defend against it was to eliminate the grievances and to spread the tenets of democracy, not by force of arms, but by a commitment that would lead to understanding among peoples. The recent recommendations of the commission set up in the United States to investigate the events of 11 September 2001 were alarming, since the recommended increased assistance to Pakistan appeared to be contingent on General Musharraf's continuation in power. Unless the people of Pakistan were encouraged to establish a democratic system and do away with discriminatory provisions in their laws and Constitution, the system would continue to breed jihad fighters and subject innocent people to xenophobic and racist policies.

25. Ms. Hampson, Vice-Chairperson, took the Chair.

26. Ms. OLINEN (European Union of Public Relations) said that recent developments threatened to exacerbate the antagonism between peoples of different faiths with dangerous consequences for religious minorities, in particular in countries that had institutionalized religious discrimination. In Pakistan, Ahmadiyas, Hindus, Christians and even Shiites were subject to discrimination, and in countries where religious extremism prevailed, women were considered as second-class citizens. The deliberate subversion of religion by men negated the very values all religions extolled. A clash of faiths was likely to be far more destructive than a clash of political objectives and it was imperative for the international community to initiate a global programme of reforms that should seek to ensure that legislation governing States did not

contravene the Universal Declaration of Human Rights; to imbue young minds with the notion of the universality of humankind and combat the idea of the superiority of a particular faith often propagated on the Internet; and to convince States to establish truly democratic systems.

27. Ms. PARKER (Humanitarian Law Project) said that many States demonized certain ethnic groups living in their territory by reducing them to “minorities” and labelling them as terrorists or separatists to discredit them. Such policies were strengthened by the ignorance and indifference of the international community, which succumbed to such racist propaganda. That was particularly true in Myanmar, where the Shan people were branded as “narco-terrorists” and the Karen people as “separatists”; in China, where the Uighur people were denounced as “terrorist traitors”; in India, where the Kashmiri people were classified as “Islamic terrorists” or “Islamic separatists” when they defended their right to self-determination as a people; and in Indonesia, where the authorities pursued a brutal campaign against the Moluccan people who sought to regain their independence. The racist rhetoric against the Kurds in Turkey and the Tamils in Sri Lanka had infected the international community worst of all. She hoped that the Sub-Commission would be immune to overtly racist attitudes that seriously undermined efforts to find solutions to the problems affecting minorities.

28. Mr. AZAM (International Human Rights Association of American Minorities) said that the caste system prevailing in many societies was undoubtedly the worst manifestation of discriminatory behaviour. Millions of people in India were victims of that social evil. He wondered why the international community was powerless to remedy the problem, which Governments played a crucial role in perpetuating. The international community had also proved incapable of protecting minorities, as illustrated by the fate of over 3,000 Muslims who had been killed in the state of Gujarat by the Hindu majority in 2002 and the failure of the Government to provide any compensation. It should not remain silent in such situations. The Sub-Commission should undertake an in-depth analysis of the issue and put forward some constructive solutions.

29. Ms. ARIF (Liberation), drawing the Sub-Commission’s attention to the plight of the people of the Chagos Islands, said that between 1966 and 1973, under a secret agreement between the United Kingdom and the United States facilitating the construction of a United States “communications facility” on the island of Diego Garcia, the entire population had been removed to Mauritius and the Seychelles, where they continued to survive in abject poverty. The compensation received was pitiful given the injury sustained and, on 10 June 2004, the British Government had adopted two orders that prevented the population from exercising its legitimate right to return home. His organization called on the Sub-Commission to investigate the matter. The Draft National Policy on Tribals and the 2002 Biological Diversity Act of the Government of India failed to reflect the interests of indigenous peoples, and his organization called on the Indian authorities to recognize the collective rights of indigenous and tribal peoples to their traditional knowledge; to ensure the promotion and preservation of traditional knowledge; to establish a system for sharing the benefits derived from such knowledge; and to adopt legislation on the intellectual property rights of indigenous and tribal peoples.

30. Mr. LITTMAN (World Union for Progressive Judaism) said that the new judeophobia under the guise of “anti-Zionism”, which was endemic in the Arab Muslim world, was nourished by a culture of hatred that was infecting Europe and beyond. The combination of terrorism, jihad and judeophobia embodied in certain Islamist organizations represented a potent

totalitarian threat. Islamic jihad fighters, who had hijacked the name of Islam, were as much a threat to Muslims as to Christians and Jews. Europe's reaction to judeophobic manifestations, including the publication in the Egyptian press of an article denying the existence of the holocaust, the diatribe by the Prime Minister of Malaysia and the presentation and dissemination of the Protocols of the Elders of Zion as an authentic text, was disappointing. He appealed to the High Commissioner for Human Rights, the Special Rapporteur on terrorism and human rights and the Sub-Commission to speak out against that culture of hatred and violence, which largely explained why the number of Jews living in Arab countries had fallen from 60 million to only 2 to 3 million.

31. Ms. WARZAZI pointed out that the Sub-Commission had decided, in a closed meeting, not to allow NGO representatives to speak several times under the same agenda item in different capacities to present identical viewpoints.

32. The CHAIRPERSON said that the secretariat would certainly look into the matter.

33. Mr. ALI KHAN (World Muslim Congress) said that, although the untiring efforts of international forums such as the Sub-Commission and the Working Group on Minorities had shed light on certain cases of flagrant human rights violations, in many regions of the world minority rights were constantly eroded. Particular note should be taken of the massive and systematic violations of minority rights by a country claiming to be the world's largest democracy. In India, the Dalits continued to be considered untouchable and were victims of the worst form of segregation. The Indian Constitution of 1950 had formally abolished that practice, but the relevant legislative provisions were for the most part not enforced. Discrimination in India also affected other minorities and vulnerable groups, including Sikhs, who were brutally repressed, Muslims, who were grossly underrepresented in the civil service and public institutions, Christians and Nagas, as well as women and children. The World Muslim Congress supported the appointment of a special rapporteur on minorities. He urged the High Commissioner for Human Rights to give priority attention to the protection of minority rights.

The meeting rose at 1.05 p.m.