II. PREVENTION OF DISCRIMINATION AND PROTECTION OF INDIGENOUS PEOPLES AND MINORITIES

This year, the members of the Sub-Commission examined reports on discrimination based on work and descent, the rights of non-citizens, indigenous peoples' sovereignty over natural resource, and peaceful and constructive approaches to situations involving minorities.

1. Prevention of discrimination and protection of indigenous peoples

A. Working Group on Indigenous Populations

i. Report of the Working Group

The Working Group on Indigenous Populations held its 21st session from 21 to 25 July 2003. The report of the Working Group contains information on the organisation of the session, major issues raised by participants and members, conclusions and recommendations, as well as annexes of lists of participants, documents and interventions by observer delegations.

In its conclusions, the Working Group invites, inter alia, the Office of the High Commissioner for Human Rights (OHCHR) to organise a second workshop on indigenous peoples, mining companies and human rights. The workshop will be one step towards preparing guidelines based on respect for the cultures and traditions of indigenous communities and the principle of full, prior and informed consent that companies should comply with when planning activities on indigenous peoples’ lands. The Working Group also decides that it will begin the elaboration of a legal commentary on this principle. Recommendations are also made with regard to co-operation with other UN bodies; the World Conference against Racism; the International Decade of the World’s Indigenous People; Voluntary Funds; and States threatened with extinction due to rising sea levels. The Working Group decides that its principal theme at its next session will be "Indigenous peoples and conflict resolution".

ii. Debate

Mr Miguel Alfonso Martínez presented an oral statement of the report of the Working Group. Participation in the Working Group was at particularly high levels (about 1’000 persons), which he suggested is an important indicator for "realising how the Working Group fits into UN work". He also highlighted the implementation of new methods of work of the Working Group this year, including a more "dynamic" interactive debate, and the setting-up of a specialisation group to draw up "new forms of dialogue". In addition, for the second year running, the Working Group introduced "group documents" to orient discussion on particular issues. The Working Group held 10 meetings and a number of private meetings.

Due to the report's late presentation in the debate on Item 5, there was little opportunity to have a substantial discussion on what Mr Alfonso Martínez had presented. Nevertheless, three experts did make comments on the report. Mr Asbjørn Eide referred to paragraph 103 of the report on the review by the Economic and Social Council (ECOSOC) of mechanisms relating to indigenous peoples and stressed the important existence of the Working Group as an independent body alongside the Permanent Forum on Indigenous Issues. Mr David Weissbrodt described the new work approaches presented by Mr Alfonso Martínez as very useful. With regard to the Working Group’s apparent incapacity to take concrete action, he further suggested that the mediation role be greatly enhanced through the encouragement of constructive dialogue between the Government and the indigenous peoples.

Several statements were made by indigenous representatives and NGOs on the situation of indigenous peoples who are denied their right to land and resources or are simply discriminated against. The Foundation for Aboriginal and Islander Research Action qualified the achievements of the International Decade of the World’s Indigenous People, which will end in 2004, as insufficient considering that States are still failing to demonstrate the will to eliminate racial discrimination against indigenous peoples. The Foundation called for more specific action by States, including the adoption of the Draft Declaration on the Rights of Indigenous Peoples. The International League for the Rights and Liberation of Peoples lamented that no specific instrument yet exists that addresses the problems of indigenous peoples living in territories stretching over the borders of several countries, and called for the consideration of an "intercultural accord of coexistence". They also requested an update on the studies by former Sub-Commission members Cristescu and Gros Espiell (in 1981 and 1979 respectively) on the right to self-determination.

Several statements were made on specific situations, including on the Crimean Tatars in the Ukraine and the indigenous Montagnards or Degar peoples of Viet Nam’s central Highlands. The Buffalo River Dene Nation from Northern Canada informed the Sub-Commission of their intention to pursue their case before the International Court of Justice in The Hague after having exhausted all legal remedies in Canada. Other NGOs emphasised the urgent need for more effective action with regard to indigenous peoples’ concerns, including the immediate adoption of the Draft Declaration.

The International Labour Organisation (ILO) outlined their contribution to the protection of the rights of indigenous peoples. The ILO Conventions 107 and 169 are the only international instruments relating exclusively to indigenous and tribal issues, with a focus on consultation and participation. The ILO is also carrying out two technical assistance projects that specifically target indigenous and tribal peoples. However, more affirmative action is needed by States, including the ratification and implementation of Convention 169.

iii. Resolutions

- **Human rights implications, particularly for indigenous peoples, of the disappearance of States for environmental reasons (2003/24)**

  The Sub-Commission urgently recommends to the Commission to call on the Secretary-General to prepare a report, with assistance from the OHCHR, on the legal implications of the disappearance of States for environmental reasons, including the implications of the human rights of their residents, with particular reference to the rights of indigenous peoples, and to submit the report to the General Assembly, the ECOSOC, the Commission and the Sub-Commission. It also recommends that upon receipt of the report, the ECOSOC recommend to the General Assembly that a working group be established to further consider this issue and its report be circulated to the ECOSOC, the Commission and the Sub-Commission.

- **International Decade of the World’s Indigenous People (2003/30)**

  The Sub-Commission strongly recommends that the draft United Nations Declaration on the Rights of Indigenous Peoples be adopted as early as possible and, to this end, appealed to all participants in the inter-sessional Working Group of the Commission on the draft declaration and to all others concerned to put into practice new, more dynamic ways and means of consultation and consensus-building, in order to accelerate the preparation of the draft declaration. The Sub-Commission welcomes the first steps being taken to establish and promote co-operation between the Working Group on Indigenous Populations, the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people and the Permanent Forum on
Indigenous Issues. The Sub-Commission also recommends to its parent bodies that a second international decade of the world’s indigenous peoples be proclaimed by the General Assembly which would focus on the promotion and protection of the rights, including the right to sustainable development, of indigenous peoples as well as implement the objectives of the first decade that had not been fully realised.


The Sub-Commission decides, in light of discussions held under the principal theme "Globalisation and indigenous peoples", to invite the OHCHR to organise a second workshop "on indigenous peoples, mining and other private sector companies and human rights with a view to preparing guidelines based on respect for the cultures and traditions of these communities and the principle of free, prior and informed consent" (para. 9); reiterates its view that the ECOSOC in reviewing at its substantive session 2004 all UN mechanisms relating to indigenous peoples, should take into consideration the fact that the mandates of the Working Group, the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people and the Permanent Forum on Indigenous Issues are distinct and complementary and requests the Commission to endorse this view. In addition, the Sub-Commission also requests the Secretary-General to transmit the report of the Working Group on Indigenous Populations on its 21st session (E/CN.4/Sub.2/2003/22) to all indigenous organisations, Governments and intergovernmental and non-governmental organisations concerned and invites them to provide information and data, in particular on the principal theme "Indigenous peoples and conflict resolution", relevant to the Working Group’s agenda at its 22nd session.

**B. Indigenous peoples’ sovereignty over natural resources**

i. Preliminary report of Ms Daes

Ms Erica-Irene Daes submitted her preliminary report to the Sub-Commission on indigenous peoples’ permanent sovereignty over natural resources, pursuant to Sub-Commission Resolution 2002/15. The report is based on Ms Daes’ study of the subject and an earlier working paper.

At the outset, Ms Daes underlines that the reconciliation of the legitimate interests of States with the prior and paramount rights of indigenous peoples to their natural resources has been recognised by many, including Governments, as a critical and necessary step for the advancement of the rights of indigenous peoples.

The report continues with a preliminary discussion of the concept "sovereignty" as it is applied or is relevant to indigenous peoples and natural resources. Ms Daes outlines that its meaning in reference to indigenous peoples and their natural resources within independent States can be generally stated as "legal, governmental control or management authority over natural resources, in particular as an aspect of the exercise of the right of self-determination" (para. 9). That is to say that the term "sovereignty" refers not to the abstract and absolute sense of the term, but rather to governmental control and authority over the resources in the exercise of self-determination.

In her further discussion of the term, Ms Daes describes States’ use of the concept of sovereignty in relation to indigenous peoples acting in their governmental capacity. In particular, she highlights legal frameworks in the United States of America (USA), where the law recognises many attributes of the sovereignty on the part of Indian Governments; Nicaragua, where the Constitution recognises the right of indigenous peoples "to manage their local affairs, maintain the communal forms of ownership and use the enjoyment of their 2 E/CN.4/Sub.2/2003/20.
lands”, and New Zealand, where the concept of sovereignty as applied to the indigenous Maori people is a part of the accepted legal framework (para. 17). Ms Daes also notes that the 17 States parties to the International Labour Indigenous and Tribal Peoples Convention, 1989 (No. 169), which contains key provisions for control over natural resources by indigenous peoples in their collective capacity as peoples, understand that indigenous and tribal peoples enjoy at least limited forms of sovereignty or management authority.

The Special Rapporteur adds that although the study does not presuppose any conclusion of the matter, she believes it would create conceptual problems to remove the word “sovereignty” from the long-established principle of permanent sovereignty over natural resources. This comment appears, in part, to be a rejoinder to concerns raised by members during debate on the subject at the previous year’s Sub-Commission, when it was suggested that Ms Daes avoid use of the term, given its potentially problematic connotations.

The report also contains an annex with a selected bibliography, a list of relevant cases and a compilation of relevant international law standards.

ii. Debate

In the presentation of her report, Ms Daes insisted that it be read together with the previously submitted working paper. The main foundation of the report, she said, is the reconciliation of the legitimate interest of States with the sovereignty of indigenous peoples over their natural resources. She argued that "meaningful political and economic self-determination is never possible without indigenous peoples having the legal authority to exercise control over their lands and territories [...]" (para. 6 of her report). She requested the Sub-Commission to recommend to the Secretary-General the submission of the present report to Governments, international organisations, etc. so as to make constructive comments on her study.

In the debate, many Sub-Commission members took to the floor to welcome the way in which Ms Daes structured her work. However, some experts also commented on what they perceived as a contentious use of the term "sovereignty" within the report.

Mr Manuel Rodríguez Cuadros argued that the term "sovereignty" is "exclusive and excluding", meaning that there cannot be two sovereignties within a State. This is an important legal issue that has to be tackled. Mr El-Hadji Guissé also questioned the possibility of having a second sovereignty within a State. He said that use of the notion of two sovereignties could be a source of violent conflicts as in Africa, and needs to be treated with a lot of caution because it can easily be manipulated by groups with "materialistic aims".

Other reactions were divided into acceptance of the term as used by Ms Daes (e.g. Mr Soo Gil Park) and serious requests for further qualification and elaboration of the theoretical analysis of that issue (especially Mr Yozo Yokota). Mr Vladimir Kartashkin voiced his support for the notion of sovereignty of natural resources as one aspect of self-determination, but expressed concern that the meaning of this sovereignty not extend to the right to an independent State. Ms Christy Ezim Mbonu, while recognizing the importance indigenous peoples attach to their land, preferred the term "autonomy" as Ms Daes used in paragraphs 17 and 19 when referring to specific country situations in Nicaragua and New Zealand. Ms Françoise Jane Hampson argued that whatever label is used, one clearly needs to recognise the supra-constitutionality of this issue.

Mr Yokota highlighted the importance of paragraph 6 on the "meaningful political and economic self-determination of indigenous peoples" which, according to him, implies that any development project must obtain the "free, prior and informed consent" of indigenous populations. He went on to say that the right to development of indigenous peoples would only be meaningful if they are in control over their land and territory.

Mr Alfonso Martínez praised the systematic presentation of the relevant legal case law, but was concerned that it was largely based on non-indigenous sources. He called for Ms Daes to pay greater attention to information from institutions directly providing information on indigenous issues.
iii. Resolution

- Preliminary report on the study on indigenous peoples’ permanent sovereignty over natural resources (2003/113)

The Sub-Commission requests the Secretary-General to submit the preliminary report of Ms Daes on "Indigenous peoples' permanent sovereignty over natural resources" to Governments, indigenous peoples’ communities and organisations, specialised agencies, other intergovernmental and non-governmental organisations for their comments, information and data that would be important for the Special Rapporteur in elaborating her final report.

2. Rights of non-citizens

A. Final report of the Special Rapporteur

The Special Rapporteur on the rights of non-citizens, Mr David Weissbrodt submitted his final paper to the Sub-Commission at its 55th session. The final report, divided into five parts, contains a principal report and four addenda. The principal report presents a synthesis of the general principles of and specific exceptions to the rights of non-citizens under international human rights law. Some of the areas in which these rights are not being respected are also briefly identified. The report also draws conclusions and makes recommendations for further action and study.

Based on a review of international human rights law, the Special Rapporteur concludes that all persons, by virtue of their essential humanity, are entitled to enjoy all human rights. The only "exceptional distinctions" that can be made (for example, between citizens and non-citizens) are those that serve a legitimate State objective and are proportional to the achievement of that objective (para. 6). The Special Rapporteur highlights that non-citizens should enjoy, among other rights, freedom from arbitrary killing, inhuman treatment, slavery, forced labour, arbitrary arrest, unfair trial, invasions of privacy, refoulement and violations of humanitarian law. They also are entitled to the right to marry, peaceful association and assembly, equality, freedom of religion and belief, social, cultural, and economic rights in general, labour rights and consular protection. The fundamental rights of non-citizens are elucidated in the Human Rights Committee's General Comment No. 15. Several international treaties, including the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, the Convention on the Rights of the Child, the Convention and Protocol relating to the Status of Refugees, the conventions and recommendations of the ILO as well as in European human rights institutions also recognise and/or expand upon these principles.

While all human beings are entitled to equality in dignity and rights, States may draw narrow distinctions between citizens and non-citizens with respect to political rights explicitly guaranteed to citizens and freedom of movement. For example, Article 25 of the International Covenant on Civil and Political Rights establishes that "every citizen" shall have the right to participate in public affairs, to vote and hold office, and to have access to public service (para. 18). Article 12 (1) of the Covenant grants "the right to liberty of movement and freedom to choose [one's] residence" only to persons who are "lawfully within the territory of a State", that is, apparently permitting restrictions on undocumented workers (para. 18). Article 2 (3) of the International Covenant on Economic, Social and Cultural Rights creates a specific exception to the general rule of equality for developing countries: "Developing countries, with due regard to human rights and their national economy, may determine to what extent they would guarantee the economic rights recognised in the present Covenant to non-nationals" (para. 19). As an exception to the general rule of equality, Mr Weissbrodt...
notes this article must be narrowly construed and relied upon only by developing countries with respect to economic rights, and emphasises that States must not draw distinctions between citizens and non-citizens in regard to social and cultural rights.

According to the Special Rapporteur, non-citizens often experience a large gap between their rights guaranteed by international human rights law and actual conditions. One of the most common problems human rights treaty bodies have encountered in reviewing States parties’ reports is that some national constitutions guarantee rights to "citizens" whereas international human rights law would - with the exceptions of the rights of public participation, of movement, and of economic rights in developing countries - provide rights to all persons. Other constitutions inappropriately distinguish between the rights granted to persons who obtained their citizenship by birth and other citizens. Furthermore, the mere statement of the general principle of non-discrimination in a constitution is not a sufficient response to the requirements of human rights law.

The situation has worsened since 11 September 2001 as several States violate the rights of non-citizens through responses to fears of terrorism. Mr Weissbrodt drew attention to the so-called "international zones" administered by some States to detain non-citizens, where such non-citizens are denied legal or social assistance (para. 27). Such zones, according to the Special Rapporteur, are a "legal fiction", a euphemism States use to try to avoid their international human rights responsibilities by claiming that such areas have extraterritorial status (para. 27).

The report also points out some positive developments, including the entry into force on 1 July 2003 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families. The Committee on the Elimination of Racial Discrimination has declared "that it stands ready to begin working towards an updated general recommendation on the rights of non-citizens" (para. 3). Mr Weissbrodt urges all treaty bodies to consider the preparation of a joint general comment/recommendation that would establish a consistent, structured approach to the protection of non-citizens’ rights.

In his conclusions and recommendations, the Special Rapporteur calls for the need for clear, comprehensive standards governing the rights of non-citizens and their implementation by States, and more effective monitoring of compliance to help end the discriminatory treatment of non-citizens. States are encouraged to pursue universal ratification and implementation of the principal human rights treaties since they deal with many of the problems encountered by non-citizens. The Special Rapporteur also urges States to take actions to counter any tendency to target, stigmatised, stereotype, or profile on the basis of race members of particular population groups, such as non-citizens - by officials as well as in the media. In addition, States should ensure that all officials dealing with so-called "irregular migrants" receive special training, including training in human rights (para. 42).

B. UN activities

This document provides an update of international standards and jurisprudence of treaty monitoring bodies relevant to the rights of non-citizens. The jurisprudence and concluding observations in this addendum cover treaty monitoring body sessions from March 2002 through March 2003.

In considering State reports, the Committee on the Elimination of Racial Discrimination highlighted several examples of discrimination against non-citizens and/or nationals of foreign origin, including: allegations of ill-treatment and discrimination against the Roma and non-citizens by law enforcement officials, especially by the police in Hungary; racial discrimination affecting people of Arab, African and Asian descent, including expressions of prejudice in the media against them in Canada; and discrimination in the acquisition of nationality in Yemen. The Committee also expressed concern about racial discrimination and counter-terrorism measures in Morocco; the abusive interpretation of electoral laws with respect to ethnic and

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religious groups in Côte d’Ivoire; discrimination against Meskhetians in Krasnodar Krai, including arbitrary denial of residence registration, in the Russian Federation; the disproportionate number of foreigners facing the death penalty in Saudi Arabia; and the deprivation under certain circumstances for certain persons without Slovenian citizenship of their pensions and of health care in Slovenia. The Committee also heard a case from an individual complainant, a citizen of the USA residing in Denmark who alleged racial discrimination against a bank in Denmark, which denied the complainant a car loan.

The Human Rights Committee expressed deep concern about the expulsion of foreigners suspected of terrorism in Yemen who had no opportunity to legally challenge the expulsion; and the high number of stateless persons in Estonia compared with the comparatively low number of naturalisations in that country. The Committee also considered a case in which a complainant, a Turkish citizen, challenged the lawfulness of an act in Austria, which limited the entitlement to stand for election to work councils (for private employers) to Austrian nationals or members of the European Economic Area.

The Committee on the Elimination of Discrimination against Women expressed concern about the consequences for victims of domestic violence of an amendment to an act in Denmark, which increases the required number of years of residence from three to seven before a permanent residence permit can be claimed. The Committee stated that the legislation may dissuade victims from leaving their abuser. The Committee also remained concerned about discriminatory provisions in the nationality law in Tunisia and Zambia’s law on nationality that discriminates against female spouses.

The Committee on the Rights of the Child raised concerns about the unequal enjoyment of economic, social, cultural, civil and political rights, in particular for asylum-seeking and refugee children in the United Kingdom; the persistence of unequal enjoyment of economic, social, cultural, civil and political rights persists for asylum-seeking and refugee children, foreign children, Roma and other minority groups in Romania; and the disparities in the enjoyment of economic and social rights, particularly health, social welfare, education, and housing experienced by Roma children in Italy. Regarding Israel, the Committee expressed concern about the rights and freedoms of Palestinian children in the occupied territories.

The Committee Against Torture took up several cases concerning the rights of non-citizens, most of which arose in the context of expulsion of non-citizens. In evaluating these cases, the Committee drew on its General Comment No. 1, reasoning that the complainant’s risk of torture in the country to which he/she will have to return to "must be assessed on grounds that go beyond mere theory or suspicion" (para. 59). However, the Committee also underlined that "the risk does not have to meet the test of being highly probable", but requires that the complainant "establish that he/she would be in danger of being tortured and that the grounds for so believing are substantial in the way described, and that such danger is personal and present" (para. 59).

C. Regional activities

This document presents an update of regional standards and jurisprudence that relate to the rights of non-citizens, including information from the European Court of Human Rights, the Inter-American Court of Human Rights, the European Committee of Social Rights, and recent decisions based on the Framework Convention for the Protection of National Minorities.

During the latter part of 2001 and 2002, the European Court of Human Rights considered the rights of non-citizens under Articles 5 and 8 of the European Convention on Human Rights and under Article 4 of Protocol 4. The Convention requires that any measure depriving an individual of her or his liberty must be compatible with the purpose of Article 5, namely to protect the individual from arbitrary detention. Article 4 of Protocol 4 provides that collective expulsion of aliens is prohibited. In the case Conka v. Belgium, the Court ruled that there had been a violation of Article 4 of Protocol 4 and Article 5. In Boultit v. Switzerland,

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the Court found that the Swiss Government breached Article 8, which deals, in part, with the extent to which the authorities can infringe on the right to respect for family life in the interest of protecting interests of public safety (in this case an alien in Switzerland with close family ties but who committed a violent crime in that country).

The European Committee of Social Rights considered the rights of non-citizens under the European Social Charter. In regards to Austria, the Committee expressed concern that the Government may be in violation of Article 16, which addresses the right of the family to social, legal and economic protection. The Committee was also concerned that a provision of an act in Belgium may contravene Article 19 of the European Social Charter, which deals with the right of migrant workers and their families to protection and assistance.

The European Commission against Racism and Intolerance (ECRI) considered human rights situations, with a particular focus on combating racism and intolerance, in countries of the Council of Europe, including Austria, Belgium, Bulgaria, Croatia, Cyprus, the Czech republic, Denmark, Estonia, Finland, France, Italy, Latvia, Malta, Norway, Switzerland, Turkey and the United Kingdom. In their considerations, the ECRI included an examination of the status of non-citizens, often with reference to Article 14 of the European Convention on Human Rights, which prohibits discrimination on any ground "such as sex, race, colour, language, religion, political or other opinion, social or national origin, associations with a national minority, property, birth or status" (para. 29).

The Special Rapporteur includes a section on the interpretation and application of the European Framework Convention for the Protection of National Minorities, noting that despite the lack of express terms that include or exclude non-citizens, general practice of States indicates that the Convention does apply to them. Several States parties provided interpretive declarations with their respective instruments of ratification that expressly stated that the State would not apply the Convention to non-citizens, leading the Special Rapporteur to remark that "such interpretive declarations, essentially reservations, indicate that in the absence of such declarations the States parties interpret the Framework Convention as applying to non-citizens" (para. 44).

The European Court of Justice considered cases regarding the right of non-citizens under the Treaty of Rome, the treaty establishing the European Economic Community (EEC). For example, in Yvonne van Duyn v. the Home Office, the Court of Justice considered the scope to and definition of Article 48, which addresses, inter alia, limitations on freedom of movement of workers within the EEC justified on grounds of public policy, public security or health. The Court of Justice also considered several cases with respect to the interpretation of the Association Agreement between the EEC and Turkey.

The Inter-American Commission on Human Rights received a petition alleging violations by the USA of the American Declaration on the Rights and Duties of Man. The petition concerns persons arrested in Afghanistan and currently detained by USA authorities at Guantanamo Bay, Cuba. The Commission pronounced a precautionary measure: that the USA must allow a competent tribunal to determine the legal status of each detainee pursuant to international humanitarian law and in particular pursuant to Article 5 of the Geneva Convention relative to the Treatment of Prisoners of War. According to the Inter-American Commission, States are obligated to respect the human rights of detainees, including legal protections, whether or not they are in the territory of the State in question.

D. Examples of practices in regard to non-citizens

This addendum presents information about practical situations and concerns that have arisen with regard to non-citizens based on material and information received from Governments, intergovernmental organisations and NGOs, the Committee on the Elimination of Racial Discrimination and the UN Special Rapporteur on the human rights of migrants.

The Special Rapporteur notes that while the human rights of non-citizens are set forth

in the international law presented in the principal report for this study, there has been little progress in implementing these rights in many States, particularly in the areas of marriage; detention of non-citizens; cruel; inhuman or degrading treatment or punishment; employment; treatment of refugees and asylum-seekers; arbitrary expulsion and deportation; property; participation in the political process; social security; housing; education; health care; participation in the cultural life of the community; and with regard to anti-terrorism measures.

He highlights, for example, that the nationality and immigration laws of several countries discriminate between the capacity of male and female citizens to marry and live with their non-citizen spouses (Mauritius, Qatar), that asylum seekers, including children, pregnant women, and elderly people, have been held in detention centres without adequate health and mental health care, education, and recreation facilities, as well as denied access to legal advice and to the courts to challenge their detention (United Kingdom, USA, Turkey), and that legislation in various countries requiring continued citizenship for recovering of confiscated property violated equal protection of the law required by the International Covenant on Civil and Political Rights (Japan, Hungary). The Special Rapporteur also highlights allegations of human rights violations committed in the process of implementing legal instruments in the battle against terrorism (USA, Belgium, France, the Netherlands, United Kingdom).

E. Replies of Governments

Addendum 4 summarises the comments received from 22 member States (Argentina, Belize, Bulgaria, Cyprus, Denmark, Estonia, Germany, Greece, Guatemala, India, Ireland, Jamaica, Lebanon, Madagascar, Mexico, Morocco, Nicaragua, Oman, Russian Federation, Spain, Thailand, Venezuela) in response to a questionnaire prepared by the Special Rapporteur.

The replies include information on relevant treaties that the country has signed and/or ratified; legal status and civil, cultural, economic, political and social rights of non-citizens, asylum seekers and refugees within each country and the problems that they face.

F. Debate

In presenting his final report as Special Rapporteur on the rights of non-citizens, Mr Weissbrodt stressed that “much more needs to be done to secure the rights of non-citizens”, asserting that "problems [...] faced by non-citizens have, if anything, worsened during the last four years".

In the subsequent debate amongst Sub-Commission members, a consensus quickly emerged that Mr Weissbrodt should continue to work on the issue. Mr Kartashkin urged, that in the future, the Special Rapporteur should be in closer contact with the treaty bodies considering that all of them deal with issues relating to the rights of non-citizens. Collaboration with the treaty bodies should be with a view to producing good conclusions and recommendations. On that same issue, Mr Fisseha Yimer supported the suggestion by Mr Weissbrodt that the treaty bodies issue a joint statement on the rights of non-citizens.

Intervening only very briefly on the issue, Ms Hampson said that Addendum I, which deals with the standards and jurisprudence of treaty bodies, should also include the useful role of the special procedures mechanisms.

Ms Iulia-Antoanella Motoc congratulated Mr Weissbrodt for having taken into account the comments made the previous year, in particular the request to emphasise the normative content of the study. In reference to paragraph 44, Ms Motoc said that a greater distinction could have been drawn between the right to take part in elections and other political rights. She highlighted the close linkage of the rights of non-citizens to the rights of minorities.

Mr Rodríguez Cuadros called the study an "excellent tool for addressing in a far more systematic and systemic fashion the issue of the rights of non-citizens". So far, the

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conceptual and analytical bases lie in the distinction between citizens and non-citizens that are found in the International Covenant on Civil and Political Rights and the International Convention on the Elimination of all Forms of Racial Discrimination. With regard to the recent entry into force of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, however, a new methodological approach could be identified since this Convention does not distinguish between citizens and non-citizens (it only refers to workers doing economic activity in foreign countries). Mr Guissé said he would like to see Mr Weissbrodt’s work take into account the text of the Convention on Migrant Workers, so to ensure any principles of protection arising out of the study do not weaken the force of the Convention.

Mr Park drew attention to the rights of non-citizens in the light of anti-terrorism measures, stating that the rights of refugees and asylum seekers must not be diluted. For example, forced repatriation of groups of refugees must be prohibited and every case must be treated in an individual manner. In that context, he drew attention to last year’s Sub-Commission Resolution 2002/23 on the international protection for refugees.

Ms Leïla Zerrougui brought up the issue of discrimination of non-citizens in international police co-operation and laid emphasis on the fact that the most urgent need is to define the rights of non-citizens before defining whatever duties exist. Mr Eide agreed that the focus should be primarily on the rights, and then on limitations, calling it a "better pedagogical approach".

Concluding the debate on the rights of non-citizens, Mr Weissbrodt reacted to some comments made by his colleagues. He agreed with Mr Guissé that the Convention on Migrant Workers is an important step, but does not think that it is "watered down" by the present document. He argued that the most important standard-setting would be the General Recommendation by the Committee on the Elimination of Racial Discrimination as announced by Mr Ion Diaconu, Chairperson of the Committee. Mr Weissbrodt also declared that he would, in future, include the special procedures mechanisms in his study.

Among the NGOs welcoming the report on the rights of non-citizens was the Japan Fellowship of Reconciliation. The representative seconded the point made by Mr Weissbrodt that little progress has been made in implementing the rights of non-citizens in many States, and gave examples of cases of arbitrary detention in the alien detention centres in Japan. NGOs also generally recommended the continuation of the study and asked that the present report be published as part of any final report.

A representative from the High Commissioner on National Minorities from the Organisation for Security and Co-operation in Europe (OSCE) argued that there is "no legitimate basis upon which to make an a priori distinction between citizens and non-citizens in terms of their equal enjoyment of human rights", and expressed its full support for Mr Weissbrodt’s view that there is still a "need for clear and comprehensive standards governing the rights of non-citizens, their implementation by States, and more effective monitoring of compliance". The representative offered the OSCE’s full co-operation on the subject.

G. Resolutions

- **Publishing the final report of the Special Rapporteur on the rights of non-citizens (2003/110)**

  The Sub-Commission, in a draft decision submitted to the Commission, asks the Commission to appoint one of its members as Special Rapporteur with the task of preparing a comprehensive study of the rights of non-citizens and to authorise the Sub-Commission to request information in regard to the study.


  The Sub-Commission calls upon States to pursue universal ratification and
implementation of the principal human rights treaties that deal particularly with the rights of non-citizens; encourages States to abide by the Declaration on the Human Rights of Individuals Who are not Nationals of the Country in which They Live; urges States to include information on non-citizens within their territory/jurisdiction in their reports to the treaty bodies; urges the human rights treaty bodies, either individually or jointly, to prepare general comments/recommendations that would establish a consistent, structured approach to the protection of the rights of non-citizens; and recommends the Commission to authorise the Sub-Commission to appoint one of its members as Special Rapporteur to further the study of the rights of non-citizens based on the final report, "taking effective action in response to information received; cooperating with the Commission's thematic procedures (particularly the Special Rapporteur on the human rights of migrants) and the human rights treaty bodies (particularly the Committee on Migrant Workers and Members of Their Families) in order to secure consistency of approach and avoid duplication of effort; making recommendations to the Sub-Commission, other relevant United Nations bodies, and other interested parties; and preparing an annual report to the Sub-Commission on the rights of non-citizens" (para. 19).

3. Discrimination based on work and descent

A. Working paper by Mr Eide and Mr Yokata

The original working paper on this topic was prepared by Mr Rajendra Kalidas Wimala Goonesekere, pursuant to Sub-Commission Resolution 2000/4. That paper was commissioned in order to accomplish three goals: "to identify communities in which discrimination based on work and descent continues to be experienced in practice; to examine existing constitutional, legislative and administrative measures for the abolition of such discrimination; and to make any further concrete recommendations and proposals for the effective elimination of such discrimination" (para. 1).

Pursuant to Decision 2002/108, an expanded working paper on discrimination based on work and descent as it concerns regions of the world other than Asia (which was the focus of the first paper) was entrusted to Mr Asbjørn Eide and Mr Yozo Yokota. Mr. Goonesekere was not re-elected to the Sub-Commission and therefore was unable to write the expanded paper.

According to the new authors, the main purpose of the paper – which should be read with Mr Goonesekere's first paper – is to identify communities, other than those traditionally referred to as "castes" in the South Asian context, in which discrimination based on work and descent continues to be experienced in practice.

The paper begins with a description, according to a "review of the literature and other available sources", of some communities outside of Asia that are affected by discrimination based on work and descent, including endogamous occupational groups in West Africa (blacksmiths, potters etc); groups in north-east Africa (the Dime and others), the Watta, former hunter-gatherers of North-East Africa; Somali Sab groups (Midgan-Madibhan, Tumal and Yibir; Akhdam of Yemen; and the Osu of Igboland (para. 44). The authors lament that they had been unable to examine, due to limited time, the diaspora communities (especially the South Asian, West African, Somali and Japanese diaspora communities) in much detail.

The authors highlight several common features of the different cases, and provide an analysis of the main points of similarity in the causes and expressions of marginalization affecting these diverse communities. The analysis is divided into causal factors and consequences, though the authors clarify that there is considerable overlap and interplay between these elements.

Causal factors include descent (membership of the marginalized group is acquired by

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birth into that group or by descent from that lineage and the marginalized status so acquired cannot be removed by individual merit or achievement); **work** (in which the marginalized status and associated discrimination is strongly associated with the occupations (or traditional occupational roles) of the groups concerned); **endogamous isolation** (which is also and more usually seen as a consequence, with the social proscription of intermarriage with the marginalized groups being the result of the stigmatisation of these groups); **pollution/purity** (in which the notion of pollution and purity is associated with beliefs regarding the physical dirtiness and/or ritually polluting nature of the ascribed functional roles of these communities); **religious sanction and myths** (for example in the cases of the marginalized African groups described, the sanction or justification is based on myths involving, for example, food transgressions or other ancestral wrongdoing or misfortune); **perceived "racial"/ethnic differences** (where popular beliefs ascribe certain groups a different "racial" or ethnic origin from that of the dominant community, often regarding those marginalized groups as being descended from conquered or absorbed peoples, for example the Abyssinian origins of the **akhdam** of Yemen).

**Consequences of discrimination** based on these factors can lead to **segregation in housing; social segregation**, in particular as a result of prohibitions on intermarriage and access to public places and services; **poverty** (these communities are typically among the economically poorest in their respective societies); and **violence** (it has been documented that efforts by members of the affected communities to improve their status and social conditions and to assert their rights have been met by violence).

Mr Eide and Mr Yokota conclude that the prevalence of discrimination based on work and descent is more widespread than might have been understood at the outset of the Sub-Commission's work on this topic. Consequently, it requires much "closer examination and attention both by national Governments and by the international human rights system" (para. 58). The authors urge the Sub-Commission to consider further examination of situations in which such discrimination occurs, taking into account the work already done by the Committee on the Elimination of Racial Discrimination (in particular through **General Recommendation No. 29**) in setting out measures for States under their obligation to eliminate discrimination based on descent.

In particular, the authors advocate that the Sub-Commission propose a study for the purpose of **drafting a set of principles and guidelines** for the effective elimination of discrimination based on work and descent as well as recommend to the Commission that its relevant **special mechanisms** pay attention in the fulfilment of their mandates to the situation of communities affected by discrimination based on work and descent.

**B. Debate**

Both Mr Eide and Mr Yokota introduced their joint working paper. Mr Eide started by calling the phenomenon of discrimination based on descent "a head-on challenge" to the principle that everyone is born free and equal in dignity and rights. He presented the overall structure of the paper, and welcomed the great contribution made by the Committee on the Elimination of Racial Discrimination with **General Recommendation No. 29** on descent-based discrimination.

Mr Yokota specified three points with regard to the working paper. First, he said that while discrimination based on work and descent is "widespread and serious", most international human rights instruments do not specifically refer to it except for **Article 1 of the International Convention on the Elimination of All Forms of Racial Discrimination**. Second, the problem of discrimination based on work and descent cannot be adequately addressed on the basis of democratic representation because, in general, the people who are suffering from this kind of discrimination are usually minorities or simply under-represented groups. Thus, international attention and action is indispensable in order to counteract this phenomenon. Third, Mr Yokota emphasised that in order to address the problem adequately, it is necessary to, first of all, acknowledge the existence of the problem, then to be determined to eliminate
and eradicate it, including taking all necessary measures, including remedies, punishment, promoting education, etc.

Mr Patrick Thornberry, Rapporteur for the Committee on the Elimination of Racial Discrimination, welcomed the paper as being a helpful contribution to the work of the Committee. He also spoke about the need to "hear more what communities say themselves" in order to avoid ascribing intentions to them. Being sensitive to customary community systems is also necessary because if human rights are universal, they need to contain cultural dimensions.

Mr Alfonso Martínez and Mr Park both noted that these types of discriminatory actions had a broader geographical scope than was initially imagined. Mr Guissé, while awaiting a much more in-depth study on the issue, stressed that the most important action should be on the educational level.

Ms Hampson called this paper "an example of the Sub-Commission at its best". She spoke on five points relating to the paper. First, she suggested that the possible key feature of this type of discrimination based on work and descent is "entrapment" and that further study should clarify this. Then, she mentioned the problem of diaspora communities (as mentioned in paragraph 41 of the working paper). The issue of discrimination within these communities is one of major concern because they often live in States with no experience of this type of discrimination, making the issue an "unrecognised problem". Third, she suggested that work be done on the possible similarities of the definitions of discrimination "based on descent" (as it is referred to in the International Convention on the Elimination of All Forms of Discrimination) and discrimination on the grounds of "birth or other status" (as it is stated in Article 26 of the International Covenant on Civil and Political Rights. Furthermore, speaking on the point made in paragraph 53 of the paper, namely segregation in access to public services, she was concerned that this could lead to serious discrimination and posed a number of questions intended to help investigate on that matter. Lastly, Ms Hampson said that the report shows very clearly the "need for States to assume their obligation to educate people out of their prejudices". She would like to see work on this issue continued.

Ms Mbonu made a brief comment on paragraph 36 saying that the information given on the interactions between Diala and Osu in the Igbo society in Nigeria were not necessarily correct, as she had already noted the previous year on the same issue. Mr Eide refuted her analysis of the interaction, and referred her to the two sources in the bibliography on which the information relied.

The many NGOs that welcomed the working paper submitted by Mr Eide and Mr Yokota included the International Movement Against All Forms of Discrimination and Racism (IMADR), the Lutheran World Federation (LWF) and Minority Rights Group International (MRG). They expressed support for the recommendations made in the working paper, and strongly recommended the continuation of the study by the Sub-Commission. Discrimination based on work and descent is truly a global issue and cannot be ignored anymore on the international agenda. The Sub-Commission should use its "special capacity to propose and articulate instruments of general application for the guidance of States and the protection of victims of violations". The IMADR stated that the problem of cast is, above all, a problem of human development, democratic education and, more specifically, human rights education.

Yemen made use of its right of reply on the issue raised on Section I. E titled "Akhdam of Yemen". The delegate made it clear that "the Yemeni constitution and laws state that Yemeni citizens are equal". The group of peoples referred to as "Akhdam" in the working paper are not discriminated against; in fact, studies show that, amongst others, they have a high level of political participation. Consequently, the experts are requested to omit that section from their paper.
C. Resolution

- **Discrimination based on work and descent (2003/22)**

The Sub-Commission calls upon States to formulate and implement without delay at the national, regional and international levels new and enhanced policies and plans of action to effectively eliminate discrimination based on work and descent; decides to entrust Mr Eide and Mr Yokota with the task of preparing, without financial implications, a further working paper on the topic of discrimination based on work and descent in order "to examine legal, judicial, administrative and educational measures taken by Governments concerned, to identify additional communities affected by discrimination based on work and descent, and to prepare a draft set of principles and guidelines for all relevant actors, not only national or federal Governments but also local governments as well as private sectors such as corporations, schools and religious institutions" (OP 7).

4. Rights of minorities

A. Working Group on Minorities

i. Report of the Working Group

The Working Group on Minorities held its ninth session at the Palais des Nations in Geneva from 12 to 16 May 2003 under the chairmanship of Mr Asbjørn Eide with the participation of the following expert members: Mr José Bengoa, Mr Vladimir Kartashkin, Mr Soli Sorabjee and Ms Leïla Zerrougui; observers for 48 States, representatives of 50 NGOs, three UN organisations and specialised agencies, one regional intergovernmental organisation and 10 universities and other institutions.

The report summarises the key elements of the discussions in the Working Group on the following topics: reviewing the promotion and practical realisation of the declaration on the rights of persons belonging to national or ethnic, religious and linguistic minorities; examining possible solutions to problems involving minorities, including the promotion of mutual understanding between and among minorities and governments; recommending further measures for the promotion and protection of minority rights; and the future role of the Working Group.

In its conclusions, the Working Group outlines the main tasks of the next session and makes a series of recommendations. These include that a voluntary fund be established to support the participation of minority representatives and experts, especially from developing countries, in meetings of the Working Group; that the Sub-Commission recommends that the Commission proclaim an International Year for Minorities, with a Decade to follow; that Governments establish national human rights institutions, which can investigate and grant appropriate relief for violations of minority rights by all State agencies; and that Governments should enact appropriate legislation on the subject of citizenship that should provide for periodic review of implementation and remedies for wrongful denial of citizenship.

B. Progress report by Mr Asbjorn Eide

Mr Eide presented an update of his study on **peaceful and constructive approaches to situations involving minorities** to the Sub-Commission. The first part of the update (Eide will submit a second part in 2004) deals mainly with the application of universal human rights to persons belonging to minorities, including when the minority concerned is not formally

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recognized in the country concerned.

The focus of the update is to set the stage for a discussion of guidelines for the application of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (Declaration on Minorities) with emphasis on the application of Article 1, paragraph 1, which states that "States shall protect the existence and the national or ethnic, cultural, religious and linguistic identity of minorities within their respective territories and shall encourage conditions for the promotion of that identity" (para. 5).

The report repeatedly stresses that serious difficulties confront minorities in many parts of the world, not because specific minority rights are not implemented, but because universal human rights are not properly respected and protected in relation to minorities. Those rights are contained in the Universal Declaration of Human Rights and are elaborated in the two International Covenants. While universal human rights are formulated as the rights of everyone as individual human beings, many of them are usually enjoyed in community with others and can therefore respond to the needs of many minorities.

Following an introduction on the mandate and background of the study, Mr Eide highlights the historic contribution of the promotion and protection of the rights of minorities to preserving and strengthening international peace and security. Mr Eide then presents a summary of standard-setting developments concerning minority protection (since Mr Eide’s last study was initiated in 1990). Before 1990, few rules existed on minority rights in general international law, the main provision was Article 27 of the International Covenant on Civil and Political Rights. Since then, the Declaration on Minorities was adopted (1992). A follow-up mechanism to the Declaration on Minorities (the Working Group on Minorities) was established in 1995. At the regional level in Europe, the OSCE established in 1992 the High Commissioner on National Minorities. The Council of Europe adopted in 1994 the European Framework Convention for the Protection of National Minorities (Framework Convention), which, as of 17 June 2003, has 35 European State parties. A supervisory mechanism in the form of an Advisory Committee examines State reports on the implementation by the State party of its obligations under the Framework Convention. The Advisory Committee has also established the practice of visiting each of the participating States, conducting interviews with minorities, NGOs and government officials. Mr Eide points out that regrettably no explicit regional instruments exist for minority protection outside Europe. But the update does provide an overview of the results of a series of regional seminars prepared by the Working Group, including one held in Honduras, Thailand, and three sub-regional seminars in Africa (held in Mali, Tanzania, Botswana).

However, many gaps in implementation of these instruments remain. For instance, the Working Group, despite encouraging wide participation in its session including from NGOs, is neither a monitoring body, nor a mechanism for handling complaints. Mr Eide laments that the Working Group has little power to act in case of serious violations, although it serves an important role as a forum and an exploratory body.

The progress report gives an overview of the concerns held by minorities, including their equal treatment as individuals; preservation and development of identity in otherwise integrated societies; effective participation while maintaining their own identity; and access to or control of land; cultural autonomy in fields such as language and education; and territorial autonomy. Although their equal treatment as individuals is a common concern to all minorities, different types of minorities will place different priorities on different concerns depending on a variety of factors. These can include, for example, whether they are large and closely knit minorities that live compactly together, or are smaller and/or live in somewhat dispersed groups.

States are not always able to meet all of these concerns, and Mr Eide clarifies that some of the demands go beyond what is compatible with other aspects of international law. Mr Eide is clear however on two major points: that States at all times are obliged to ensure the enjoyment by everyone of their individual human rights; and States cannot "transfer so much autonomy to minorities that the State is deprived of its authority and capability to ensure human rights within its territory, and thus also the human rights of those who live
inside the autonomous area” (para. 33).

A discussion of evolving norms in international law around the concept of minority follows, looking in particular at the Human Rights Committee’s General Comment No. 23 interpretation of Article 27 of the International Covenant on Civil and Political Rights. Mr Eide insists, however, that a legal definition of minorities is not only not necessary or desirable, but in fact could be potentially harmful. A general definition would "easily lead to the assumption that all minorities falling within that definition would be entitled to all minority rights, and that all groups falling outside are entitled to none of the minority rights... Both of these assumptions are wrong" (para. 40). He emphasises that the debate on a definition of “minority” overshadows that the major problem facing many minorities is the lack of respect for and, again, the weak or sometimes non-existing protection of their universal human rights. In regard to when the rights consist in claims on the State to adopt special measures to ensure appropriate conditions for the preservation and development of the group identity, Mr Eide recognises that it may indeed be necessary to use a more restrictive definition of the beneficiaries of such "claim rights". In this context, Mr Eide references rights found in the Declaration on Minorities and in regional instruments such as the European Framework Convention.

In discussing the universal human rights as the foundation for minority protection, Mr Eide is guided by the Universal Declaration of Human Rights, and Article 2 of the International Covenant on Civil and Political Rights, under which States have undertaken to respect and to ensure to all individuals within its territory the rights contained in the Covenant (obligations, he stresses, which are both negative and positive in nature) as well as Article 2 of the International Covenant on Economic, Social and Cultural Rights, where States have undertaken to take steps to the maximum of available resources to achieve progressively the full realisation of the rights. In this regard, States must immediately identify the vulnerable groups and set benchmarks for the progressive realisation of the rights contained in that Covenant for everyone under its jurisdiction. Mr Eide states that while the rights in the Universal Declaration and the Covenants are formulated as the rights of individuals, the respect for and protection of those rights go a long way in guaranteeing minority protection.

In addition, Mr Eide stresses the principle of non-discrimination, which is of general applicability, elaborated in many human rights instruments and set out in the Declaration on Minorities (Article 4.1), which requires States to take measures where required to ensure that persons belonging to minorities may exercise fully and effectively their human rights and fundamental freedoms without any discrimination and in full equality before the law. States are also required to recognise and ensure that everyone has a right to an effective remedy against violations of those rights. Mr Eide points out that the experience of the Working Group on Minorities shows that many of the issues brought to its attention have arisen where there has been a lack of equal and adequate protection. A major problem has been unequal treatment by law enforcement officials at various levels.

Mr Eide elaborates on the protection of minorities through universal human rights, stressing that the first requirement is to respect and protect their existence, which is implicit in "universal integrity rights" contained in the Universal Declaration and relevant Conventions, including the right to life, freedom form torture, and freedom of movement and residence (para. 52). Minorities are also entitled to set up associations, have the right to freedom of religion, and freedom of expression and information, which includes a right to choose one’s language of expression and information. In this latter regard, Mr Eide explains that there are caveats in the extent that a person belonging to a linguistic minority is entitled to use her or his own language in relations with public authorities. In addition, a question arises as to whether a person belonging to a linguistic minority has a right to learn her or his language. According to Mr Eide, universal human rights do not include a general right to obtain publicly funded education of another language other than the official language.

The freedom of association, expression and information, or of religious practice, can only be limited under the grounds recognised in the international instruments and prescribed by law, including limitations necessary to protect public safety, order, health or morals, or the
fundamental rights and freedoms of others.

Persons belonging to minorities are also entitled, without discrimination, to enjoy economic and social rights: including the right to have access to work freely chosen, rights in work, social security, right to an adequate standard of living, right to the highest attainable standards of health, right to education and the enjoyment of cultural rights.

Concerning the right to education, Mr Eide examines the large and complex issue of the extent to which minorities can demand that their identity and culture be taken into account in the educational process. In this context, Mr Eide cites Article 4 of the Declaration on Minorities, and Article 29 of the Convention on the Rights of the Child, placing particular emphasis on paragraph 1, which concerns the development of the child’s personality talents, and mental and physical abilities of the fullest potential. In order to accomplish this for all children, including minority children, Mr Eide suggests that educational policies must combine a focus on the universal values, the practical needs of the child, and the respect for separate cultural traditions and identities.

Mr Eide pays special attention to migrant children, stating that they should receive education both about their culture of origin and that of their host culture, since such education plays a crucial role in shaping their new identity "while redefining — and maintaining links — with the society from which the voluntary migrants migrated" (para. 80).

The right to participate in the cultural life of the community is already covered to a large extent by the right of minorities to use and learn their own language and the right to practice their own religion and belief. However, Mr Eide declares that the preservation of culture can require much more, but touches only briefly on the controversies surrounding how far these rights should go for different categories of minority, looking in particular at the Human Rights Committee’s General Comment No. 23 addressing the interpretation of the sentence in Article 27 that "persons belonging to... minorities shall not be denied their right to enjoy their culture" (para. 83). The Human Rights Committee refers in particular to the cultural rights of indigenous peoples and the right to enjoy their own culture "in many forms, including with the way of life associated with land resources" (para. 83). Mr Eide underlines however that there are other groups, other than indigenous peoples, which have similar needs.

In his concluding remarks, Mr Eide reiterates that the major problem for many minorities around the world is a lack of political will or capability on the part of the State to respect and, particularly, to protect universal, individual human rights. An overview of the final update of the report is also provided, in which, inter alia, Mr Eide will review the international mechanisms for promotion and protection of minority rights both at the level of the UN (treaty bodies, charter mechanisms and their reference to minority issues) and at the regional level, in order to identify the gaps and the need for strengthening protection.

C. Debate

Mr Eide briefly presented the first part of the update of his earlier study completed in 1993 and informed the Sub-Commission that his work drew extensively on the experience of the Working Group on Minorities.

Ms Motoc welcomed the study, which she considered to be detailed especially with regard to, inter alia, the right to education. She highlighted the delicate issue of "vulnerable minorities" who are often without any representation, not even through NGOs. Ms Motoc stated that the issue concerning minorities and the right to land and natural resources is a difficult problem since it is of a different legal regime than that of the right of indigenous populations.

Mr Yimer emphasised the importance of Section II of the report "The Imperative Foundations of International Order: Peace and Human Rights" and in particular paragraph 16. This paragraph stresses that minority groups, as non-State actors, also need to respect and protect human rights and that more efforts are needed to ensure this even though the main responsibility still rests on the State. Mr Yimer asked for a more detailed elaboration of the
actual meaning of paragraph 81, which deals with the question of "multiculturalism, interculturalism and transculturalism in the process of education" in the further studies.

Mr Guissé intervened on the question of definition of a minority, stressing that a general definition is not useful. Every case would need to be treated in an individual manner taking into account the specific local circumstances. A minority is not "autonomous", it is not "beyond the State". With regard to the issue of maintenance of peace and respect for human rights, he underlined that this is the exclusive competence of the State, and not individuals or groups.

Mr Rodríguez Cuadros briefly intervened on the report calling it "a constructive approach" and expressed generally agreement with the recommendations made by Mr Eide.

One NGO statement – made on behalf of the Bahá’í International Community and Minority Rights Group International (MRG) – indirectly referred to Mr Eide’s study and more specifically to the effective protection of "vulnerable ethnic and religious groups". Almost ten years after the genocide in Rwanda, "the lessons [...] have still not been learnt". They urged the Sub-Commission to re-affirm the linkage between human rights issues and conflict prevention and security activities of the UN. More effective communication on human rights issues between all the human rights bodies and other decision-making bodies (e.g.: the Security Council) is essential. The representative of Sri Lanka also intervened on the issue of the protection and promotion of minority rights calling it "a core condition for societal harmony". Specific reference was made to paragraph 16 in which Mr Eide speaks about the importance of non-state actors also respecting and protecting human rights.

NGOs also took the floor to comment on the valuable work done by the Working Group on Minorities since its establishment in 1995. However, the Himalayan Research and Cultural Foundation called for a more focused approach to the monitoring of minority rights’ situations. In order to do this, the Working Group should review the political systems so as to ensure that "existing political, legal and constitutional systems do not discriminate against minority groups" and that "judicial systems are geared up enough to protect minority rights". Pax Romana asked the Working Group to focus on the issue of discrimination based on religion in the political context, and the necessity to make a distinction between different forms of discrimination. Giving the example of the "consistent pattern of violations of human rights of Karen and Shan ethnic minorities in Burma", Pax Romana reiterated the call for a special mechanism for minorities with a "specific mandate to receive communications on violations of minority rights and to engage in preventative diplomacy with the parties concerned".

D. Resolutions

• Rights of minorities (2003/23)

In this resolution, the Sub-Commission invites the OHCHR to consider organising training workshops at the national level on the implementation of the rights of minorities; recommends the establishment of an international year for the world’s minorities, to be followed by a decade, with a view to "advancing the implementation of article 9 of the United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities relating to inter-agency cooperation for the full realisation of the rights and principles set forth in the Declaration, within their respective fields of competence, and decided to prepare a draft decision on that matter for the consideration of the Commission on Human Rights" (OP 14). The Sub-Commission also recommends the establishment of a voluntary fund to facilitate the participation in the Working Group and its related activities of minority representatives and experts from developing countries and for the organisation of other activities relating to the promotion of minorities, deciding to prepare a draft decision to that effect for the consideration of the Commission at its 60th session.
• Draft decision on a voluntary fund on minority-related activities (2003/111)

The Sub-Commission recommends that the Commission endorse the Sub-Commission’s recommendation that a voluntary fund on minority-related activities be established to facilitate the participation in the Working Group on Minorities and its related activities of minority representatives and experts from developing countries and for the organisation of other activities relating to the implementation of the rights of persons belonging to minorities, with the members of the Working Group acting as a "virtual decision-making board". The Sub-Commission recommends that the Commission recommend that the ECOSOC approve this request.

5. General debate

NGOs as well as Government delegates made comments on a variety issues relating to minorities, discrimination based on religion and gender, and racism that were not directly related to one of the reports or studies.

With regard to minority issues, situations in India, Pakistan and Nepal were highlighted by NGOs. The Asian Women’s Human Rights Council spoke on the situation of Dalit women in Nepal, and on the Korean minority in Japan. They insisted upon the need for human rights education for police officers, and on a more general level, stressed the importance of history education in those countries "to cultivate the critical reflection ability necessary for becoming the ethical subject who contemplates on human rights principles on her own and acts in accordance with these principles in her daily life".

Interfaith International spoke about the "desperate need for modernising and democratising in Pakistan". Following an increasing trend in UN forums, in which some NGOs vocalise their support for particular Governments rather than human rights principles, the World Peace Council, appeared to praise India for its "success story" in respect to the "politics of dialogue with its minorities" and accuse Pakistan for its policies leading to internal strife and instability.

The Indian delegate also intervened to point out that India’s minority groups, whether based on religion or otherwise, enjoyed special safeguards to guarantee them all their rights.

Anti-Slavery International highlighted the case of the Midgani/Madhiban "outcaste" clans in Somalia, who experience serious discrimination based on occupation and descent. On a more general level, the MRG and the African Society of International and Comparative Law intervened on importance of recognising the existence of minorities and lamented that some countries in Africa are not paying sufficient attention to the rights of minorities. A great problem is the denial of citizenship to particular groups. The joint statement called for more attention to be given to traditional African methods that "successfully mediate between ethnic groups, resolve conflicts and strengthen relations".

A comprehensive intervention was made by the International Federation of Free Journalists who spotlighted the often-threatening situation that the press is placed in when reporting on issues of minorities. More specifically, the NGO urged the Russian Federation to stop making false allegations on the situation of Russian minorities in the Baltic States and focus more on the protection of the basic rights of its own minorities, referring to the situation of the Caucasian and Central Asian minorities as well as to the situation in Chechnya.

With regard to discrimination based on religion, several NGOs again referred to the situation in India and Pakistan. Minnesota Advocates for Human Rights mentioned the religious hatred and communal violence that manifested itself in the "Gujarat killings" in India (as did Ms Hampson earlier). A joint statement by the Dominicans for Justice and Peace, Fransiscans International and Pax Christi International, and others, expressed serious concern about the religious discrimination inscribed in the legislation of Pakistan, whereas the European Union of Public Relations said that the practice of religion today often "negates the very values of humanity". Gender discrimination, for example, is often "sanctified in terms of
either religion or custom”.

In regard to discrimination and work, the International Confederation of Free Trade Unions (ICFTU) called upon the major "receiving" States to ratify and implement the Convention on Migrant Workers, none of which have yet done so.

On a more general level, the International Council of Jewish Women, in a joint statement with ten other NGOs, suggested that the UN prepare short texts written in everyday language about the contents of UN protection of women and children. The simple knowledge of UN standards is not widespread amongst the people concerned, they pointed out. International Educational Development asked the Sub-Commission to look into the matter of the proposed or actual changes to the situation of the United Nations Trust Fund on Contemporary Forms of Slavery and the United Nations Voluntary Fund for Indigenous Populations since such changes could have an impact on the operations and the working groups that the Funds support.

Lastly, the delegate of Argentina spoke on the renewed commitment of his country to human rights, which are now part of all State policies. Amongst others, measures recently adopted ensured that there was no impunity for executive officials. The representative of Mexico stated that her country was in the process of identifying an appropriate long-term strategy with regard to its indigenous peoples. She also underlined the importance of the work done by Mr Weissbrodt on the rights of non-citizens.