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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 16th MEETING

Held at the Palais des Nations, Geneva,  
on Friday, 6 August 2004, at 3 p.m.

Chairperson: Mr. SORABJEE

later: Ms. MOTO  
(Vice-Chairperson)

later: Mr. SORABJEE

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- (a) WOMEN AND HUMAN RIGHTS
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- (c) NEW PRIORITIES, IN PARTICULAR TERRORISM AND COUNTER-TERRORISM (continued)

The meeting was called to order at 3.10 p.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) (E/CN.4/Sub.2/2004/28, 29 and Add.1, 30 and Add.1, 31 and 32) (continued)

1. The CHAIRPERSON invited the Chairman and members of the Committee on the Elimination of Racial Discrimination (CERD) to take part in the discussion.
2. Mr. YUTZIS (Chairman, Committee on the Elimination of Racial Discrimination) said that CERD was anxious to respond to the initiative taken by the Sub-Commission in a gesture which was one of the many expressions of the need to understand that the protection of human rights was in the end a collective endeavour. The aim should be to find some points of intersection in the work on human rights. Of course, CERD had its own specific mission and scope, but any opportunity to form synergies with other bodies was welcome.
3. CERD had recently produced some proposals containing elements on which joint work might be conducted. For example, it had recently held a thematic debate on descent-based discrimination. The decision to take up that topic reflected the Committee's intention to place on the agenda a topic largely forgotten by States parties and the Committee itself. CERD had thus been able to expand its jurisprudential framework and improve the understanding of the definition of racial discrimination contained in article 1 of the International Convention on the Elimination of All Forms of Racial Discrimination. The Sub-Commission had made a very valuable contribution to that work, which had resulted in General Recommendation XXX on discrimination against non-citizens (CERD/C/64/Misc.11/Rev.3). CERD had thus restored to its agenda what had previously been a controversial and ambiguous subject.
4. Mr. KJAERUM (Committee on the Elimination of Racial Discrimination) said that the Sub-Commission's work on the rights of non-citizens and the production of General Recommendation XXX by CERD provided excellent examples of the collaboration between the two bodies. He outlined the history of the treatment of the topic from the time when CERD had first taken it up in 1997 down to the production of the final report of the Sub-Commission's Special Rapporteur (E/CN.4/Sub.2/2003/23 and Add.1-4). CERD had adopted General Recommendation XXX in March 2004; it concentrated on the establishment of the legal framework for protecting the rights of non-citizens, and the concerns expressed were based on the Special Rapporteur's reports and on the results of the country examinations conducted by CERD itself.
5. The efforts made to date constituted the easy part of the task: the next step was to make the General Recommendation work in practice. CERD would use it in its country examinations and hoped that States would also draw on it as a set of minimum standards for legislation. National human rights institutions should also bear it in mind when monitoring State practice.

And intergovernmental agencies such as the Office of the United Nations High Commissioner for Refugees (UNHCR), and of course non-governmental organizations (NGOs), should take the General Recommendation on board. It could in fact replace several of the somewhat vague conclusions of the UNHCR Executive Committee. He hoped that the Sub-Commission would study the General Recommendation with a view to determining how the work could be further advanced, especially with regard to practical implementation. He also hoped that the Sub-Commission's current work on discrimination based on work and descent would be continued on a similar basis of dynamic interaction.

6. Mr. LINDGREN ALVES (Committee on the Elimination of Racial Discrimination) said that, as a former member of the Sub-Commission, he could perhaps see more clearly than others that the two bodies lacked a common fund of knowledge and that neither knew exactly how the other worked. In view of their origins and functions, it was of course not surprising that the two bodies should have different working methods. It was regrettable that the Sub-Commission was no longer permitted to address individual situations and name the countries concerned. But CERD did follow that practice, on the basis of the periodic reports of States parties. The meetings of CERD might seem boring, but they constituted a constructive dialogue with States parties. In his experience, no State party had ever refused to engage in a discussion with CERD, even relating to an article on which it had entered a reservation. That showed that the system for the protection of human rights was not totally useless. He recommended that expert members of country delegations and representatives of NGOs should attend a meeting of CERD in order to see how constructively the situations in individual countries could be discussed.

7. The CHAIRPERSON said that it might be possible to overcome the differences in working methods and the lack of a body of shared knowledge by having members of the Sub-Commission attend meetings of CERD. But the Chairman of CERD had rightly mentioned points of intersection. The effort was a collective one and had the same objective: to rid the world of the scourge of discrimination. Meetings such as the present one did indeed offer an opportunity for the two bodies to examine each other's methods and see how best to integrate their work.

8. Mr. BOSSUYT said that, as a former member of CERD, he attached special importance to the present dialogue. All bodies such as CERD and the Sub-Commission were part of an interconnected international system for the protection of human rights; there was everything to be gained from greater cooperation, dialogue and shared knowledge of how the different components of the system worked. General Recommendation XXX was indeed welcome. For some time, the Sub-Commission had been working on the question of discrimination in the administration of justice. Members of the Sub-Commission might usefully be invited to attend meetings at which CERD was discussing that topic.

9. Mr. PINHEIRO said that meetings such as the present one were welcome because it was impossible for a body to work for the protection of human rights in a "closed space". He noted that seven of the draft resolutions for the current session contained the word "discrimination" in their titles. Although the Sub-Commission was no longer able to adopt resolutions naming States, there was no reason why it could not conduct a dialogue with States along the lines of the dialogue in CERD. The working methods of the two bodies might therefore be closer than thought.

10. Mr. GUISSÉ said that he had had experience of presenting a periodic report of his country to CERD. The members of CERD could be tough but they were always objective, and their discussions were focused directly on real human rights situations. He agreed that meetings such as the present one were important, but more time should be allocated for the discussions between the members of the two bodies, and indeed with members of the International Law Commission, with a view to generating a new common impetus to improve the understanding of human rights and their delivery. It would be useful to set aside a whole day for such discussions.

11. Mr. KARTASHKIN said that the question of discrimination against non-citizens was very complicated from both the jurisprudential and the political standpoints. At first sight, General Recommendation XXX addressed virtually all the problems, and the solutions which it offered went in the right direction. However, he would like to know whether the list of non-citizens contained in the second and third preambular paragraphs was exhaustive. The Commission on Human Rights and the Sub-Commission had long been discussing the question of the nationality of members of ethnic, religious and other minorities, many of whom were regarded as non-citizens in their countries of residence. He wondered whether CERD had examined all the categories and tried to define non-citizenship by determining what distinguished non-citizens from foreigners. That question was very relevant to the General Recommendation.

12. Ms. WARZAZI said that, as a former member of CERD, she could affirm that many things had changed in that body: it had originally concerned itself exclusively with the periodic reports of States parties and had not produced any recommendations or analyses relating to general situations. She agreed with Mr. Kartashkin that the concept of non-citizen was rather vague in the General Recommendation. She was also puzzled by the reference to “particular groups of non-citizens” in paragraph 13: protection must be afforded to all non-citizens.

13. Ms. HAMPSON said that there were clearly significant areas in which CERD and the Sub-Commission were interested in the same issues but from slightly different angles. CERD had just conducted a discussion on reservations to the International Convention and had also discussed that issue with members of the International Law Commission. She would be interested to know the results of the discussion in CERD itself.

14. Mr. ALFONSO MARTÍNEZ said that he would like to know the origins of the General Recommendation: the need for general guidance on the subject would seem to indicate a need for a point of reference for all the relevant United Nations bodies. In December 2003 a seminar organized by the Office of the United Nations High Commissioner for Human Rights concerning treaties between States and indigenous peoples had recommended that the treaty-monitoring bodies should give specific attention to the formal legal obligations of States under such treaties. The Sub-Commission’s Working Group on Indigenous Peoples had also mentioned that matter in its latest report (E/CN.4/Sub.2/2004/28). He would like to know how CERD intended to comply with that recommendation in its future work with States parties to the International Convention, which also had such treaty obligations.

15. Mr. BENGOA said that the term “non-citizen” required further clarification, since it tended to give rise to divergent legal and sociological interpretations. Whereas its legal definition referred exclusively to persons living on the territory of a foreign State without

citizenship, its sociological definition could be extended to include persons living in various difficult situations. The definition used in General Recommendation XXX of CERD seemed to correspond to persons living in a foreign State, who did not have citizenship but intended to stay there. He wondered whether the rights contained in the Recommendation, such as those in paragraph 26, were applicable to migrants, whose intention to live or stay in the host State was harder to determine.

16. Mr. KJAERUM (Committee on the Elimination of Racial Discrimination) said that the Committee, rather than try to define non-citizens, had taken an empirical approach, and referred to groups of people by name. In reply to the question raised by Ms. Warzazi, paragraph 13 was designed to ensure that discrimination did not occur between different groups of non-citizens. Further to the comments by Mr. Alfonso Martínez, he said that priorities for General Recommendations were established on the basis of Special Rapporteurs' and State party reports, taking into account the main issues raised by NGOs. General Recommendation XXX was not designed exclusively to address the concerns of non-citizens living in a foreign State for an extended period of time. Paragraph 30, for example, referred to the right of children of undocumented immigrants to attend school in the host country. The Committee intended the Recommendation to address the needs of rejected asylum-seekers from Western Europe.

17. The CHAIRPERSON thanked the members of CERD for their contribution. He suggested holding a subsequent, joint seminar in order to address some of the issues raised in greater depth.

18. Ms. SAHUREKA (International Association of Democratic Lawyers) welcomed the decision of the Economic and Social Council to declare a second International Decade of the World's Indigenous People, to begin in January 2005. The United Nations High Commissioner for Human Rights should be appointed to coordinate the programme of activities for the Decade. The first Decade had given indigenous peoples the chance to defend their lands, laws and customs at the United Nations. The report of the Working Group on Indigenous Populations (E/CN.4/Sub.2/2004/28) had highlighted the excellent results of collaborative research between experts and indigenous communities, and stressed the principle of free, prior and informed consent with regard to the use of indigenous peoples' resources. The Working Group and the Permanent Forum on Indigenous Issues were essential platforms for indigenous peoples.

19. Mr. MALEZER (Foundation for Aboriginal and Islander Research Action) said that, unless there was an immediate breakthrough in negotiations concerning the draft declaration on the rights of indigenous peoples, indigenous peoples could be forced to pursue their human rights concerns through existing mechanisms, such as treaty monitoring bodies. In particular, he urged the Government of the United Kingdom to reconsider its opposition to the core principle of collective rights prior to the next negotiating session. The Sub-Commission should advise the Commission on how to inject a new sense of purpose into the Working Group on the draft declaration, including a short time frame for completing its work.

20. The recommendations contained in paragraphs 73, 75 and 76 of the report by Ms. Daes, Special Rapporteur on indigenous peoples' permanent sovereignty over natural resources (E/CN.4/Sub.2/2004/30 and Add.1), should be given top priority. The Sub-Commission should

recommend the creation of an ad hoc committee of the Commission to promote permanent sovereignty over natural resources, and the Special Rapporteur should be assisted to consult widely with all State and non-State actors. Aboriginal peoples recognized their own sovereignty, in terms of all powers, rights and freedoms they had enjoyed prior to colonization, irrespective of whether it was officially recognized by Australian law. The Working Group on Indigenous Populations played a vital role in rising to the challenges of an increasingly politicized climate for human rights, in which States took precedence over the forgotten, legitimate entity of peoples.

21. Mr. BULL (International Organization of Indigenous Resource Development) said that his organization strongly supported the innovative, cooperative approach taken by the Working Group on Indigenous Populations at its twenty-second session. Emphasizing the importance of paragraphs 114, 117 and 118 of its report, he endorsed the recommendation for a seminar on the implementation of treaties, agreements and other constructive arrangements between States and indigenous peoples. In his capacity as representative of the territory of Treaty 6, in Canada, he thanked the Working Group for having accepted its invitation to hold a United Nations seminar in an indigenous treaty territory, and urged the Sub-Commission to recommend follow-up measures.

22. The second International Decade of the World's Indigenous People should focus on implementation and restate the necessary inclusion of a programme of action. The recommended workshops and seminars should constitute the first components of a substantive action plan. He supported the recommendation, contained in paragraph 75 of document E/CN.4/Sub.2/2004/30, to convene an expert seminar on issues requiring further consideration; the seminar should focus, in particular, on water rights.

23. Mr. JAMES (International Human Rights Association of American Minorities) said that he belonged to one of several Thlingit nations of Alaska never to have ceded sovereignty or lands to the United States of America. His people remained in conflict with the United States over recognition of its title to land and resources, exercise of its right to self-determination, development projects affecting tribal lands, and the United States' refusal to recognize indigenous peoples' sources of authority. The United States was planning to invade Kuiu Island, the only remaining island, rainforest ecosystem of its kind, in spite of its importance as traditional tribal land belonging to the Kuiu Thinglit Nation. Conflict resolution must take place outside domestic courts, which had a vested interest in the denial of indigenous rights. Within the past few months, 47 indigenous nations from North, South and Central America had come together to form the United Native Nations. The organization intended to unite the 1.3 billion indigenous people of the world in pursuing the noble objectives of truth and justice for all mankind.

24. Mr. LITTLECHILD (United Nations Permanent Forum on Indigenous Issues) said that the reports in documents E/CN.4/Sub.2/2004/28 and 30 gave him tremendous encouragement for the future work of the Permanent Forum in ensuring the survival of indigenous peoples. He fully supported the draft resolution on the final report on the study "Indigenous peoples' permanent sovereignty over natural resources" (E/CN.4/Sub.2/2004/L.3). He expressed concern at

Mr. Bengoa's suggestion for joint work by the Working Groups on Minorities and Indigenous Populations, respectively. Indigenous peoples must be seen as separate peoples, whose sovereignty lay outside that of States, rather than as minorities within States. He invited experts to consult his review of activities undertaken under the International Decade of the World's Indigenous People and report of the seminar on treaties, agreements and other constructive arrangements between States and indigenous peoples (E/CN.4/Sub.2/AC.4/2004/7 and Corr.1).

25. Mr. ALFONSO MARTÍNEZ said that the response to the report of the Working Group on Indigenous Populations (E/CN.4/Sub.2/2004/28) had surpassed expectations. He thanked the members of the Sub-Commission, the observer for Guatemala, and the NGOs for their contributions.

26. With reference to Mr. Bengoa's suggestion regarding joint work between the Working Groups on Indigenous Populations and on Minorities, he welcomed such a possibility, inasmuch as everything that led to differentiation between the conceptualization and treatment of the problems of the two groups merited support.

27. Mr. Bengoa had referred to paragraph 17 of the report, on the failure of Governments to protect the lands of indigenous peoples. In fact, a document was being prepared on that problem, which was one of the most frequent sources of conflicts between State and non-State, indigenous and non-indigenous sectors in multiple societies: the almost inevitable clash between authorities whose powers originated from traditional indigenous sources and authorities at all levels created by States to deal with indigenous issues. The paper would also examine the possibility of third parties identifying peaceful solutions to disputes.

28. The representative of Interfaith International had expressed concern about the proposal for a second International Decade of the World's Indigenous People, fearing that it would mask their true situation. The reverse was true; if a second Decade were mandated, it would be because the first Decade had not achieved its ultimate goal of ending discrimination against indigenous peoples.

29. With regard to the concerns of the Indigenous World Association, the Working Group was examining the after-effects of colonialism, because many present-day situations were a direct result of the colonial presence and legacy, particularly in countries where the Declaration on the Granting of Independence to Colonial Countries and Peoples (General Assembly resolution 1514 (XV)) had not been fully implemented.

30. He thanked Mr. Bull from the territory of Treaty 6 in Canada for the invitation to hold a seminar on the implementation and enforcement of treaties in an indigenous treaty territory. If it were possible, it would be a significant step forward in the Sub-Commission's direct collaboration with indigenous peoples, who not only merited its endeavours to promote their rights, but were entitled to expect increased efforts to defend their cause.

31. The CHAIRMAN declared the debate on agenda item 5 closed.



SPECIFIC HUMAN RIGHTS ISSUES:

- (a) WOMEN AND HUMAN RIGHTS
- (b) CONTEMPORARY FORMS OF SLAVERY
- (c) NEW PRIORITIES, IN PARTICULAR TERRORISM AND COUNTER-TERRORISM

(E/CN.4/Sub.2/2004/33-35, 36 and Corr.1, 37 and Add.1, 38-43 and 45;  
E/CN.4/Sub.2/2004/CRP.3; E/CN.4/Sub.2/NGO/7, 15, 19, 21, 22, 25 and 27;  
E/CN.4/2003/101) (agenda item 6) (continued)

32. Ms. MILADI (National Union of Tunisian Women) said that since its independence in 1956, and even before acceding to any of the international conventions, Tunisia had taken measures to eliminate all forms of discrimination against women. Her organization ran numerous programmes for women and girls in need of assistance. Support for the promotion of women had led to their incorporation into the sustainable development process and women had access to all sectors of the country's political, social and economic life. The National Union of Tunisian Women was also working to train and empower women who were poor or disabled.

33. Given the increasing use of new information and communication technologies, Tunisia had recently enacted a law protecting personal data, which represented another advance in the safeguard of human rights. It had also proposed the establishment of a World Solidarity Fund, a proposal that had been adopted by the General Assembly by resolution 57/265.

34. Lastly, her organization wished to assert its unfailing support for Palestinian women in their daily fight for survival, dignity and cultural identity, and trusted they would be allowed to play a key role in resolving the Israeli-Palestinian conflict.

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

36. Ms. HAMPSON, referring to the final report by Ms. Koufa, Special Rapporteur on terrorism and human rights (E/CN.4/Sub.2/2004/40), said that there was an urgent need to address two issues outside the Special Rapporteur's mandate. The first was the identification of the causes of terrorist activity in order to find an effective way of preventing it. The second was the compatibility of State counter-terrorist measures with human rights law, refugee law and international humanitarian law. States had to take effective measures to protect those within their jurisdiction. However, there were an increasing number of disaffected people, who had become potential recruits of organized groups engaging in political violence as a direct result of the measures adopted by States over the past three years. A lesson learned by States with experience of organized armed groups was that violation of human rights standards resulted in an increase in active or passive support for such groups.

37. It had been argued that exceptional situations required exceptional measures. However, experience had shown that it was precisely in exceptional situations that measures had to be kept within limits and their implementation controlled by a vigilant judiciary. Human rights law was particularly well suited to be a framework for exceptional measures, because the relevant provisions contained balancing elements allowing flexibility. Several international and regional agreements had sought to introduce guidelines, without great success. It was necessary to start with the situation on the ground and to observe the impact of counter-terrorist measures and their implementation and only then to consider the law applicable to the situation.

38. In the area of economic and social rights, the right to peaceful assembly, the right to strike and the right to work were being affected. Over-zealous surveillance measures had been put in place and there were many issues relating to detention, due process and transfer. All the norms that had been established so laboriously were under threat. Part of the problem could be attributed quite simply to wilful defiance of human rights law. At times, States were adopting measures that went far beyond what was permitted. Human rights law did allow States to take special measures, but within a framework which ensured that indiscriminate effects were avoided. She strongly supported Ms. Koufa's proposal regarding the creation of a working group of the Sub-Commission to draft principles, guidelines and a commentary on the compatibility of counter-terrorism measures with human rights law.

39. Ms. ROSE (Centre on Housing Rights and Evictions) said that women bore the brunt of the world's housing crisis and, in many countries, were denied the right to inherit land, housing and property. Sub-Saharan Africa was being devastated by the spread of HIV/AIDS, and ensuring women's rights to inheritance and equal property ownership should be a vital part of any strategy to combat and contain the spread of the virus. In many cases, HIV-positive widows were turning to prostitution for survival, and that only helped to increase the spread of the disease. Obstacles to women's equal inheritance rights included inadequate laws, lack of political will, discriminatory attitudes, extreme poverty and patriarchal customs. The matter had often been handled inadequately as there had been complete disregard for the human rights aspect of women's housing, land and property rights. The right to inherit housing and land also ensured the rights to health, food, work and security. To effect real change, all stakeholders must be involved and action must be informed by a human rights framework. The Sub-Commission was urged to encourage cooperation and positive action.

40. Ms. SHARFELDDIN (International Organization for the Elimination of All Forms of Racial Discrimination), referring to racism and racial discrimination and their impact on world affairs, said that just solutions were based on facts. Consequently, it was necessary to have credible sources of information that reported truthfully on events. Those working for the media should exercise their task with honesty and integrity and journalists should be required to take an oath to respect the truth, since their work could potentially affect the human rights of many people.

41. In the United States, special interest groups owned most of the media and there was a tendency to give excessive attention to some events involving a limited number of victims, while the sufferings and human rights violations of thousands of others went unmentioned. The media manipulated the truth and made significant matters appear insignificant and vice versa.

He appealed to NGOs to call upon all media to commit their personnel to carrying out their work honourably and with integrity. An international media agency should be established under the auspices of the Secretariat to transmit world news relating to the work and conferences of the United Nations, in order to provide an unbiased view on issues of relevance to international cooperation.

42. Mr. HIGASHIZAWA (Japan Civil Liberties Union) said that the Supreme Court of Japan had recently decided not to review the case filed in 1993 against the Government of Japan by 46 Filipino women who had been used as sexual slaves by the Japanese army during the Second World War, on the grounds that their case did not meet the requirements set out in the Civil Procedure Code. The Court had also rejected similar appeals by other survivors of sexual slavery, and had failed to make any material judgements, despite the fact that so many provisions of domestic and international law were being contested. The lower courts had rejected the victims' demands for an apology and legal compensation on the grounds that the principle of State immunity had applied at the time the crimes had been committed and that the 20-year statute of limitations for such claims had already expired. Although the Japanese Government had accepted as historical fact its past involvement in sexual slavery, it had used a number of technical and legal arguments to evade legal responsibility for its acts. The Sub-Commission should reiterate the legal principle that States could not invoke their internal law or technical barriers as justification for their failure to meet their obligations under international law.

43. Mr. Sorabjee (Chairperson) resumed the Chair.

44. Mr. BEUTLER (Worldwide Organization for Women) said that the unlawful separation of children from their families was a terrible violation of the rights enshrined in the Convention on the Rights of the Child and often led to more egregious human rights violations. Throughout the world, families were being torn apart as a result of the abduction either of the children or of the parents. According to unofficial estimates, as many as 5,000 children, some as young as 4 years old, were working as prostitutes in Cambodia. In China, the families of those who practised Falun Gong had been viciously persecuted since the spiritual movement had been banned in 1999. The children of Falun Gong practitioners were sometimes imprisoned with their parents or left at home without anyone to care for them. Sometimes they were tortured and killed. In Uganda, some 20,000 child soldiers had been forcibly recruited by the rebel group to fight in its war against the Government. The Sub-Commission should undertake measures to investigate the situations throughout the world where the rights of children were being violated and should promote compliance with the Convention on the Rights of the Child, whether through the appointment of a special rapporteur, the establishment of a working group or the adoption of a resolution.

45. Mr. ANGELIDES (International Federation for the Protection of the Rights of Ethnic, Religious, Linguistic and Other Minorities) said that many women suffered from multiple forms of discrimination because of their gender and because they belonged to an ethnic, religious or linguistic minority. Such was the case of many of the women in Cyprus. Although both the State and civil society recognized the ongoing need to develop laws and institutions to enforce the rights of women, since the illegal invasion by Turkey in 1974, Cypriot women had been victims of systematic violations of human rights. Turkish Cypriot women residing in the

occupied territories lived in constant fear of the Turkish authorities. They were often forced to change their names in an attempt to erase any link with their Cypriot origins and were sometimes subjected to violence because of their political convictions. Thousands of Greek Cypriot women had been forcibly expelled from their homes. A number of such women had challenged the actions of Turkey before the European Court of Human Rights. However, in one such case, Turkey had refused to implement the Court's decision. It had also failed to meet its obligations under international law to account for the persons who had disappeared during the invasion. Despite its political aspirations to become a member of the EU, Turkey continued to violate the principles of modern international law and human rights standards both in mainland Turkey and in the occupied areas of Cyprus. The Sub-Commission should urge Turkey to acknowledge individual and State responsibility for the crimes that had been and continued to be committed in Cyprus. A just, workable and viable solution should be found that safeguarded the political independence, sovereignty and territorial integrity of Cyprus. That could be achieved by ensuring the immediate withdrawal of the Turkish occupying forces and settlers and by fully restoring the human rights and fundamental freedoms of all Cypriots.

46. Mr. PUNJABI (Himalayan Research and Cultural Foundation) said that, in document E/CN.4/Sub.2/2004/40, the Special Rapporteur on terrorism and human rights had underscored the difficulties in reaching a consensus on the definition of terrorism, indicating that issues had become political rather than legal. However, politics should not be allowed to prevent States from agreeing on a definition. Furthermore, the suggestion that the existence of armed combatants pursuing an ideological objective was an obstacle to a definition of terrorism was untenable in the new global situation. The involvement of criminal gangs, extremist fundamentalists, psychopaths and fascists had blurred the distinction between freedom fighters and terrorists and had taken away the legitimacy of any violent militant groups. Moreover, the issue of self-determination should not be seen as an obstacle to the development of a legal definition of terrorism. In her report, the Special Rapporteur discussed the threshold of State involvement in sponsoring terrorism. However, instead of focusing on the question of threshold, attention should be focused on a State's responsibility for controlling the criminals and terrorists on its territory. Furthermore, allowing international State terrorism to be used to achieve strategic objectives would plunge the entire world into a state of chaos. As the debate on balancing anti-terrorism measures and protecting human rights clearly remained inconclusive, the Special Rapporteur's mandate should be extended.

47. Mr. SYED (European Union of Public Relations) said that, when deciding how to define terrorism, the international community should not be misguided by distinctions drawn between romantic revolutionary movements and terrorism. Terrorism was a lethal political tool used by States who could not afford direct military confrontations with other States and who consequently resorted to the use of non-State actors with specific territorial ambitions. Terrorist networks needed territory, financial input, intelligence and weapons. Without the backing of States, they would not be able to operate. Direct operators as well as their mentors should be subject to the scrutiny of national and international laws.

48. India's control over Jammu and Kashmir was based on a legally binding constitutional instrument. Pakistan's claim to the territory had no legal standing. Non-State actors operating on behalf of a neighbouring State were no more than State-sponsored terrorists and should be

firmly instructed to withdraw. Pakistan should freeze and dismantle the jihadist infrastructures in Pakistan and bring to justice the terrorist leaders and operators who targeted civilians and democratic infrastructures in Kashmir. Pakistan's pledge to fight terrorism and to promote the right to self-determination should no longer be allowed to misguide the people of Kashmir and the international community. As Pakistan had not wished to hold a plebiscite to determine the will of the people, other creative processes of conflict resolution had to be found. All national security forces should be held accountable for their actions. Human rights violations in all their forms had to be curtailed and the rule of law must be allowed to prevail.

49. Ms. EL-HAMID (Afro-Asian Peoples' Solidarity Organization) said that the situation of Iraqi women had improved since the fall of the dictatorship. The new law governing the administration of the Iraqi State during the transitional period stipulated that a quarter of the seats in the National Assembly should be reserved for women. Furthermore, a number of NGOs focusing specifically on the rights of women had recently been established. However, the activities of those NGOs were being hampered by the deteriorating security situation in Iraq. Furthermore, the occupation forces which had practised psychological and physical torture against Iraqi women prisoners of war were likely to go unpunished because of the United States' rejection of the Rome Statute of the International Criminal Court and the bilateral agreements it had concluded with certain States in order to prevent the punishment of its soldiers.

50. Similarly, the continued Israeli occupation was hampering the development of the women of Palestine, particularly Palestinian women refugees. The situation had deteriorated dramatically since the beginning of the second Intifada. Since 2002, the apartheid wall had hindered the activities of humanitarian workers and had led to the exclusion of thousands of Palestinians. Palestinian women were also suffering as a result of domestic violence, which had been proved to increase in times of instability. The women of Darfur, too, were suffering as a result of the severe humanitarian disaster in that region of the Sudan.

51. The Sub-Commission should call for the release of all documents relating to the treatment of Iraqi prisoners and conduct an independent investigation into human rights violations in Iraqi prisons. It should urge Israel to implement General Assembly resolution 194 (III) and Security Council resolutions 242 (1967) and 338 (1973) and to facilitate the return of Palestinian refugees. It should also ensure international monitoring of a ceasefire in Darfur and oversee the arrest of all supporters of the Janjaweed and other armed militia groups. It should call for an end to all forms of gender-based violence in armed conflict, and all NGOs should cooperate with the United Nations in order to formulate and implement policies to that end.

52. Mr. WASEY (Voluntary Action Network India) said that it was unclear how long it would take the international community to reach a consensus on a definition of terrorism. In the meantime, the perpetrators of terrorism should not be allowed to enjoy impunity. It was crucial to examine the ideology that was used to fuel terrorism. For over a decade, terrorists had been using and distorting religious doctrines - including Islam - to strengthen their social base. However, Islamic law unambiguously stated that killing a single innocent human being was tantamount to killing the entire human race. The misuse of Islam by terrorists and the approval of such tactics by the organs of a State should be examined as a matter of priority by the Special Rapporteur on terrorism and human rights and by the Sub-Commission.

53. Mr. LA Yifan (Observer for China), speaking in exercise of the right of reply, said that Falun Gong was an evil cult that advocated a doomsday theory to exercise psychological control over its practitioners. To date, over 2,000 people had died or been maimed and over 650 people had become mentally disturbed as a result of practising Falun Gong. Falun Gong was responsible for inciting violent and criminal activities such as the derailment of railway trains and the sabotage of radio and television installations. The Chinese Government had outlawed the Falun Gong movement in order to protect the human rights of all persons, including the practitioners of Falun Gong and the members of their families. The Government had always acted within the boundaries of domestic and international law. It had adopted an approach of patient persuasion to help the practitioners to understand the evil nature of Falun Gong and to help them to lead a normal life. The international community should not be deceived by the lies and rumours propagated by the Falun Gong leaders.

The meeting rose at 6.10 p.m.