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**RACISM, RACIAL DISCRIMINATION, XENOPHOBIA AND
ALL FORMS OF DISCRIMINATION: COMPREHENSIVE
IMPLEMENTATION OF AND FOLLOW-UP TO THE DURBAN
DECLARATION AND PROGRAMME OF ACTION**

**Report of the Intergovernmental Working Group on the effective
implementation of the Durban Declaration and Programme of
Action on its third session***

Chairperson-Rapporteur: Mr. Juan Martabit (Chile)

* The annexes are reproduced in the language of submission only.

Summary

At its third session, the Intergovernmental Working Group conducted a thematic analysis of racism and health, racism and the Internet, and complementary standards.

One issue repeatedly raised by delegations and discussed by the panellists was the lack of disaggregated health data on different racial, ethnic and minority groups, such information being important in developing health services sensitive to particular needs.

Regarding racism and the Internet, delegations and panellists examined the competing interests of upholding freedom of speech and expression and the need to ban incitement to racism on the Internet.

Concerning complementary standards, the participants found that the single most pressing obstacle to tackling racism, racial discrimination, xenophobia and related intolerance, as well as the effective implementation of the Durban Declaration and Programme of Action, is the failure of States to implement their obligations and that concrete efforts at the national level, including by national human rights institutions, with appropriate support from the international community, would make a substantial contribution to the fight against racism.

The Working Group adopted a set of recommendations on each theme.

CONTENTS

	<i>Paragraphs</i>	<i>Page</i>
Introduction	1	4
I. ORGANIZATION OF THE SESSION	2 - 14	4
A. Attendance	4 - 7	4
B. Opening of the session	8	5
C. Election of the Chairperson-Rapporteur	9	5
D. Opening statements	10 - 11	5
E. Adoption of the agenda	12	5
F. Documentation	13	5
G. Organization of work	14	5
II. GENERAL STATEMENTS	15 - 19	6
III. THEMATIC ANALYSIS	20 - 49	6
A. Racism and health	20 - 36	6
B. Racism and the Internet	37 - 49	9
IV. COMPLEMENTARY STANDARDS	50 - 63	12
V. FOLLOW-UP TO THE RECOMMENDATIONS OF THE SECOND SESSION AND RECOMMENDATIONS FOR FUTURE WORK	64 - 72	15
VI. RECOMMENDATIONS	73	16
VII. ADOPTION OF THE REPORT	74	21

Annexes

I. List of attendance	23
II. Agenda	25
III. List of documents prepared for the Working Group	26

Introduction

1. The present report is submitted to the Intergovernmental Working Group on the effective Implementation of the Durban Declaration and Programme of Action in accordance with Commission on Human Rights resolution 2003/30. While the recommendations included in section VI were adopted by consensus by the Working Group, the other sections of the report are the sole responsibility of the Chairperson-Rapporteur.

I. ORGANIZATION OF THE SESSION

2. As reflected in the report on the second session of the Working Group (E/CN.4/2004/20), under paragraph 26 of the recommendations, the present report is structured in four parts: general statements; thematic analysis (racism and health, racism and the Internet); complementary standards; recommendations and future work.

3. The Working Group held its third session in Geneva from 11 to 22 October 2004. The Working Group held a total of 20 meetings.

A. Attendance

4. The session was attended by representatives of States Members of the United Nations, non-Member States, specialized agencies, treaty bodies, special procedures of the Commission on Human Rights, intergovernmental organizations and non-governmental organizations. (For the list of attendance, see annex I.)

5. Several experts were invited to participate in the three panels on the themes under consideration. Regarding the theme of racism and health, the following experts gave presentations: Mr. Paul Hunt, Special Rapporteur on the right of everyone to the highest attainable standard of physical and mental health; Ms. Helena Nygren-Krug, Health and Human Rights Adviser, World Health Organization (WHO); Ms. Cristina Torres Parodi, Regional Adviser in Health Policy Development, Pan American Health Organization (PAHO); Mr. Manuel Carballo, Director, Centre for Migration and Health (United Kingdom); Dr. Benedeto Saraceno, Director, Department of Mental Health and Substance Abuse - Mental Health and Discrimination (WHO); Dr. Federico Montero, Medical Officer, Discrimination and Right to Health (WHO); Dr. Nora Groce, Professor of Global Health (Yale University); Ms. Miriam Maluwa, Senior Adviser, Law and Human Rights, Joint United Nations Programme on HIV/AIDS (UNAIDS); and Dr. Ximena Avellaneda, Grupo de Estudios sobre la Mujer Rosario Castellanos (Rosario Castellanos Study Group on Women) - Health and Indigenous Peoples.

6. On the theme of racism and the Internet, the following experts gave presentations: Mr. Marc Furrer, Director, Federal Office of Communication (Switzerland); Mr. Ernest C.A. Ndukwe, Chief Executive Officer, Communications Commission (Nigeria); Mr. Alexander Ivanko, Senior Adviser on Freedom of the Media, Organization for Security and Cooperation in Europe (OSCE), and Mr. Robert Shaw, Internet Policy Adviser, International Telecommunication Union (ITU).

7. On the theme of complementary standards, the following experts gave presentations: Mr. Alexandre Sicilianos, Vice-Chairman, Committee on the Elimination of Racial Discrimination (CERD); Mr. Raghavan Pillai, Vice-Chairman, CERD; Mr. Doudou Diène, Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; Mr. Yuri Kolosov, member, Committee on Economic, Social and Cultural Rights (CESCR); Ms. Patrina Patten, member, Committee on the Elimination of Discrimination against Women (CEDAW); Mr. Lee Swepston, Chief, Equality and Employment Branch, Human Rights Coordinator, International Labour Office (ILO); Ms. Jo-Anne Bishop, Adviser on Tolerance and Non-Discrimination, Office of Democratic Institutions and Human Rights (OSCE/ODIHR); and Mr. Serguei Lazarev, Chief, Fight against Discrimination and Racism Section, United Nations Educational, Scientific and Cultural Organization (UNESCO).

B. Opening of the session

8. At the first meeting, Mr. Dzidek Kedzia, Chief of the Research and Right to Development Branch in the Office of the High Commissioner for Human Rights (OHCHR), opened the session.

C. Election of the Chairperson-Rapporteur

9. Also at the first meeting, Ambassador Juan Martabit (Chile) was elected Chairperson-Rapporteur by acclamation.

D. Opening statements

10. United Nations High Commissioner for Human Rights, Mrs. Louise Arbour, delivered the opening address.

11. The Chairperson-Rapporteur made a statement.

E. Adoption of the agenda

12. Also at the first meeting, the Working Group adopted the agenda for its third session (E/CN.4/2004/WG.21/6) (annex II).

F. Documentation

13. The Working Group had before it a number of documents, a complete list of which is attached (annex III).

G. Organization of work

14. The Working Group approved its programme of work as contained in document E/CN.4/2004/WG.21/7.

II. GENERAL STATEMENTS

15. Representatives of 13 States took the floor in the general debate on agenda item 5. Delegates stressed the importance of implementing the Durban Declaration and Programme of Action, and expressed their commitment to fight against racism, racial discrimination, xenophobia and related intolerance. Several welcomed the broad participation of States on the first day of the Working Group and called on States to continue to participate actively in the proceedings. Several expressed support for the pragmatic approach taken during the discussions with the aim of finding practical solutions to eliminate racism and racial discrimination.

16. Delegates discussed strategies that were being implemented at the national level. Anti-discrimination legislation had been adopted or was being elaborated in several countries. The Chairperson suggested that the texts of such legislation should be made available to Member States in order to share experiences of good practices. Numerous States referred to the work undertaken by various ministries within their Governments as well as by national human rights institutions in tackling racism and racial discrimination. One delegate mentioned the creation of a fund, with an allocation of substantial financial resources over several years, to coordinate measures to fight against racism, anti-Semitism and extremism.

17. Awareness-raising campaigns to inform the larger public about the positive aspects of multiculturalism and the importance of tolerance were under way in several countries. Such campaigns often targeted young people at school, and were designed as part of educational programmes against racism and racial discrimination.

18. Several delegates acknowledged that the primary responsibility for combating racial discrimination rests with States. States were encouraged to ratify the International Convention on the Elimination of All Forms of Racial Discrimination and were reminded that the effective implementation of the Convention was of utmost importance. Some delegates acknowledged the positive efforts made to date by the United Nations and regional organizations in combating racism. The importance of the international legal framework in combating racism and racial discrimination was pointed out by many delegates. Some delegates mentioned the need to tackle contemporary forms of racism with additional tools.

19. An NGO observer stressed the difficulties faced by Muslim populations in the aftermath of the events of 11 September 2001. Reference was also made to the plight of the Palestinian people, human rights defenders, indigenous peoples and minorities.

III. THEMATIC ANALYSIS

A. Racism and health

20. The Working Group began its thematic analysis of agenda item 6 by considering the topic of racism and health.

21. Paul Hunt provided an overview on health and discrimination. He stated that discrimination on the grounds of race, ethnicity, gender and other factors was a key social determinant of health. He pointed out that a human rights approach brought an added value to the issue of health, such as a focus on the disadvantaged and vulnerable. Referring to the origins

and scope of the right to health, he explained that the right to health went beyond health care to encompass safe drinking water, adequate sanitation and access to health-related information, and included freedoms, such as the right to be free from discrimination and the right to a system of health protection.

22. Non-discrimination meant that everyone had the right to the highest attainable standard of mental and physical health without distinction as to race, colour, national or ethnic origin. At the same time, attention must be given to ensure that health care was responsive to the particular needs of vulnerable and marginalized populations. Sound health policy-making within the context of the Durban Declaration and Programme of Action required that the cultures and traditions of specific groups be taken into account by actively involving those who were affected by the decisions being made. He also emphasized the need to train health professionals so that they were sensitive to ethnic and cultural values in the delivery of health care.

23. Benedetto Saraceno highlighted the key linkages between discrimination and mental health. Referring to the persisting notion that behavioural and mental disorders were connected to certain groups of people, he explained that mental illness was prevalent across all populations, regardless of race or ethnicity. Certain populations such as refugees, asylum-seekers and migrants were disproportionately burdened by mental health problems owing to their socio-economic situations and concerns linked to immigration status. Exposure to racism severely affected a person's dignity which, in turn, was detrimental to the mental health of the individual. Emphasizing that racism was a social determinant of mental ill-health, he indicated that people exposed to discrimination encountered barriers to accessing mental health care.

24. Noting that access to mental health treatment and care, and discrimination at the workplace were critical issues for marginalized and vulnerable populations, Dr. Saraceno stressed the need to ensure that mental health services were accessible and affordable, and responsive to the needs of marginalized populations, including migrants. Providing education to indigenous women and to girls was also an effective way of empowering them in light of their vulnerability to mental health problems. In his view, education and sensitization campaigns in schools, hospitals, the workplace, as well as by the media in countries of immigration were effective ways of fighting stigma and discrimination.

25. Helena Nygren-Krug, WHO, underlined the significance of the World Conference in shedding light onto the issue of health and discrimination. She explained the intersection between discrimination and health, including the importance of being sensitive to discrimination in designing public health programmes. For example, outreach activities undertaken in a single language or ignoring health problems unique to certain groups could result in discrimination. She also referred to discrimination as a determinant of health. She gave examples of WHO activities that addressed discrimination, including a world health survey that found discrimination in the way that different groups of people were treated by the health system and in the training of health professionals on human rights, in particular, about stigma and discrimination.

26. Cristina Torres Parodi cited global examples of good practices in health policies and programmes that addressed racial/ethnic inequalities in access to health. Best practices included: developing health programmes and strategies that took into account a particular ethnic group;

disaggregating information by ethnic origin; creation of new institutions to deal with racial discrimination; implementing special programmes and conducting research to reduce disparities in health conditions and access. In her view, financial commitment was the biggest obstacle to addressing racial/ethnic inequalities regarding access to health information and services. She stressed the need to develop ethnically sensitive indicators to monitor progress in meeting the health-related Millennium Development Goals, to introduce an ethnic variable into national statistics and to utilize the information in policy-making.

27. Nora Groce addressed racism in the delivery of health care. She asserted that the denial of health programmes and support services to members of specific ethnic and minority groups was the most obvious form of racism. Racism could be manifested in more subtle forms, namely in separate services, often substandard, for members of ethnic or minority populations or in cases where there was a refusal to acknowledge culturally divergent practices. The denial of the right to decision-making in health policies by the members of ethnic and minority communities was also a form of racism. She also underlined the need for improved statistics on health with regard to minorities and other vulnerable groups.

28. Ximena Avellaneda explained the impact of discrimination on the health of indigenous peoples. She noted that the systems of traditional medicine maintained by indigenous peoples through the ages had been discriminated against and rejected in national health plans. She underlined the need for strengthening the capacity of indigenous organizations to participate in decision-making and implementation of health plans that involved the welfare of indigenous peoples. She also called attention to the difficulties faced by indigenous peoples with respect to their reproductive health and to violence against women. In providing specific ideas for eliminating such discrimination, she underscored the importance of the political will of Governments to work for the benefit of women.

29. Federico Montero argued that health and rehabilitation services were inaccessible or non-existent for the vast majority of persons with disabilities in most countries. Many of the persons with disabilities lived in isolated areas of developing countries where access to transportation was difficult. In order to promote and guarantee access, persons with disabilities and their organizations needed to be directly involved in the planning, monitoring and evaluation of the health and rehabilitation services. People with disabilities were disproportionately poor, poverty could cause disability and disability perpetuated poverty. He stressed the importance of mainstreaming disability prevention and rehabilitation in all poverty reduction programmes and of promoting community-based rehabilitation strategies.

30. Miriam Maluwa described the complex linkages that existed between discrimination, poverty and HIV/AIDS. Women belonging to minority groups were particularly vulnerable to HIV infection as they faced dual discrimination, once by virtue of their gender and second, based on their ethnicity. She reiterated the need for disaggregated data to demonstrate the trends of HIV epidemics in marginalized communities. She called for strengthening of local and national programmes to counter intolerance against people with AIDS, capitalizing on existing knowledge, and for strong commitment by Governments to promoting access to HIV prevention measures without discrimination.

31. Manuel Carballo focused on the issue of access to health services for migrants, regardless of their legal status, refugees and displaced persons. People on the move were more vulnerable to health risks, including work-related accidents and diseases, sexually transmitted infections, and reproductive health and chronic psychosocial problems. He underlined the importance of ensuring access to health care and social support in countries of destination. When the health of migrants and refugees was threatened, so was the health of people in countries of destination. Therefore, there was a vested interest on the part of Governments of countries of destination to ensure access by these groups to health services.

32. In the discussion that followed, many participants agreed that racism was a social determinant of health and that States had the obligations to develop programmes to address disparities in access to health.

33. One issue repeatedly raised was the lack of disaggregated health data on different racial, ethnic and minority groups, needed to understand their health situation and the availability to them of health services and information. One participant pointed out that lack of disaggregated data impeded the development of comprehensive national anti-discrimination plans.

Ms. Maluwa indicated that the lack of consensus on the definition and classification of different groups hampered systematic efforts to collect disaggregated data. She also noted the possibility of such data being used in a negative manner. She added that UNAIDS had no disaggregated data regarding HIV and race.

34. Several participants argued that urgent attention should be given to neglected diseases which often afflicted the poor in developing countries. Mr. Hunt noted that WHO had implemented good programmes in that area, but agreed that the amount of research being conducted in the field of neglected diseases was insufficient. He called for additional funds to be made available for such research.

35. Mr. Hunt stressed the important role played by national human rights institutions in relation to racism and health. He suggested that more attention should be given to developing a sound methodology for impact assessments on human rights and health prior to the formulation of policies.

36. Regarding asylum-seekers and health, Mr. Carballo said that States often gave preference to asylum-seekers with urgent health needs. Citing trends for asylum policies to become stricter, he pointed out that health problems, including stress, could be exacerbated by the considerable time spent waiting for a decision on asylum.

B. Racism and the Internet

37. The Working Group continued its thematic analysis of the implementation of the Durban Declaration and Programme of Action by considering the topic of racism and the Internet.

38. Robert Shaw presented an overview of the World Summit on the Information Society (WSIS) which took place in Geneva in December 2003. He referred to the background of WSIS as well as the Declaration of Principles and the Plan of Action adopted by the Summit. While recognizing the potential of new information technology to promote sustainable development, WSIS also confirmed that preventive measures must be taken, as determined by law, against

abusive uses of information technology, such as illegal acts motivated by racism, racial discrimination, xenophobia and related intolerance. The ethnic dimension of the information society was one of the key WSIS principles. The focus of the second WSIS, to be held in Tunisia in 2005, would include follow-up to the Geneva Declaration and Plan of Action as well as the report of the Working Group on Internet Governance. Mr. Shaw suggested that a WSIS thematic meeting on ethical dimensions of information communication technologies (ICTs) could be organized to encourage stakeholders to continue research in this area.

39. Ernest C.A. Ndukwe expressed his views from a regulator's perspective, as well as that of someone from a developing country. He cited the crucial role of the Internet in driving the economy and referred to the digital divide between the developed and developing countries. Most Governments in developing countries were concerned about facilitating expansion of the much-needed ICT infrastructure to generate economic growth. Regulatory bodies worldwide had adopted a light-handed regulatory approach so as not to limit the enormous benefits of the Internet. Taking account of the nature of the Internet, he stressed that it must be mandatory for all States not only to legislate against acts that incited hatred in any form, but also to track down and prosecute offenders. Once the Government had set the appropriate legislation in place, the regulator should ensure compliance by service providers. The regulator also had a responsibility for consumer protection and played a direct role in eliminating racism and hate messages on the Internet.

40. Alexander Ivanko stated that a least-restrictive approach should be taken in addressing misuse of the Internet. He emphasized the importance of ensuring freedom of expression and equal access to the Internet, and did not advocate regulation. He also referred to the difficulty of filtering sites and the relatively small portion of cyberspace occupied by problematic web sites, such as those inciting racism and hatred. He expressed support for educational programmes to tackle hatred. For example, in Canada, non-governmental organizations offered classes in schools to help students learn how to deal with web sites that had racist content.

41. Marc Furrer underlined the importance of maximizing the opportunities offered by ICTs, while minimizing the dangers of ICTs. He stated that every country should have a national law that established as a criminal act racist action and the public spread of racist ideas. It was not necessary to have a specific law on the Internet, as racist action must be judged a crime whether committed on the Internet or by any other means. Such a law must respect the principle of freedom of expression and clearly draw the line between freedom of expression and a criminal racist act. The responsibilities of the Government, the legal system, the private sector and civil society at the national level must be clear. Private Internet service providers needed to know when they must take action against customers who violated a law against racism. Governments must ensure restrictive use of such a law so as not to limit freedom of speech. He further noted the importance of harmonizing legal structures, as the Internet was not bound by national borders. Coordinating international action, such as bringing the Durban Declaration and Programme of Action into the WSIS process, was also essential.

42. In the discussion that followed, many participants recognized the positive role of the Internet in promoting human development and fostering a culture of tolerance, while expressing concern about the use of the Internet for widely spreading racist propaganda. The importance of ensuring equal access to all people around the world was reiterated by many.

43. There was a discussion on whether regulation was necessary. Mr. Furrer defined regulation as the legal enforcement of measures against racist content on the Internet. Mr. Ndukwe said that regulation meant checking misuse of Internet resources. Many participants disagreed with Mr. Ivanko, who opposed regulation of the Internet to fight racism. Mr. Ivanko stressed the importance of ensuring freedom of expression, and was of the opinion that hate messages were often spread by classic media and not necessarily the Internet, and that the courts should decide whether there was a clear and present danger posed by racist sites. Mr. Shaw pointed out that regulation was indispensable for using new technologies such as the Internet. The need to strike a balance between freedom of expression and cyber abuse was echoed throughout the discussion.
44. Many participants agreed that a national law that established as a criminal act racist action and the spread of racist ideas was necessary. Some referred to a specific law banning incitement of racism on the Internet, while others referred to a more general anti-discrimination law that criminalized racist action on and off the Internet.
45. Several participants emphasized the importance of freedom of expression and the need to clearly draw the line between criminal racist acts and freedom of speech. Mr. Ndukwe, among others, noted that regulatory measures should not hamper the use of the Internet. The existence of anti-discrimination legislation was seen as having a deterrent and educational effect for potential offenders. Technical difficulties in finding the offender should not discourage authorities from regulating the use of the Internet to propagate racist messages. One participant suggested that all web sites should bear the name of the author to facilitate prosecution.
46. Several participants underlined the role of regulators in fighting racism in cyberspace. To avoid the risk of service providers being ruled by the market, Governments needed to oversee any self-regulatory measures taken by the private sector. Mr. Ndukwe said that consumer protection constituted a vital responsibility of regulators.
47. It was agreed that international cooperation was essential in addressing the digital divide between developed and developing countries as well as in combating the misuse of the Internet, such as inciting racism and hatred. In some countries, in particular in Africa, infrastructure for establishing an Internet connection was poor and the market had just begun to open up to operators. Mr. Ivanko explained that OSCE provided financial support to Internet cafés to promote the use of the Internet. An NGO participant highlighted the digital divide and the need to ensure access to the Internet by indigenous peoples.
48. Concerning combating racism in cyberspace, reference was made several times to the Convention on Cybercrime. Participants stressed that international cooperation was possible even if the applicable legislation was different among countries. Mr. Ivanko, however, referred to the difficulty in securing international cooperation as some countries could block the process of building consensus towards uniformity in relevant legislations.
49. Many participants stated that OHCHR should organize a seminar on the human rights dimension of the use of the Internet. Such a seminar could take stock of measures that had already been taken in fighting racism on the Internet and recommend areas in which the Working Group could be active in following-up on the Durban process in that regard. One participant suggested including the Internet and terrorism as one of the issues to be discussed.

IV. COMPLEMENTARY STANDARDS

50. In connection with item 7 of the agenda, Alexandre Sicilianos presented the views of CERD on the implementation of the substantive provisions of the International Convention on the Elimination of All Forms of Racial Discrimination. He said that article 1 clarified the scope of racial discrimination and provided protection for the groups of victims identified in the Durban Declaration and Programme of Action. Concerning article 2, the Committee emphasized the obligation of States parties to take special and concrete measures to guarantee vulnerable groups the full enjoyment of human rights. He reiterated the Committee's view that the prohibition of the dissemination of ideas based on racial superiority or hatred was compatible with the rights to freedom of expression and freedom of association. Article 4 also applied to material disseminated on the Internet. The Committee strongly felt that any reservations limiting the scope of article 4 should be withdrawn. Regarding article 5, Mr. Sicilianos stressed that the adoption of an international instrument on cultural rights defining the content of those rights would be useful for the work of the Committee. With regard to article 6, the Committee noted the difficulties faced by victims of racial discrimination in seeking protection and remedies against acts of racial discrimination, and invited States parties to regulate the burden of proof in civil proceedings, thereby ensuring that the complainant did not bear the entire burden of proof. Finally, with respect to article 7, he underlined the importance of human rights education in the elimination of racial discrimination.

51. Raghavan Pillai expressed the views of the Committee on the implementation and effectiveness of the Convention. He began by stressing the importance of the reporting process for States parties, enabling them to assess and evaluate as well as improve, among other things, existing legal provisions. He noted the resource constraints of States parties in preparing reports and referred to the options for dealing with overdue reports, such as the submission of a consolidated document. Referring to the Committee's view that preventive measures should be a part of its regular agenda, he said that early warning measures were to be directed at preventing existing problems from escalating into conflicts. The presence of a pattern of escalating racial hatred and violence was one of the criteria for taking early warning measures. He cited the lack of awareness on the part of the public with respect to the existence of the possibility of communications from individuals or groups and the importance of first exhausting national remedies. He concluded that complementary standards in procedures evolved with the dynamics of the work of the Committee.

52. Doudou Diène elaborated on the new trends of racism. The struggle for human rights in the area of discrimination had eroded in light of the fight against terrorism, and there had been an increase in xenophobic political platforms worldwide. He also pointed out that there was an emerging trend towards establishing a hierarchy among different forms of discrimination. In order to counter such trends, the universal nature of the struggle against racism must be emphasized, and linked to the struggle for multiculturalism. He stressed the need to implement existing norms before considering the development of a new instrument. Coordination among the mechanisms set up to fight racism was of the utmost importance.

53. Pramila Patten provided a gender perspective on racial discrimination. Noting that racial discrimination did not affect men and women in the same way, she pointed out that women victims of racism faced structural barriers, including poverty, social exclusion, insecure legal status, violence and difficulty in accessing the labour market. CEDAW had noted that women

suffered multiple forms of discrimination based on the grounds of race and ethnic or religious identity, recognized the intersection of gender and ethnicity, addressed women who were at special risk of violence, and emphasized the special health needs of women belonging to vulnerable groups. CEDAW had consistently reflected the rights of minority and indigenous women in its concluding observations. She stressed that the effective implementation of existing instruments is crucial in combating racism and encouraged the use of individual complaint procedures, complementarity among treaty bodies and the ongoing reform of the treaty bodies.

54. Yuri Kolosov presented his views on the issue of complementary standards in connection with the authoritative legal status of general comments and observations issued by treaty bodies and their possible role in filling in gaps as complementary standards. In this regard, a determination should be made as to whether such comments and conclusions were legally binding or not. Mr. Kolosov referred to the possibility of putting forward a request, through the General Assembly or the High Commissioner on Human Rights, to the International Court of Justice for such a determination. With regard to complementary standards, he called for broad participation by States in the implementation of international treaties combating discrimination; he suggested the transformation of declarations into treaties; he mentioned the possible elaboration of a model national law against discrimination and the development of a school programme to teach students about different civilizations; and urged revitalization of the International Convention Concerning the Use of Broadcasting in the Cause of Peace of 1936. He also explained the need for a code of ethics for Internet service providers.

55. Lee Swepston referred to various ILO conventions relevant to combating racism in the field of labour. He underlined the significance of the ILO Declaration on Fundamental Principles and Rights at Work and its follow-up, which recognized that the members of ILO had an obligation to respect the principles concerning the fundamental rights contained in the ILO conventions. The right to be free from discrimination was one of those fundamental rights. Citing practical aspects of the work of ILO, he remarked that the ratification and implementation of existing legal instruments were important and that ratification campaigns to encourage States to accept certain legal norms could be effective. He also referred to the reluctance of States to collect data by race and ethnic group, such as the racial make-up of the workforce. Lack of information on indigenous people, for instance, was contributing to their exclusion in society. National human rights institutions should have a role in identifying racial discrimination.

56. Serguei Lazarev outlined the UNESCO strategies, priorities and activities which reflected the Durban Declaration and Programme of Action. The fight against racism, discrimination and exclusion was central to the mandate of UNESCO and the World Conference had given new impetus to the UNESCO work programme. New UNESCO strategies would aim at: revitalizing efforts in the fight against racism; reinforcing cooperation with other United Nations agencies; and strengthening awareness-raising activities in the field. Priority areas of work would include: strengthening research efforts on the link between current forms of racism and discrimination as well as traditional prejudices and forms of discrimination; pursuing the link between discrimination and women, HIV/AIDS, globalization and other new forms of discrimination; and construction of identities in multicultural and multi-ethnic societies. UNESCO would also facilitate the ratification of its standard-setting instruments such as the 1960 Convention against Discrimination in Education. The new strategies had been designed as a multidisciplinary exercise, requiring cooperation among the organization's programme sectors, namely, social and human sciences, natural sciences, education, culture and communication.

57. Jo-Anne Bishop described the increased role of OSCE in promoting tolerance and combating racism. ODIHR, among others, had been tasked with serving as a collection point for information as well as with monitoring incidents motivated by racism, xenophobia, anti-Semitism and intolerance. In developing its Tolerance and Non-Discrimination Programme, ODIHR had concentrated its efforts on understanding what activities were being undertaken by other organizations. Ms. Bishop recommended several measures to ensure the implementation of existing international standards, including providing concrete support and assistance to States which had yet to adopt, implement or strengthen national laws to meet international standards, as well as establishing an international cadre of law enforcement trainers to provide an international standard of law enforcement training.

58. Following the panellists' remarks, a group of countries urged States that had not done so to ratify the International Convention on the Elimination of All Forms of Racial Discrimination and effectively implement the existing conventions that dealt with the fight against racism and related intolerance. The group further stated that the effective implementation of existing conventions should not prevent the Working Group from addressing the gaps identified. In the view of the group, the best way to deal with gaps in the existing conventions was not through the adoption of general recommendations by the treaty bodies but through the elaboration of optional protocols to the relevant international conventions, beginning with the International Convention on the Elimination of All Forms of Racial Discrimination. Such an optional protocol could deal with definitions of new racist crimes, a general prohibition of discrimination, human rights education to promote racial harmony, discrimination against workers in the informal economy and Internet crimes, and set up criteria for the annual publication of a "racial equality index" as proposed by the independent eminent experts.

59. Another group of countries highlighted the Committee's view that a State's failure to ratify or to implement the International Convention on the Elimination of All Forms of Racial Discrimination, rather than the gaps in the Convention itself, was the key issue in combating contemporary forms of racism. The group stressed that it shared the views of CERD that the single most pressing obstacle to tackling racism, racial discrimination, xenophobia and related intolerance, as well as the effective implementation of the Durban Declaration and Programme of Action, was the failure of States to implement their obligations. The group believed that concrete efforts at the national level, including by national human rights institutions, with appropriate support from the international community, would make a substantial contribution to the fight against racism. Citing the Committee's comments on article 4, the group said that further discussions in relation to complementary standards should proceed on the basis of an assessment of the added value of any additional instruments in combating racism. The group emphasized that the discussion on complementary standards and the implementation of existing standards were interlinked.

60. Several participants expressed support for the views of one or the other group of countries, to varying degrees. Many agreed that the lack of political will on the part of Governments was a major obstacle in the fight against racism and discrimination.

61. The first group of countries also referred to the proposal made by the former Acting High Commissioner for Human Rights during the second session of the Working Group that further standard-setting might be useful in the areas of ethnic cleansing, human rights education, genocide, indigenous populations and propagation of hatred through the Internet. The group

cited the proposal as an example of a way to deal with gaps in the existing conventions. Several participants, however, questioned the need to develop new instruments in those areas, such as human rights education, and called for the gaps to be identified prior to consideration of additional instruments. Some participants argued that the existing legal framework did not address the multiple forms of discrimination mentioned in the Durban Declaration and Programme of Action, and stressed the need for complementary standards.

62. Several participants shared the concern expressed by Mr. Diène that there had been an increase in xenophobic political platforms worldwide. Several underscored Mr. Diène's call for more attention to be paid to the universal nature of the struggle against racism. Mr. Diène emphasized the need to counter the current trend towards establishing a hierarchy among different forms of discrimination, and said that specific forms of discrimination experienced by certain groups must be raised to the universal level. Mr. Diène emphasized the direct link between fighting racism and the long-term construction of multicultural societies. The recognition of plural identities was of the utmost importance and victims of discrimination should not be "locked up" in certain communities. Cultural diversity, multiculturalism and the building of cultural identities were all essential elements for combating all forms of discrimination.

63. A participant underlined the importance of country visits by CERD. Drafting an optional protocol to the Convention setting out conditions and procedures for such visits could be undertaken by the Committee, if needed. The visits could also be organized in the context of early warning.

V. FOLLOW-UP TO THE RECOMMENDATIONS OF THE SECOND SESSION AND RECOMMENDATIONS FOR FUTURE WORK

64. Items 8 and 9 were discussed together. The Coordinator of the Anti-Discrimination Unit (ADU) presented an overview of the follow-up measures taken by OHCHR in response to the recommendations of the second session of the Working Group. Those measures took into consideration the main focus of the role of OHCHR, which was to follow up the effective implementation of the Durban Declaration and Programme of Action, by collecting information on initiatives taken by interested stakeholders while focusing on servicing established follow-up mechanisms and other meetings, providing technical cooperation to partners, strengthening inter-agency coordination, expanding liaison with NGOs and youth organizations, and launching a series of publications and other awareness-raising and outreach material.

65. In 2004, the High Commissioner had submitted a report to the Commission on Human Rights (E/CN.4/2004/17 and Corr.1) and the Secretary-General had submitted a report to the General Assembly (A/59/375).

66. The Working Group of Experts on People of African Descent held its fourth session in Geneva from 25 October to 5 November 2004 and considered the impact of racism on health, employment and housing. It is envisaged that the experts will undertake their first-ever country mission in 2005, at the request of the Government of the country concerned.

67. The independent eminent experts, who initially met in November 2004 in Geneva to assess the international standards in fighting racism with a view to preparing complementary standards, and to address challenges and policy issues pertaining to the work of the other two follow-up mechanisms, would meet again in 2005.
68. OHCHR/ADU continued to contribute to regional activities. An intergovernmental meeting in Brasilia for countries in the region on how to address the health-related Millennium Development Goals from a human rights perspective, jointly organized with PAHO, was scheduled to take place from 1 to 3 December 2004.
69. OHCHR continued to cooperate with the special procedures of the Commission, relevant United Nations bodies and specialized agencies, international and regional organizations, CERD, the United Nations Voluntary Fund for Technical Cooperation in the Field of Human Rights, UNESCO, the World Bank, the International Monetary Fund, the United Nations Conference on Trade and Development, ILO, the Office of the United Nations High Commissioner for Refugees, the European Commission against Racism and Intolerance and ODIHR.
70. Technical cooperation continued to be provided to strengthen national human rights institutions' capacity in adopting national plans of action to combat racism, support awareness-raising initiatives and fund small grants schemes under the Assisting Communities Together (ACT) project.
71. With regard to the dissemination of information on the work of OHCHR, a newly redesigned ADU web site would soon be operational. In the area of publications, joint projects had been undertaken, inter alia, with WHO and UNAIDS ("HIV/AIDS: Stand up for Human Rights") and UNESCO ("Dimensions of racism"). They would soon be made available to the general public.
72. Activities with NGOs and youth organizations had taken place worldwide, with the support or at the initiative of OHCHR, in close cooperation with other agencies or regional organizations. Meetings, which had attracted enthusiastic participation, were held in Washington D.C., Maracaibo, Venezuela, and Quito in March 2004, Yaoundé in July 2004 (in association with the United Nations Subregional Centre for Human Rights and Democracy for Central Africa), and Barcelona, Spain, in August 2004.

VI. RECOMMENDATIONS

73. **Following discussion on and analysis of the thematic issues of racism and health and racism and the Internet, and on the issue of complementary standards, the Working Group agreed by consensus to adopt the following recommendations:**

General

- 1. States should display greater political will, strengthen national legislation, further develop and improve implementation strategies and take concrete actions so as to overcome the obstacles to combating racism, racial discrimination, xenophobia and related intolerance and achieving racial equality.**

- 2. States should be encouraged to develop or elaborate national action plans to promote diversity, equality, equity, social justice, equality of opportunity and the participation of all. In so doing, they should take a participatory approach, consulting with all sectors of society, including the victims of racism. In this regard, there is a need to identify and implement good practices to strengthen local and national programmes in countering racism, racial discrimination, xenophobia and related forms of intolerance.**
- 3. New strategies should be developed to address multiple or aggravated forms of discrimination, in particular those suffered by vulnerable groups.**
- 4. States should improve the collection, compilation, analysis, dissemination and publication of reliable statistical data at the national and local levels in order to assess regularly the situation of victims and implement policies to combat racism, racial discrimination, xenophobia and related intolerance, in compliance with international human rights law and their national legislation. OHCHR should provide technical assistance to develop the capacity-building of countries to gather statistical data. Such statistical data should be made available to the relevant human rights monitoring bodies and mechanisms, including as part of States parties' periodic reports to the human rights treaty bodies.**

Racism and health

- 5. The introduction of an anti-discrimination perspective in health policies and programmes, including in those developed in the framework of poverty reduction strategies, should ensure that health services are accessible, affordable and culturally and linguistically appropriate to all sectors of society, including to vulnerable groups and victims of multiple forms of discrimination.**
- 6. Health education campaigns should be elaborated and carried out. Culturally sensitive information and recommendations about health and health care should be disseminated in appropriate languages, and messages must be adapted to special conditions (disabilities, language, gender and illiteracy) of their intended audiences.**
- 7. Ombudspersons, national human rights institutions or other appropriate mechanisms should have, as part of their responsibilities, the fight against discriminatory practices in health systems and provide appropriate assistance to victims seeking effective remedies.**
- 8. States should mainstream attention to disability in all poverty reduction strategies and health-related policies with the aim of promoting rehabilitation of, equal opportunities for, and social inclusion of people with disabilities who are also subject to racism, racial discrimination, xenophobia and related intolerance. They should also ensure that all international development partnerships include aspects related to health, education, and the economic independence of persons with disabilities and their families.**

9. States should strengthen international cooperation and technical assistance, as well as partnerships at the national and international levels, to help developing countries in mainstreaming anti-discriminatory and anti-racist measures, actions, policies and programmes in their health-care systems, including in the collection and use of statistics appropriate for anti-discrimination public health policy-making.

10. All victims of racially motivated acts of violence require physical and mental health programmes and services that are responsive to their needs, including with respect to gender issues as well as other grounds of multiple discrimination. Mental health must be given greater attention within national and international health policies, strategies and programmes.

11. WHO should be encouraged to develop, in cooperation with OHCHR, the Special Rapporteur on the right to the highest attainable standard of physical and mental health and other interested parties, an effective methodology for assessing the impact of health-related policies through a human rights perspective.

12. In view of the fact that the issue of neglected diseases is a critical challenge to developing countries, the Special Rapporteur on the enjoyment of the right to the highest attainable standard of physical and mental health is herein encouraged to work together with WHO on ways in which the international community can address it.

13. There is a need to reinforce the policies and programmes of international organizations on the implementation of the commitments contained in the Durban Declaration and Programme of Action, by including a victim-oriented perspective, supporting technical cooperation projects for local capacity-building in developing countries, and mobilizing additional international funding for the Global Fund to fight AIDS, Tuberculosis and Malaria.

14. The international community should exert all efforts and adopt measures towards ensuring access to affordable medication for all, in particular victims of pandemics such as HIV/AIDS, tuberculosis and malaria, many of whom are subject or susceptible to different forms of discrimination.

15. The international community should be urged to strengthen its efforts in addressing the special health needs of people living under foreign occupation, refugees and internally displaced persons suffering from racism and racial discrimination. The special health needs of migrants also have to be addressed.

16. Donor organizations should pay greater attention to tackling the problem of urgent health care of refugees and internally displaced persons, in particular, in zones of protracted conflict or forgotten humanitarian crisis.

Racism and the Internet

- 17. Legally enforceable measures should be adopted and implemented at the national level, in conformity with international human rights law, to counter incitement to racial hatred or acts of violence through the media and new information and communication technologies, including the Internet.**
- 18. There is a need to identify and implement good practices at the national and international levels to strengthen the fight against racism, racial discrimination, xenophobia and related intolerance on the Internet, and to enhance international cooperation between law enforcement agencies and national institutions in these fields.**
- 19. Human rights education should play a prominent role in combating racism, racial discrimination, xenophobia and related intolerance and promoting a culture of peace and dialogue. Educational policies and programmes should be formulated to promote peace, respect for cultural diversity and universal human rights, non-exclusion and non-discrimination.**
- 20. States should provide OHCHR with information on their implementation of the provisions of the Durban Declaration and Programme of Action relevant to combating racism on the Internet.**
- 21. On the question of the elaboration of voluntary ethical codes of conduct and self-regulatory measures and policies (Programme of Action, para. 144), States should urge the private sector to proceed in a participatory and transparent manner.**
- 22. OHCHR should organize a high-level seminar within the next session of the Working Group on the Internet and racism, racial discrimination, xenophobia and related intolerance. The purpose of the seminar would be to consider progress made in the implementation of relevant provisions of the Durban Declaration and Programme of Action; to assess the possibilities of and challenges posed by the use of the Internet to propagate or to counter material which incites racial hatred and acts of violence and propose concrete measures to be taken at the international and national levels to combat the abuse of the Internet for all forms of racist manifestations; and to examine the contribution that the Internet can make in the fostering of social harmony and the fight against racism. OHCHR should endeavour to ensure the participation of all stakeholders, inter alia States, WSIS, international and regional organizations, NGOs, the private sector and the media.**
- 23. The United Nations web sites, particularly that of OHCHR, should be used as a vehicle for combating racism, racial discrimination, xenophobia and related intolerance, including through the follow-up and implementation of the Durban Declaration and Programme of Action, both at the national and the international level.**

24. The Working Group calls for full implementation of the recommendations contained in the ministerial declaration of the high-level segment of the Economic and Social Council at its substantive session of 2000, “Development and international cooperation in the twenty-first century: the role of information technology in the context of a knowledge-based global economy”, thus helping to bridge the digital divide and to foster digital opportunities and counter poverty and exclusion, which affects in particular victims of racial discrimination and related intolerance.

Complementary standards

25. The Working Group considers it appropriate to recall that the obstacles to overcoming racism, racial discrimination, xenophobia and related intolerance and achieving racial equality lie mainly in the lack of political will, weak legislation, and lack of implementation strategies and concrete action by States.

26. The Working Group reiterates the urgency of the universal ratification of and accession to existing international human rights instruments, in particular accession to the International Convention on the Elimination of All Forms of Racial Discrimination, with a view to universal ratification by 2005, and to other relevant international human rights instruments,¹ especially those that lack an adequate number of ratifications.

27. In combating racism, racial discrimination, xenophobia and related intolerance, States should consider withdrawing reservations contrary to the object and purpose of the International Convention and consider withdrawing other reservations to relevant international and regional legal instruments on human rights and non-discrimination.

28. To enhance the effective implementation of the International Convention, States should consider making the declaration envisaged in article 14 of that instrument, deploy further efforts to comply fully with their reporting obligations, and follow up on concluding observations and pay due attention to general recommendations adopted by CERD.

29. To ensure enhanced and coherent implementation of existing international human rights instruments, coordination should be improved between all regional and international organizations and human rights bodies with a mandate to address the issue of racism, racial discrimination, xenophobia and related intolerance. Fields of coordination could include technical assistance and the collection, dissemination and exchange of relevant statistics and information on best practices.

30. In the implementation of existing standards, contemporary or new forms or manifestations of racism and xenophobia should be fought. States should take action to tackle racist platforms in political institutions present in various parts of the world, particularly when they impact on the broader political debate and affect people seriously. Any attempts to justify, intellectually and morally, any form of racism shall be rejected.

31. States must ensure that anti-terrorist measures are in compliance with international human rights standards in order to ensure that such measures do not result in racism, racial discrimination, xenophobia and related intolerance.

32. Attempts to establish hierarchies among different forms of racism, racial discrimination, xenophobia and related intolerance, as well as among the victims, must be countered.

33. In the fight against racism, racial discrimination, xenophobia and related intolerance, the legal human rights-based approach must be complemented by intellectual and cultural strategies aimed at reaffirming the value of multiculturalism within and among States, as well as respect for cultural diversity and for universal human rights.

34. The Working Group reaffirms its mandate to prepare complementary standards to update and strengthen the existing instruments dealing with the elimination of racism, racial discrimination, xenophobia and related intolerance.

35. The Working Group should focus its efforts on strengthening the implementation of existing instruments by identifying gaps in international human rights law, with a view to preparing complementary standards to address them. In contributing to these efforts, the Working Group should further conduct an in-depth assessment and evaluation of the implementation of existing international instruments, including suggestions to enhance the effectiveness of the fight against racism, racial discrimination, xenophobia and related intolerance. Complementary standards should strengthen the existing norms and bring added value.

36. OHCHR is requested to organize a four- to five-day high-level seminar within the fourth session of the Working Group to address the work identified in paragraphs 22 and 35 of the present recommendations.

VII. ADOPTION OF THE REPORT

74. Having adopted its recommendations by consensus and entrusted the Chairperson-Rapporteur with the finalization of the other sections, the Working Group adopted the present report on 21 October 2004.

Note

¹ (a) International Covenant on Economic, Social and Cultural Rights; (b) International Covenant on Civil and Political Rights and the Optional Protocols to the International Covenant on Civil and Political Rights; (c) Convention on the Prevention and Punishment of the Crime of Genocide of 1948; (d) International Labour Organization Migration for Employment Convention (Revised), 1949 (No. 97); (e) Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others of 1949; (f) Convention relating to the Status of Refugees of 1951, and its 1967 Protocol; (g) International Labour Organization Discrimination

(Employment and Occupation) Convention, 1958 (No. 111); (h) Convention against Discrimination in Education, adopted on 14 December 1960 by the General Conference of the United Nations Educational, Scientific and Cultural Organization; (i) Convention on the Elimination of All Forms of Discrimination against Women of 1979, with a view to achieving universal ratification within five years, and its Optional Protocol of 1999; (j) Convention on the Rights of the Child of 1989 and its two Optional Protocols of 2000, and the International Labour Organization Minimum Age Convention, 1973 (No. 138) and Worst Forms of Child Labour Convention, 1999 (No. 182); (k) International Labour Organization Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143); (l) International Labour Organization Indigenous and Tribal Peoples Convention, 1989 (No. 169) and the Convention on Biological Diversity of 1992; (m) International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families of 1990; (n) The Rome Statute of the International Criminal Court of 1998; and (o) United Nations Convention against Transnational Organized Crime, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the Convention and the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the Convention of 2000.

Annex I

LIST OF ATTENDANCE

States Members of the United Nations

Afghanistan, Albania, Algeria, Angola, Argentina, Australia, Austria, Azerbaijan, Bahrain, Barbados, Belgium, Benin, Bolivia, Brazil, Brunei Darussalam, Canada, Chile, China, Colombia, Congo, Costa Rica, Côte d'Ivoire, Croatia, Cuba, Cyprus, Czech Republic, Denmark, Dominican Republic, Ecuador, Egypt, El Salvador, Estonia, Ethiopia, Finland, France, Ghana, Germany, Greece, Guatemala, Haiti, Honduras, Hungary, India, Indonesia, Iran (Islamic Republic of), Ireland, Israel, Italy, Japan, Kenya, Latvia, Lebanon, Libyan Arab Jamahiriya, Luxembourg, Madagascar, Mali, Malta, Mexico, Morocco, Netherlands, New Zealand, Nicaragua, Nigeria, Norway, Pakistan, Paraguay, Philippines, Poland, Portugal, Qatar, Republic of Korea, Romania, Russian Federation, Saudi Arabia, Senegal, Serbia and Montenegro, Slovakia, Slovenia, South Africa, Spain, Sri Lanka, Sweden, Switzerland, Syrian Arab Republic, Tunisia, Turkey, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania, Uruguay, Venezuela, Yemen.

Non-member States represented by observers

Holy See.

United Nations

Joint United Nations Programme on HIV/AIDS (UNAIDS), United Nations Development Programme (UNDP).

Specialized agencies

Food and Agriculture Organization of the United Nations (FAO), International Labour Organization (ILO), International Telecommunication Union (ITU), United Nations Educational, Scientific and Cultural Organization (UNESCO), World Health Organization (WHO).

Intergovernmental organizations

African Union, European Commission, International Organization for Migration, League of Arab States, Organization of the Islamic Conference.

Non-governmental organizations

General consultative status

International Federation of Business and Professional Women, Organization of African Trade Union Unity.

Special consultative status

Baha'i International Community, International Committee for the Respect and Application of the African Charter on Human and Peoples' Rights, International Service for Human Rights, Lawyers Without Borders, United Nations Watch, Worldwide Organization for Women.

Roster

Association for the School as an Instrument of Peace, Association of World Citizens, World Peace Council, World Union for Progressive Judaism.

Accredited to the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance

Aspacio Afroamericano, Centro Studi per L'Evoluzione Umana, Indigenous Peoples and Nations Coalition.

Annex II

AGENDA

1. Opening of the session.
2. Election of the Chairperson-Rapporteur.
3. Adoption of the agenda.
4. Organization of work.
5. General statements: exchange of information on participants' implementation activities and debate on issues of general interest to the implementation process.
6. Thematic analysis: discussion on and analysis of the following major issues:
 - (a) Racism and health;
 - (b) Racism and the Internet.
7. Complementary international standards: examination of submissions from the Committee on the Elimination of Racial Discrimination and other United Nations bodies and specialized agencies.
8. Follow-up to the recommendations of the second session.
9. Recommendations for future work.
10. Adoption of conclusions and recommendations.
11. Adoption of the report.

Annex III

LIST OF DOCUMENTS PREPARED FOR THE WORKING GROUP

Symbol	Title
E/CN.4/2004/WG.21/6	Provisional agenda
E/CN.4/2004/WG.21/7	Draft programme of work
E/CN.4/2004/WG.21/8	Symbol not used
E/CN.4/2004/WG.21/9	Symbol not used
E/CN.4/2004/WG.21/10 and Add.1	Views of the Committee on the Elimination of Racial Discrimination on the implementation of the International Convention on the Elimination of All Forms of Racial Discrimination and its effectiveness
E/CN.4/2004/WG.21/11	Contribution by other intergovernmental organizations
