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人权理事会
第二十八届会议
议程项目 9
种族主义、种族歧视、仇外心理和相关的不容忍现象：
《德班宣言和行动纲领》的后续行动和执行情况

拟定补充标准特设委员会第六届会议的报告** ***

主席兼报告员：Abdul Samad Minty(南非)

内容提要

本报告是根据人权理事会第 3/103 决定和第 6/21 及 10/30 号决议提交的。报告概述了拟定补充标准特设委员会第六届会议的议事情况。在一些相关领域的专家发言之后，就第五届会议商定的众多议题展开了实质性讨论。会议期间，委员会还审议了由联合国人权事务高级专员办事处散发的问卷调查，和主席兼报告员根据人权理事会第 21/30 号决议编写的最新答复概要。

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*** 迟交。

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一. 导言

1. 拟定补充标准特设委员会根据人权理事会第 3/103 号决定和第 6/21 号及第 10/30 号决议提交本报告。

二. 会议组织安排

2. 特设委员会于 2014 年 10 月 7 日至 17 日召开第六届会议。会议期间举行了 15 次会议。

A. 出席情况

3. 各会员国、代表非会员国的观察员、政府间组织，以及在经济及社会理事会具有咨商地位的非政府组织的代表参加了本届会议。

B. 会议开幕

4. 联合国人权事务高级专员办事处(人权高专办)反歧视科科长宣布特设委员会第六届会议第 1 次会议开幕。联合国人权事务高级专员致开幕词，他回顾说，委员会的工作是提出增强保护所有人的方法，使其免受种族主义、种族歧视、仇外心理和相关不容忍现象的伤害；这是《德班宣言和行动纲领》明确提出的，将继续指导办事处的工作。委员会的工作是明确国际社会可以通过何种方式，确保这些侵权行为数以百万计的受害人享受到更大的体面，即更多的尊严、平等和公正。他表示相信，委员会将在本届会议期间取得更大进展，完成任务授权，并继续前进，为更有效地解决种族主义、种族歧视、仇外心理和相关不容忍现象的方式提供指导。

C. 选举主席兼报告员

5. 在第 1 次会议上，特设委员会以鼓掌方式选举南非共和国常驻联合国日内瓦办事处代表 Abdul Samad Minty 为会议主席兼报告员。

6. 主席兼特别报告员感谢高级专员与会并致开幕词，感谢委员会再次选举他担任这一职务，指出他将与委员会所有伙伴和成员共同努力。反种族主义世界会议在《德班行动纲领》第 199 段中建议，人权委员会制订补充性国际标准，以加强和修订反对种族主义、种族歧视、仇外心理和相关的不容忍现象的国际文书的所有方面。委员会的讨论将继续采用上届会议通过的增量方法，为成员提供机会，进一步思考和理解将要讨论的问题，以及与委员会的任务和与行动纲领第 199 段之间的联系。本届会议成果的形式将由本届会议期间的讨论决定。在前两届会议达成的一致意见的基础上，主席兼报告员鼓励委员会继续着重探讨受害人的悲惨

处境，并确保对人的尊严的无条件尊重。对此，他认为，应该探索建立一个仇外心理的国际监管框架的多种可能，因为仇外心理的表现更为猖獗，需要更强有力的措施。他尤其指出，明目张胆的种族主义和仇外行径继续在多国的足球场内外发生，原因是没有开展消除种族主义和仇外心理的足够行动。

D. 通过议程

7. 特设委员会在第 1 次会议上通过了第六届会议的议程。

E. 工作安排

8. 主席兼报告员介绍了工作方案草案。工作方案(见附件 III)在第 1 次会议上通过。

9. 主席兼报告员请代表团和与会者作一般性发言。许多代表团热烈欢迎高级专员与会和致开幕词。

10. 埃塞俄比亚代表代表非洲集团发言，再次表达了非洲集团对委员会工作的承诺，并回顾人权理事会第 3/103 号决定；人权理事会在决定中授权委员会作为优先和必要的事项，拟订补充标准，可采取公约的形式或《消除一切形式种族歧视国际公约》(以下称《公约》)附加议定书的形式，以弥补《公约》中的现有缺陷，并提供新的规范标准，旨在反对一切当代形式的种族主义，包括煽动种族和宗教仇恨。非洲集团仍然关切的是，由于对是否需要制定补充标准这件事本身进行了毫无必要的讨论，以致拟定补充标准的进展有限。埃塞俄比亚代表强调，必须在第二届会议问题清单拟定的领域内解决偏见受害者的问题，因为这些受害者需要得到委员会更好的保护，最大限度的补救，并完全消除这些种族主义行为的有罪不罚情况。非洲集团呼吁所有区域集团作出进一步的政治承诺，制定补充标准，并加强与种族主义、种族歧视、仇外心理和相关不容忍现象作斗争。

11. 巴西大使表达了巴西常驻联合国日内瓦办事处代表团对特设委员会工作的支持。大使特别指出，巴西是一个多文化和多种族的社会，强调《德班宣言和行动纲领》对巴西非常重要，该文书对反对种族主义、种族偏见、仇外心理和相关不容忍现象作出了重要贡献。他提到打击种族主义的措施，指出平权行动措施是巴西国内政策的核心。

12. 巴基斯坦大使代表伊斯兰合作组织发言，指出对穆斯林的歧视日益增多，世界各地出现了仇视伊斯兰现象的总趋势，这阻碍了和平凝聚。他强调，《德班行动纲领》第 199 段和人权理事会第 16/18 号决议对打击种族主义、种族歧视、仇外心理和相关不容忍现象具有重要的指导意义。他强调，关于禁止可构成煽动歧视、敌意或暴力言论的鼓吹民族、种族或宗教仇恨言论的《拉巴特行动计划》，是进一步讨论的有用基础。

13. 阿尔及利亚大使说，阿尔及利亚支持埃塞俄比亚代表和巴基斯坦大使分别代表非洲集团和伊斯兰合作组织所作的发言。他指出，仇外心理和种族主义行为正在增多，对移民、难民和庇护寻求者造成影响。仇外心理现象在世界范围蔓延，受害者人数也在增多；他强调，受害者既受到“精神上”的影响，也受到“身体上”的影响。阿尔及利亚支持特设委员会的任务授权，敦促采用以受害者为中心的方式开展工作。审视现有各项文书的特异性非常重要。

14. 摩洛哥代表说，摩洛哥支持代表非洲集团和伊斯兰合作组织所做的发言。摩洛哥特别重视委员会的工作。他指出，种族主义和仇外的思维、行动正在世界范围内急剧上升；他还提醒不要单向地看待特设委员会的工作。他指出，现有框架受到巨大威胁，《德班宣言和行动纲领》以及《维也纳宣言和行动纲领》应作为重要的信息来源。摩洛哥代表提到，国际社会必须实现平衡，他感谢各代表团对委员会的工作作出积极贡献。《拉巴特行动计划》为委员会正在处理的各项问题提供了一个可靠的办法。

15. 欧洲联盟代表说，种族主义、种族歧视、仇外心理和相关不容忍现象与欧洲联盟的根本原则、与欧洲联盟所有成员国的共同价值观，即对人的尊严的尊重、自由、民主、平等、法治和对人权的尊重背道而驰。她引述欧洲联盟外交事务与安全政策高级代表在消除种族主义国际日代表欧洲联盟所做宣言说：“我们必须更加坚决地行动起来，解决所有形式的不容忍现象、种族主义、仇外心理和其他类型的歧视。在经济危机的时代，种族主义和仇外心理部分受到愈加严重的失业和对未来的不确定性的推动，愈演愈烈的危险非常真实。正是在这个充满挑战的时代，我们对打击种族主义的承诺才必须毫不松懈。”重中之重，应该是有效地执行现有国际人权法，包括有效执行《公约》。

16. 委内瑞拉玻利瓦尔共和国代表说，该国支持特设委员会的工作，并对某些国家不支持委员会的工作表示遗憾。他敦促核可和执行在《德班行动纲领》第 199 段一致同意的事项，从而在世界范围内解决种族主义、种族歧视、仇外心理和相关的不容忍现象。

17. 瑞士代表同时代表阿根廷、亚美尼亚、巴西、智利、哥伦比亚、日本、墨西哥和乌拉圭发言，他对两届会议期间的准备工作表示赞赏，对工作方案以及在本届会议期间邀请专家发言表示支持。他强调了《公约》和《德班宣言和行动纲领》对本届会议工作的重要性；他说，他发言所代表的一些国家代表团将建设性地参与审议，确定规范框架是否存在空白，以及本届会议应如何解决这些空白。

18. 南非代表说，南非代表团同意埃塞俄比亚代表代表非洲集团所做的一般性发言。她欢迎采用增量方法解决各项议题，正如主席兼报告员指明的那样。南非仍然关切的是，《德班行动纲领》第 199 段受到质疑，对拟定《公约》补充标准缺乏进展表示关切；她援引第 3/103 号决定，提醒委员会注意其任务授权。南非认为，委员会的工作是解决空白；因此她敦促各代表团超越根深蒂固的立场，朝着向种族主义的受害人提供适足保护和补救的方向前进，结束种族主义、种族歧

视、仇外心理和相关不容忍行为有罪不罚的现象。她说，南非代表团致力于建设性地开展工作，从而加快拟定急需的《公约》补充标准。

19. 印度尼西亚代表强调，种族主义、仇外心理和相关不容忍现象仍然存在，在某些情况下已经加剧，并呈现多种形式。委员会的重要工作是，在《公约》补充标准所要达到的目的方面实现具体结果。需要注意含有宗教和民族因素的仇恨言论。这一问题涉及宗教自由与表达和见解自由的关系。印度尼西亚高度重视宗教自由和表达自由，认为这些自由可以在国际人权法的框架下在国家层面实现共同发展。印度尼西亚还意识到，这些现象具有能跨越国界的特点，部分原因是信息和通信技术的快速发展。印度尼西亚认为，可能需要制定一项国际文书，从而有效预防基于宗教和信仰而煽动敌意和暴力的行为。

20. 美利坚合众国代表说，种族主义与该国的价值观毫不相容。他强调了委员会工作的重要性，认为其任务授权包括促进协商一致的行动计划，委员会不应从事拟定使人混淆的新的国际法文书。仇外心理是一个严重问题；然而，解决该问题不需要新制定或修订条约，而是要执行现有人权法。美国代表团认为，几位之前在委员会发言的专家，他们的意见反映了这些结论。

21. 尼日利亚代表说，该国支持代表非洲集团的发言。他突出了污名化和仇外心理的问题，以及加强对这类侵害行为受害人的国际保护的重要性；他强调，难民、庇护寻求者和移民尤其脆弱，更加突出了委员会工作的重要性。

三. 一般讨论和主题讨论

A. 预防和提高认识

22. 在第 2 次会议上，特设委员会听取了以下专家的发言：欧洲足球协会联合会(欧足联)足球与社会责任高级经理 Patrick Gasser、联合国体育促进发展与和平办公室副主任 Jonas Burgheim, 和欧洲反种族歧视足球网(反歧足网)代表 Pavel Klymenko, 他们发言的议题是“预防和提高认识，包括开展人权教育和培训，打击种族主义、种族歧视、仇外心理和相关的不容忍现象”与体育的关系。

23. 在第 3 次会议上，非洲裔问题专家工作组主席 Mireille Fanon-Mendès-France 就同一议程专题做了发言。在第 4 次会议上，联合国教育、科学及文化组织(教科文组织)健康和全球公民教育科的 Karel Fracapane 向委员会简要介绍了该组织有关这个议题的工作。

24. 这些发言以及随后同与会者的讨论概要见附件 I, A 节。

B. 根据人权理事会第 21/30 号决议开展的问卷调查

25. 在第 5 次会议上，主席兼报告员简单介绍了根据人权理事会第 21/30 号决议所做的调查问卷在重新分发后收到的答复概况。他在 2014 年 7 月 21 日的一份普

通照会中，请尚未对调查问卷作出答复的常驻日内瓦和纽约的代表团作出答复，并表示欢迎之前已经对调查问卷作出回复的国家提供补充资料。

26. 在 2014 年 9 月 19 日的截止日期前又收到了 13 份答复。主席兼报告员建议，应通盘审议调查问卷和收到的答复摘要，这样可帮助特设委员会更好地掌握最新答复简报中的资料，审视缺点，并提出解决建议。不论是制定新的公约还是不制定公约，只要结果能改善受害者的条件，两种方式对委员会的工作都非常重要。

27. 主席兼报告员介绍了载有调查问卷答复摘要的文件，请与会者考虑下一步如何进行，以及如何推动调查问卷的问题。答复仍然不具有代表性；答复只是论事的，不过仍对讨论的多个方面有用。调查问卷收到的答复的原始副本可在人权高专办网站上查阅。

28. 主席兼报告员从几个方面提出了问题，提到机构和立法的作用、宪法规定、对受害人的补救以及积极措施。他指出，大多数新的答复提供了有关仇外心理问题的很有趣的资料，仇外心理似乎是影响到全球许多国家的一个关切。就此，他问到在国家层面采取了哪些举措，是否有一些国家和区域可能没有面临与仇外心理相关的问题。他问到仇恨罪行与仇外罪行之间的区别，仇外心理是一种情绪还是一种行为动机。他请与会者把仇外心理作为一种程度有别的现象。主席兼报告员还问到，打击极端主义是否与打击歧视和仇外心理是一样的，询问了“国家机制”的有效性，并问到国家机制的定义应该狭义地理解还是做广义的解释，以及消除种族歧视委员会是否有效，尤其是在仇外心理方面的有效性。他还问到，委员会的哪些建议已经被国家执行，保留是否确实对《公约》的执行是一个巨大的障碍。

29. 欧洲联盟代表发表了初步意见，对调查问卷的回复率仍然偏低表示失望。她强调，这些回复对某些区域的代表性不足，欧洲联盟希望听到它们的意见。她谈到《公约》的重要性，重申尚未批准或加入《公约》的国家应该批准或加入《公约》。欧洲联盟的一贯立场是，全面执行现有标准是关键；新答复中仅有一份提到需要制定补充标准。

30. 巴西代表说，根据收到的回复，仇外心理和国家机制都是国家关切的问题。然而，对空白问题没有达成一致。两个主题都需要进一步讨论，消除种族歧视委员会对这些问题的看法至关重要。另外，特设委员会也可以思考，是否可以促进制定有关这些问题的行动计划和指导方针等。关于程序方面的空白，对调查问卷的回复表明，消除种族歧视委员会仍然缺乏开展相关活动的正式任务授权，如无法开展国家访问和对其建议的后续工作等，这些对其履行职能非常重要。随后设立的条约机构对这些问题作出了规定。因此，可能需要该领域的补充规范。

31. 委内瑞拉玻利瓦尔共和国代表特别强调了新的补充标准对打击种族主义、种族歧视、仇外心理和相关的不容忍现象的重要性，并提到需要把一切形式的歧视定为刑事犯罪。委内瑞拉是一个多民族社会，政府致力于执行 2011 年《反种族歧视法》，该法第 11 条对仇外心理和种族主义行为作出规定。委内瑞拉代表还

突出了民间社会对预防和根除种族歧视的积极作用，并报告说该国成立了一个打击种族歧视的国家机构，以有效执行《公约》规定和《德班宣言和行动纲领》。政府致力于收集分类数据，近期的 2011 年人口普查将提供更为详细的人口资料。

32. 俄罗斯联邦代表也支持需要制定额外标准，强调现有国际标准缺乏有效性。他鼓励各代表团考虑起草新的补充标准，并提高现有机制的有效性。

33. 摩洛哥代表向会议通报，摩洛哥已经实施一项新的移民政策，要求采用以人权为基础的方法。移民需要获得法律认可，以及获得住房和教育等领域的权利。新政策十分全面，涵盖了寻求庇护者和难民。他指出，必须改变以安全为核心的方针，那种方针使人产生一种防范心态。他承认在数据收集上存在问题，并补充说，该国目前正在开展人口普查，将对制定公共政策产生积极影响。他特别强调了统计数字的重要性。

34. 主席兼报告员询问，宪法和立法是否足以解决种族主义、种族歧视、仇外心理和相关的不容忍现象，还询问了政府怎样才能从法律措施出发、进而保护实际受害者。他请与会者分享这方面的良好做法和困难。

35. 摩洛哥代表说，打击种族主义、种族歧视、仇外心理和相关的不容忍现象可采取不同的方式。一方面，《宪法》中有打击歧视的条款。由于摩洛哥既是移民的原籍国，又是移民的过境国和目的地国，考虑到具体事实，还存在操作的方面。这些综合因素使摩洛哥存在大量无正式身份的移民。需要制定一项新的庇护和移民政策。就此，政府已经收到一份报告，决定采取新政策。摩洛哥代表指出，应该解决操作层面的日常问题。早期预警努力突出了修订法律规定的必要。已经通过了新的移民和难民法案。挑战是把这些法律规范付诸实践。

36. 意大利代表突出介绍了载于《意大利宪法》的坚实原则，这些原则适用了产生义务的欧洲联盟指令。打击种族歧视国家办公室等机构被赋予保护受害者的职权；受害者可以方便地访问办公室的网站，还开设了 24 小时电话热线。他承认需要额外资源。他提到调查问卷有关《公约》第十四条的问题 2(vi)，说没有资料说明多少国家已经接受第十四条。他强调，大量逾期未向消除种族歧视委员会提交报告是一个严重问题，许多国家从未提交报告，或者报告严重逾期。

37. 主席兼报告员确认，所有条约机构均有大量逾期报告，这是一个普遍问题，普遍定期审议程序中已有认识。一些国家不具备提交报告的资源。

38. 埃及代表说，埃及在种族和宗教方面是一个“和谐一致的社会”，最新的《宪法》在少数族裔的种族歧视方面不存在问题。所有公民平等，法律面前人人平等。虽然公民的原籍可能在别处，但没有基于民族的仇外心理，公民认为自己是埃及人。国家人权理事会是一个独立机构，处理人权方面的所有问题，并受理受害人的申诉。理事会拥有所需的资源。国家理事会向司法部门和法院移交申诉，并为进入司法程序提供便利。

39. 乌拉圭代表说，乌拉圭已经批准《公约》。除《公约》外，还有一系列有关歧视问题的具体法律；移民方面包括关于移民权利、家庭团聚和不以任何理由进行歧视的规定。移民局设立了一个快速应对方案，允许在 48 小时内颁发身份证件。2004 年，通过了一项关于种族歧视的法律，成立了一个负责种族主义和歧视问题的委员会，实施该法。还制定了防止歧视的各项政策。委员会向议会提交了一份关于非洲人后裔配额的法律草案，并已获得通过。普遍定期审议期间，乌拉圭政府承诺起草一份打击种族歧视的行动计划；现在处于第二阶段，重点是计划的起草工作。

40. 南非代表着重指出，1996 年《宪法》承认该国过去存在的不公正现象，重点是一个保持多样性的、团结的民族，目的是营造社会和谐。《宪法》第九章规定设立增进和保护文化、宗教和语言群体权利委员会。2002 年，南非举办了非洲联盟峰会，以增进非洲人民的凝聚力。2012 年，南非举办了非洲侨民全球峰会，为“一个大家庭”概念赋予了具体含义。南非还在非洲发展新伙伴关系(新伙伴关系)中发挥重要作用。

41. 阿尔及利亚代表说，该国的《宪法》对种族歧视作出了规定，一些法律体现了不歧视原则。《宪法》第二十九条禁止任何歧视；包括《刑法》和《选举法》在内的所有法律均禁止歧视。他强调了人人平等的重要性，并且说与移民及其家庭相关的问题得到特别重视。采取了消除歧视的立法措施和制度措施；对外国人诉诸民事司法不再规定条件；在该国的外国人也可以获得法律解释和法律援助。

42. 瑞士代表说，仇外心理不是国家法律下的一个法律术语，公职人员必须尊重基本权利。种族歧视在瑞士受到惩处。法律提供了免受歧视的充分保护，但加强当前法规的运用非常重要。他向会议介绍了三个机构：(a) 成立于 1995 年的联邦禁止种族主义委员会，一直在监督旨在明确种族主义和种族歧视的活动，努力促进更好的理解，强调预防并听取少数群体的关切；(b) 反对种族主义处，自 2001 年起一直在促进协调并制定打击种族主义的措施；(c) 联邦移民委员会，自 2008 年起一直在移民问题上弥合当局和民间社会的差距。

43. 希腊代表向委员会通报，希腊议会于三周前通过了一项新的反种族主义法，严禁种族主义言论、基于种族原因而对他人实施的暴力，以及其他形式的歧视；法律包括多种措施和制裁，例如监禁和罚款。如果此类行为是公职人员所为，则作为加重因素考虑，给予双倍制裁。代表还指出公共宣传措施的重要性，向会议通报了希腊常驻日内瓦代表团组织的一些活动，例如人权理事会关于平等和体育的一场会外活动，和与南非常驻代表团一起组织的纪念已故总统纳尔逊·曼德的律师 George Bizos 的活动。

44. 主席兼报告员指出了司法机关在解读法律中的作用。他说，研究案例法以及司法机关如何负起责任、为其他案件创立先例，将很有意义。他说，国家机制的授权来自法律规定，但应该审查机制的有效性，以及民众在这些机构中的代表情况。此外，他提到与《公约》相关的程序上的空白，尤其是仇外心理方面的空白。

45. 俄罗斯联邦代表强调，对《公约》的保留对其执行产生了负面影响。例如，关于第四条，仇恨言论正在现代技术的时代膨胀，有必要撤回对该条的保留。俄罗斯联邦没有提出任何保留。

46. 巴西代表说，特设委员会应进一步讨论《公约》是否存在实质性空白的问题。对于程序性空白，前两届会议期间，来自消除种族歧视委员会的专家已经指出，他们不具备开展国家访问的任务授权，由一份附加文件作出规定这项授权将很有益处。对调查问卷的答复也提出了这一点。

47. 美国代表强调，回应仇恨言论的最好办法是发出更多言论。他指出，《公约》明确禁止歧视和暴力行为，《公约》在把仇外心理作为法律问题处理方面没有空白。有效执行现有的义务明显存在不足，在这一领域继续讨论将富有成果，这正是美国所期待的。

48. 南非代表回顾说，保留只要不违背条约便是许可的，这也包括对第四条的保留。她强调，如不制定新的标准，当代形式的种族主义和种族歧视将得不到惩处。她还指出，消除种族歧视委员会的第十五号一般性意见(2004 年)，关于对非公民的歧视问题非常重要。

49. 欧洲联盟代表说，根据指令，欧洲联盟成员国必须成立平等问题的机构，这些机构必须是独立的组织，除其他外能够开展独立调查、公布独立报告和提出建议等等。“平等网”是一个由欧洲平等问题机构组成的网络，包括 38 个组织。关于仇恨言论，欧盟代表强调，应充分尊重表达自由，现有国际框架非常重要。欧盟代表提到欧洲联盟理事会 2008 年的框架决定，关于借助刑法打击某些形式的种族主义和仇外心理及其表现，包括把蓄意公开煽动种族主义、仇外和暴力作为犯罪，并要求对刑法做相应修改。

50. 摩洛哥代表指出，需要控制互联网上的仇恨言论；这种控制是许多国家的一项重大关切，但不应以任何方式降低国家通过传统媒体打击仇恨言论努力的重要性。摩洛哥已经制定包括《宪法》第六条在内的多项法律措施，并制定了一部刑法和新闻法。煽动针对外国人仇恨的记者在摩洛哥受到惩处。与消除种族歧视委员会有效互动并提交定期报告非常重要。

51. 美国代表表示，美国坚决反对限制言论自由。他强调，这种限制十分危险，政府不应当控制表达。不民主的政府滥用这些措施。

C. 特别措施

52. 在第 6 次会议上，委员会就“预防、打击和消除种族主义、种族歧视、仇外心理和相关的不容忍现象的一切形式和表现的特别措施(包括平权或积极措施在内)、战略或行动”主题开始讨论。会议特别邀请埃塞俄比亚常驻联合国日内瓦办事处的 Ephrem B. Hidug 主持。消除种族歧视委员会委员 Carlos Vázquez 发言介绍了《消除一切形式种族歧视国际公约》和委员会实践中对特别措施的处理办法。

53. 在第 7 次会议上，北卡罗来纳大学教堂山分校法学院民权中心主任 Theodore Shaw 教授也就特别措施的议题作了发言。在第 8 次会议上，巴西里约热内卢联邦大学经济学研究所研究员 Elisa Alonso Monçores 就“巴西的平权行动：近期经验和社会指标”作了发言。

54. 在第 9 次会议上，平等权利信托执行主任 Dimitrina Petrova 就这一议程主题作了发言。

55. 这些发言以及随后同与会者分别进行的讨论情况摘要，见附件 I, B 节。

D. 国家机制

56. 在第 10 次会议上，阿根廷打击歧视、仇外心理和种族主义国家研究所主任 Pedro Mouratian 就“设立、任命或保持有权保护和打击一切形式和表现的种族主义、种族歧视、仇外心理和相关的不容忍现象的国家机制”专题，向特设委员会介绍了该组织的工作。

57. 他的发言和随后同与会者的讨论情况摘要，见附件 I, C 节。

E. 仇外心理

58. 第 11 次会议讨论了“仇外心理”主题。欧洲联盟基本权利局平等和公民权利处处长 Ioannis Dimitrakopoulos 作了发言。

59. 发言和随后同与会者的讨论情况摘要，见附件 I, D 节。

F. 一般讨论和交流意见，第 12 次会议

60. 特设委员会第 12 次会议举行了一般性讨论和交流意见。

61. 欧洲联盟代表发表了一些初步意见，认为重发的调查问卷产生的结果在基本上与第一次调查问卷的结果非常相似。包括欧洲国家在内的一些区域的意见得到了很好体现，然而还是没有其他一些区域的代表性意见。特设委员会的讨论证实，挑战依旧。还突出了世界多地采取的积极步骤和最佳做法。情况不同，应对种族主义的解决办法和相关问题的形式也依国家不同而不同，因而不存在一刀切的办法。关于补充标准的问题，欧盟代表指出，欧洲联盟认为第六届会议已经肯定了这样的办法，即国家和利益攸关方应该作出更多努力，更有力地执行现有标准并监督其执行。《公约》仍然是重要的国际文书，欧洲联盟对公约没有得到普遍批准表示遗憾。欧洲联盟看不到任何证据表明，没有国际法律标准便会阻碍与这些现象作斗争的努力。

62. 美国代表提到第 11 次会议期间的讨论，指出移民改革是美国政府的一项优先工作，政府强调，美国境内的 1,100 万非法移民需要有一条获得公民身份的途

径。有关备受关注的大量孤身儿童问题，美国正与相关邻国政府合作，从根源上解决移民问题，让人们了解移民的风险。

63. 巴西代表建议，委员会可以着手拟定行动计划或指导方针等文件，以填补 Petrova 女士在发言中提到的解释上的空白。巴西代表说，对受害人的生活产生积极影响应该是重中之重，并说她期待就程序方面存在的空白展开讨论。

64. 非洲联盟代表强调，特设委员会业已确立的任务授权就是拟定补充标准。委员会的责任不是考虑这些标准是否必要，或者是否存在空白，《德班宣言和行动框架》以及人权理事会已经对此作出决定。第六届会议和前几届会议过程中表达了几种不同的观点，现在是向前努力，起草条款的时候了。委员会不应继续无休止地讨论，而应总结现有结论，恪守其任务授权。他谈到美国代表提到的移民问题，并且说在该领域取得进展非常重要。他提到，“种族主义与体育”是一个重要领域，委员会有可能作出贡献。

65. 南非代表代表非洲集团重申，人权理事会通过第 3/103 号决定成立了特设委员会，规定了清晰的任务授权，即作为“优先事项”，拟定公约或《公约》的补充议定书。该决定没有提到考虑和讨论可能的空白或标准的必要性。《德班行动框架》第 199 段也没有为此种考虑留下任何空间。拟定补充标准的任务授权十分清晰，重心明确，毫无疑问。非洲集团认为，正在进行的讨论以及坚持主张执行《公约》是错误的，因为国际社会在其他诸多例子中都曾拟定过各种补充标准。种族歧视的受害者人要得到更好支持；现在迫切需要彻底消除种族歧视行为的肇事者有罪不罚的现象。只有具备政治意愿才能制定出补充标准；必须找到这种意愿，因为必须向前迈进。

66. 阿尔及利亚代表指出，法律框架中存在空白，尤其是受害者权利方面。因此，需要开展工作，从而采取以受害者为中心的办法，打击种族主义、种族歧视、仇外心理和相关的不容忍现象。他呼吁各代表团重点关注受害者的苦难。前几届会议上的发言已经提供了充足的材料，发放了几次调查问卷，也在人权理事会的框架内举行了数次讨论；因此不能说为前进所做贡献仍然不足。委员会需要关注移民等问题，阿尔及利亚代表提到了委员会和人权理事会其他委员会的工作方法这一反复出现的议题。任务授权经常受到质疑。然而，这并不是特设委员会的角色，因为已有明确的任务授权，现在是根据德班谈判取得的这一任务授权，取得进展的时候了。

67. 巴基斯坦代表代表伊斯兰合作组织指出，专家们已经在本届会议期间做出了重要贡献；他说，委员会的任务授权不容置疑。在整个发言中，很难理解委员会为什么要讨论补充标准的必要性；因为任务授权已经反映出这样一个假设：这种必要性是存在的。伊斯兰合作组织认为，需要制定补充标准。人权理事会第二十五届会议期间，伊斯兰合作组织的一位代表在议程项目 9 下建议，制定一项处理所有形式的种族主义、种族歧视、仇外心理和相关的不容忍现象的任择议定书。因此，伊斯兰合作组织建议，起草一份《公约》的补充议定书，全面处理种族主义问题；特设委员会的下届会议应专门讨论实质性空白问题。伊斯兰合作组织认

为，现在必须寻找前进方向，考虑包括宗教不容忍在内的各种新形式的不容忍现象了。

68. 瑞士代表说，他认为立场分歧表现在：有的国家维护任务授权，却不清楚缺失何在，而有的国家强调关键是执行，《公约》不需要进一步的议定书。瑞士试图找出可能确定的空白领域，却无法做到这一点。因此，瑞士并不质疑任务授权，而是怀疑它能否实现。重新起草《公约》不是一个选项，因为尚未出现必须制定新法律的实质性案件。仇外心理问题两年前已得到澄清，解决该现象和其他现象的工具是现成的。不存在放之四海皆准的秘诀，不宜把一套预先制定的严格制度强加给所有国家。指导反种族主义斗争的主要原则已经存在。现在本质上是一个执行的问题。

69. 委内瑞拉玻利瓦尔共和国代表重申，该代表团坚决支持特设委员会的任务授权。委员会已经工作了六年，已经审查了多项国际标准以及与这些标准的不符之处。《德班宣言和行动纲领》规定的任务授权是消除歧视新形式方面的任何空白，委员会应该把工作重点放在该领域。他支持南非代表代表非洲集团、巴基斯坦代表代表伊斯兰合作组织所作的发言，敦促委员会开展更多实质性工作。他认为，各方面的发言表明，出现了新形式的种族主义，这些发言的内容将使委员会能够起草《公约》的新的补充标准。机制必须加以改进，以涵盖新形式的种族主义、仇外心理、仇恨言论和煽动仇恨行为，包括针对移民的这类行为。

70. 德国代表强调，委员会必须找到前进方向，会议室中正在进行的意见交流非常重要。然而，德国代表认为，应该听取请来的专家们的意见；专家们都强调，与仇外心理等现象做斗争无需新的标准。德国完全支持欧洲联盟的发言，《公约》不存在实质性空白；然而，各国应改进对《公约》的执行。人权的其他领域也是如此。不由分说便质疑这些领域的基本标准不合常规，把重点放在执行上却是一个良好做法。在此方面，德国代表支持瑞士代表所作发言。

71. 埃及代表说，特设委员会存在这一事实表明，法律框架需要得到更新。必需明确立法中现存的空白，并评估如何填补空白。埃及代表支持巴基斯坦代表代表伊斯兰合作组织提出拟定一项补充议定书的建议，这将是委员会的一个关键步骤。

72. 印度尼西亚代表指出，执行的问题需要解决，也需要制定补充标准。补充标准的想法在特设委员会成立时已被接受，不应引起争议。在实质性问题上，印尼代表支持巴基斯坦代表代表伊斯兰合作组织所作的发言和埃及代表的发言。在印度尼西亚，由于煽动仇恨牵扯到跨国界的问题，因此存在一个真实的空白。印度尼西亚感到，肇事者未受到惩处，却对印度尼西亚的国内局势产生了巨大影响，可能导致骚乱。因此，在跨国煽动基于宗教的仇恨方面存在实质性空白，这已经十分明显。

73. 摩洛哥代表说，特设委员会存在的原因非常清楚，相关的决议、决定和《德班宣言和行动框架》提供了牢固的法律基础。不应就委员会是否应该存在展开讨

论。许多发言强调，《德班宣言和行动纲领》是在 2001 年通过的，13 年后的今天种族主义仍然存在。委员会不仅应限制种族主义，还要根除种族主义；委员会不能无所事事。委员会已经举行了六届会议，很明显，它面前的工作十分艰巨。委员会应加强国际立法，一致意见不是要重新制定而是要完善《德班宣言和行动纲领》。摩洛哥认为，不作为意味着委员会没有履行其任务授权，是在实施“犯罪”。委员会的工作是必要的，可以有几种形式；应由委员会决定采用哪种形式。

74. 突尼斯代表表达了对南非代表代表非洲集团、巴基斯坦代表代表伊斯兰合作组织所作发言的支持。当前的国际框架不足，因为出现了新形式的种族主义；还可以观察到，一些政治运动的纲领从仇恨外国人中受益。任何种族主义行为都不能逃脱惩罚，国际社会需要完善法律武器。委员会从发言中听到，受害者往往不愿报案或提出控告。《公约》通过以来，种族主义已经发生变化，经常同以经济和宗教为理由的歧视一同出现。当前的经济危机加剧种族歧视。《公约》没有对宗教等诸多其他因素作出规定。正如南非代表指出的，委员会的职能不是重新制定规范，而是解决种族主义当今的表现形式。此外，通信革命增添了一个新的因素。

75. 巴基斯坦代表澄清说，伊斯兰合作组织并不是说制定一项任择议定书就意味着重新起草《公约》。然而，几项人权公约都有任择议定书。因而，他提议在特设委员会下届会议上举行实质性讨论，考虑要填补的实际的实质性空白。委员会有足够的原始材料可资利用。

76. 德国代表指出，实际上没有任何东西禁止各国采取行动打击种族主义。核心问题依旧是《公约》是否得到执行，以及国家文书是否依据国际人权规范得到修订。

77. 瑞士代表重申，委员会六届会议进行了讨论，仍未找出任何重大空白，足以紧急到委员会应该拟定补充标准的地步。瑞士认为，委员会却发出了一个明确的信息：各国应该与种族主义现象作斗争。瑞士怀疑任何补充标准能否产生进一步的行动。此外，必须指出的是，多数任择议定书都与来文有关，解决一些明确发现的需要。

78. 阿尔及利亚代表说，明显需要制定标准，必须填补前几届会议上中确定的空白。委员会已经听到要改进执行的一再呼吁，现有文书的执行存在明显局限。阿尔及利亚认为，一般性讨论已经显露出，当前文书不足以解决所有形式的歧视。

79. 突尼斯代表补充说，草拟一项议定书的工作并不妨碍各国执行《公约》。然而，现有空白必须得到解决，仇外心理和极端歧视正是此类空白。突尼斯代表对特设委员会能够取得进展表示乐观，并指出，各国决不能受到委员会工作的阻碍而不在国家层面采取行动。

80. 非洲联盟代表说，制定一项规则仅仅是朝执行规则迈出的第一步，因为规则可能得不到普遍接受。国家可以随时决定是否愿意加入条约。

81. 主席兼报告员对讨论作了总结，指出意见分歧仍然存在。各代表团似乎没有考虑提出的证据，而是坚持其原有的政策立场。

82. 《德班宣言和行动纲领》是经协商一致通过的，2001 年反种族主义、种族歧视、仇外心理和相关的不容忍现象世界会议上该文件没有受到任何反对。参与作出该决定的国家应同那时一样，保持一分诚意。

83. 由于一些国家集团之间相继出现差异和分歧，特设委员会已经召开了多次会议。一个集团坚持无需制定一项新的法律，而应把重点放在改善执行上。另一种观点认为，可以把目标放在改善执行上，但还不够。该集团坚持，需要制定一项议定书，应对新出现的现象。

84. 主席兼报告员强调，根据各方面的发言，种族主义已经在多个言论场合、部门和区域有所抬头。正如本届会议期间所阐释的，种族主义在足球等部门非常明显，国际足球联合会(国际足联)和其他联合会内部已经在讨论如何解决这一问题。

85. 主席兼报告员说，在长期僵局存在的情况下，会议无法继续下去，他请各代表团考虑前进方向，从而在本届会议结束前找到解决办法。他宣布正式会议休会，特设委员会继续举行由区域协调员和感兴趣的代表团参加的非正式会议。

G. 在《消除一切形式种族歧视国际公约》方面的程序性空白

86. 在第 13 次会议上，消除种族歧视委员会委员 Anwar Kemal 就“在《消除一切形式种族歧视国际公约》方面的程序性空白”作了发言。发言及随后讨论情况摘要见附件 I, E 节。

H. 一般讨论和交流意见，第 14 次会议

87. 在第 14 会议上，特设委员会又举行了一次一般讨论和交流意见。主席兼报告员回顾说，需要考虑如何处理新的议题清单，以及应对调查问卷采取何种步骤。

88. 美国代表谈到对《公约》所作保留的问题，以及特设委员会的宗旨和未来工作。对于保留，国家对《公约》作出保留，尤其是对第四条作出保留，在讨论期间受到批评。美国代表指出，根据联合国条约汇编网，大约 20 个国家对第四条作出保留。包括美国在内的广泛国家都作了保留。表达自由与反歧视法律交叉的领域中存在一些难题；美国不会接受对美国《宪法》保护的基本自由进行限制的义务。例如，美国批准过纳粹党在一个犹太人为主的社区进行一次备受争议的游行，但同时也保护其他人对那次游行表示抗议的权利。美国代表强调，对公约的保留一般是允许的。对于特设委员会的宗旨，美国代表强调，要求委员会制定一

项新条约的人权理事会第 3/103 号决定，是通过投票，而不是协商非一致通过的。《德班宣言和行动纲领》第 199 段也并未呼吁制定一项新条约；相反，该段的语言是“制定补充性国际标准”，没有预定文件的类型。特设委员会的工作中包含解决任何空白的权力；但是《德班宣言和行动纲领》并未要求委员会制定新的条约或议定书，而是制定可能表现为其他形式的补充标准。人权理事会最近协商一致通过的决议，如第 21/30 号决议，提到《德班宣言和行动纲领》第 199 段，强调需要制定补充标准。美国不认为需要一份新的、具有法律约束力的文书。然而，美国认为有可能需要其他补充标准，也愿意就标准可能采取的形式展开讨论，改进这些领域的保护工作。

89. 巴西代表指出，委员会在听取了本届会议各项发言之后掌握了许多资料，可以在此基础上继续前进。Kemal 先生在关于程序性空白的简报中强调，例如可以通过制定一项《公约》任择议定书，允许进行国家访问等办法解决程序性空白问题，这对增强《公约》的执行非常重要。巴西代表强调，消除种族歧视委员会已经在多个场合向特设委员会提出这一问题，现在是特设委员会为了产生效果而就该问题采取行动的时候了。

90. 巴基斯坦代表代表伊斯兰合作组织对该建议表示欢迎，特设委员会应该采纳并推动消除种族歧视委员会的建议，并就程序性空白考虑制定一项《公约》的任择议定书。她还欢迎美国代表的立场，现在是讨论补充标准形式的时候了。巴基斯坦强调，消除种族歧视委员会在一般性意见中考虑了实质性空白问题，一般性建议不具有法律约束性，而是具有指导性；补充标准可以吸收一般性建议讨论的问题，把它们纳入一项任择议定书。巴基斯坦代表建议，特设委员会在下届会议期间，按照消除种族歧视委员会一般性建议提到的问题，花时间探讨：(a) 补充标准的形式；(b) 解决程序性空白问题的一项《公约》任择议定书；(c) 解决实质性空白问题的一项《公约》任择议定书。

91. 智利代表说，智利同意推动特设委员会工作的任何提议，支持前面巴西代表所作发言。

92. 南非代表代表非洲集团重申了立场，对《公约》第二、第四和第十四条的保留产生了空白，应该加以解决。她提议，应该请消除种族歧视委员会提供资料，说明保留的情况以及保留如何影响到《公约》的执行。南非代表强调，《公约》有 35 项相关一般性建议，是一份“活的文件”；这表明《公约》存在实质性空白。特设委员会应在下届会议上考虑实质性空白问题。消除种族歧视委员会强调，监督和国家访问是《公约》程序性空白的核心要素，特设委员会也应予考虑；还应请委员会在特设委员会下届会议上就这一问题发表意见。南非代表还建议，应请人权高专办在特设委员会第七届会议上发言，介绍各条约机构机制的比较研究，以及《消除一切形式种族歧视国际公约》的各项程序有何不同，以便解决空白。

93. 欧洲联盟代表重申，欧洲联盟致力于参加关于潜在空白的讨论，并找到建设性的方法，执行解决种族主义问题的现有做法。特设委员会成立以来，欧洲联盟在国家和区域层面取得了很大进步，欧洲联盟立法的发展在某些情况下超越了联合国的框架。在讨论特设委员会的工作方法时，欧洲联盟代表强调，需要以事实为基础前进，而不是以满腔热忱为基础。将来明确任何空白的工作，必须建立在分析和事实基础之上。补充标准不必是一项任择议定书或是一项新的公约；可以是新的指导方针、最佳做法和消除种族歧视委员会的一般性建议。欧盟代表请求拿出《公约》如何不能解决实质性空白的事实；她说，消除种族歧视委员会的委员已经反复指出，委员会对有些国家不履行应尽的报告和执行义务表示遗憾。

94. 主席兼报告员在会议最后指出，看法上存在差异：有的认为，考虑制定补充标准就是要研究补充议定书或公约；有的认为，法律标准除其他外还可以是最佳做法和指导方针等等。消除种族歧视委员会在其发言和报告中请各国审查所做的保留，因此在保留和报告方面明显存在问题，这些都是可以改善《公约》条款执行的领域。还有一个考虑，是解释和基于事实的判断。国家无需同意一项新的法律标准，因为国家掌握着考虑批准文书的决定权。

95. 会议休会，以便区域协调员考虑提出的建议，以及第六届会议可以在哪些领域达成结论或提出建议，并就协商一致和协议的程度提出建议。

四. 通过报告

96. 主席兼报告员于 10 月 17 日上午宣布第 15 次会议开幕。会议休会，以便给委员会更多时间继续非正式讨论，争取达成一致。

97. 会议于当天下午复会。在非正式讨论的基础上，特设委员会同意在委员会第七届会议上讨论下列议题：

(a) 《公约》执行的有关问题；

(一) 普遍加入或批准《公约》的问题；

(二) 分析对几个条款所作保留的数量、范围和原因，以及这些保留的影响；评估第十四条申诉机制的使用情况；

(三) 《公约》报告义务的有关问题、挑战和最佳做法；

(四) 对国家所提建议的执行情况；

(b) 关于《公约》的程序性空白；

(一) 进一步完善消除种族歧视委员会就程序性空白和最佳解决方式的关键要素提出的意见(根据特设委员会的任务授权，对 2007 年研究报告和各方面的发言以及提出的建议开展的后续行动)；

(二) 人权高专办介绍其他条约相关程序的比较研究；

(c) 国家、区域和次区域机制；

(一) 专题小组讨论会，提供关于国家、区域和次区域机制的比较视角；

(d) 发言和讨论：在有效执行《公约》方面，消除种族歧视委员会一般性建议的宗旨和提出建议的程序，以及可能存在的任何缺陷；

(e) 与消除种族歧视委员会的一名或多名委员进行一般性讨论。

98. 特设委员会达成了以下关于种族主义与体育的一般性结论：

(a) 种族主义、种族歧视、仇外心理和相关的不容忍现象正在世界范围内增多。体育界内外，包括在世界各地的足球场上，都看到并有记录在案的这些祸患的恶毒表现；

(b) 足球是一项遍及世界的重要运动项目，能够吸引大量观众，对世界各地数以百万计的人们造成巨大影响；

(c) 国际足球联合会和各国的足球协会都认识到体育中存在种族歧视问题，正在努力打击这一祸患；

(d) 可利用体育，尤其是足球，扩大反歧视信息，支持各国政府和民间社会反对种族主义的重大努力；

(e) 特设委员会鼓励人权理事会请人权高专办，尤其是请反歧视科，在工作中继续把体育中的种族主义列为优先事项，重点关注足球领域。在此方面，委员会认为，应该向人权高专办提供开展种族主义与体育相关活动的资源。

99. 第 15 次会议还通过了第六届会议的报告，但有待核准，并附有一项谅解，各代表团须在 2014 年 10 月 31 日前对自己的发言作出技术性修订，并以书面方式提交秘书处。主席兼报告员请与会者作一般性发言。

100. 巴基斯坦代表代表伊斯兰合作组织，感谢主席兼报告员在本届会议期间的卓越领导和指导。

101. 南非代表代表非洲集团感谢主席兼报告员的领导，认为第六届会议取得的进展，建设性氛围也得到改善。她强调，特设委员会的任务应以《德班行动纲领》第 199 段和人权理事会第 3/103 号决定、第 10/30 号决议为指导，她再次表达了非洲集团的观点，这种指导应该是委员会开展工作的重心。

102. 欧洲联盟代表感谢主席兼报告员为促成建设性氛围和丰富的意见交流做出贡献，说主席兼报告员的长期经验帮助委员会找到了前进方向的共同基础。对于本届会议期间考虑的两项新的议题，即预防和提升认识以及特别措施，欧洲联盟认为，邀请的专家们对这些问题做了全面阐述，没有一位专家表示，还有任何特定领域没有包括在打击种族主义和解决相关问题的现有国际法律框架之内。对于仇外心理的问题，她强调说，正在以各种理由通过不同的反歧视措施打击仇外表现；欧洲联盟仍然认为，委员会就该现象的法律定义开展工作没有新的价值。关

于国家机制问题，依然需要进一步探索这些机制在改进现有国际标准的执行方面的潜力，这将确保其效力。关于程序性空白问题，欧盟代表强调，作为出发点，消除种族歧视委员会能够在现有程序范围内有效开展工作。缔约国合作的程度一直不能令人满意，这就是为什么应该首先改进现有程序的执行情况。欧盟代表还建议，特设委员会向人权理事会提供有关分配给委员会的会议时间长度的考虑意见。展望下一届会议，欧盟代表说，审议那些已经取得一致的议题将使委员会从中受益，世界各地区的国家都可在审议中分享执行现有规范和标准方面的经验。

103. 中国代表对主席兼报告员的聪明才智表示赞赏，感谢特设委员会和秘书处全体同事在过去两周的辛勤工作。中国代表指出，种族主义是一种严重侵犯人权的行为，国际社会正在目睹严重且愈发加重的种族主义、种族歧视、仇外心理和相关的不容忍现象。国际社会应该维护旨在打击种族主义的国际框架，因此应对《德班宣言和行动纲领》和德班审查会议成果表现出明显的政治意愿。应该促进世界不同种族和社会之间的和谐共存。为此，应该拟定新的补充标准，以应对当代形式的种族主义、种族歧视、仇外心理和相关的不容忍现象。敦促特设委员会为此取得实际成果。

104. 巴西代表感谢主席兼报告员发挥的作用，帮助特设委员会协商一致通过本届会议的结论。她对特设委员会的侧重表示乐观，委员会未来的工作将完成人权理事会交付的任务。她尤其欢迎各项结论，以及将就《公约》的程序性空白展开讨论的建议。

105. 美国代表也感谢主席兼报告员带给特设委员会第六届会议的精神和指导，并对所有同事在会议期间努力达成一致意见表示赞赏。

106. 主席兼报告员宣布会议闭幕，他感谢与会者对他的谢意，指出本届会议期间取得的进展是所有代表团辛勤工作的结果。

Annexes

[English only]

Annex I

Summaries of the expert presentations and initial discussions on the agenda topics

A. Summary of the expert presentations and initial discussions on the topic of "Prevention and awareness-raising, including through human rights education and training, in the fight against racism, racial discrimination, xenophobia and related intolerance"

1. At the 2nd meeting on 7 October 2014, the Ad Hoc Committee on the Elaboration of Complementary Standards heard presentations given by Mr. Patrick Gasser, Senior FSR Manager at Union of European Football Associations (UEFA), Mr. Jonas Burgheim, Deputy Head of the United Nations Office on Sport for Development and Peace (UNOSDP), and Mr. Pavel Klymenko, a representative of the Football Associations against Racism in Europe (FARE Network) on "Prevention and awareness-raising, including through human rights education and training, in the fight against racism, racial discrimination, xenophobia and related intolerance" as it related to sport.

2. Mr. Patrick Gasser presented on UEFA's role in the area of racism in sport, stating that football provided a unique platform to address that issue. UEFA was active in anti-racism initiatives in football. It had established a set of sanctions for disciplinary controls, it organized Football Action week every October during Day 3 of the UEFA Champions League and had just held a "Respect Diversity" conference in Rome in September 2014. Its' "No to Racism" campaign included education, campaigning and sanctions. He noted that UEFA's anti-discrimination campaign comprised 54 Euro 2016 qualifiers (national team's competition), 40 games of the Champions League and Europa League (club competition). The following actions took place during those matches: "No to Racism" campaign via announcements on stadium speakers; graphics on giant screens; the broadcasting of television advertisements; messages in match programmes and kids-players escort initiative. In addition, UEFA pursued a number of educational programmes, such as seminars on institutional discrimination, the Captains for Change Initiative and the Women in Football Leadership Programme.

3. UEFA noted that it tackled all forms of discrimination, including racism, gender

discrimination and homophobia. While its jurisdiction was currently limited to UEFA-sponsored events, such as Champions League matches, UEFA also worked at influencing national associations. An important part of UEFA's national approach was the cooperation between the UEFA's control and disciplinary body and the FARE Network in order to monitor football matches and report discriminatory behaviour.

4. Mr. Jonas Burgheim, introduced the work of the Special Adviser on Sport for Development and Peace and the United Nations Office on Sport for Development and Peace and the work of the Intergovernmental Working Group in the area of sport, peace and development. The Group's main activities were the promotion and support of (national) policies and projects as well as policy work in cooperation with UN partners, with reference

to GA resolution A/RES/67/17. He noted that the Human Rights Council had become increasingly active in the field of human rights and sport, noting resolutions A/HRC/RES/13/27, adopted in 2010, A/HRC/RES/26/18 and A/HRC/27/L.14 both adopted in 2014 in that regard. Mr. Burgheim explained that UNOSDP worked with a number of different actors ranging from governments to other United Nations entities to sport federations. The Office was active in policy formulation and was implementing concrete projects under its mandate. UNOSDP was involved in the drafting process of the relevant General Assembly resolutions, and had intervened from time to time to resolve emblematic cases concerning discrimination in sport, notably a recent case concerning the wearing of the head scarf during a women's basketball games. Mr. Burgheim underlined the importance of sport in the area of anti-discrimination, noting that sport was a powerful tool to strengthen social ties and networks, and promote ideals of peace, fraternity, solidarity, non-violence, non-discrimination, tolerance and justice. Sport was a global phenomenon, which had a strong convening power and enjoyed wide-spread popularity, especially among youth. He offered the support of the Office on Sport for Development and Peace and provision of relevant expertise to the Ad Hoc Committee.

5. Mr. Pavel Klymenko, FARE Network, briefed delegates about the work of the network concerning racism and xenophobia in sport, especially football. The FARE network membership, though primarily European, was also growing on a global scale. FARE was currently active in more than forty countries and cooperated with UEFA, FIFA, CONCACAF and others. Among the major issues in football that were addressed by FARE were: the re-emergence of far-right parties and extremist movements in Europe; the continued abuse of ethnic minorities; escalating xenophobia and extremist symbolism at matches; the existence of glass ceilings for minorities in sports administration and coaching; and the fact that national bodies and Governments were slow to respond to such problems. He explained that stronger sanctions from responsible sport associations, as well as national authorities were important to combat racism and xenophobia in sport. It was important that UEFA disciplinary bodies be informed, following an analysis of the probability of risk at certain matches and that independent monitoring of these matches take place. He added that FARE assisted with the collection of data, carrying out a preventative prognostic function.

6. Mr. Klymenko stated that strong leadership was necessary, as there was an obvious need to broaden diversity in sport, in cooperation with affected communities. He added that the system of data collection undertaken by FARE Network allows for prevention, and could be replicated at the national level. It was also important to ensure that legal frameworks were consistent at the national level, as such commonly-agreed principles to assist in addressing discriminatory incidents in sport at the international level could be useful. The cooperation between police forces and sport organizers was critical. In addition, the expert suggested that anti-discrimination campaigns needed to be supported by countries and public authorities should engage with fans and victims.

7. The representative of Morocco while noting that football was at the forefront in addressing discrimination in that sport, inquired about anti-discrimination initiatives in other sports and other regions and whether it would be possible to build on the initiatives taking place in Europe. The European Union welcomed the expert discussion of practical initiatives taking place to combat racism in sport. It also inquired whether there were attempts to expand these initiatives to other regions and other sports, and also asked about other forms of discrimination, such as discrimination against women and persons with disabilities, asking about examples of efficient approaches. It noted that an increased partnership between UN organizations and sport federations was essential to combat discrimination. The Human Rights Council should play a role in that regard. Some sport associations, such as the International Olympic Committee, that had UN observer status, were very active, but, the potential for close cooperation was largely l untapped and remained to be utilized.

8. Mr. Burgheim and Mr. Gasser noted that in addition to football, other sport federations were becoming engaged in the fight against discrimination. With regard to the global coverage of football and racism issues, it was recalled that FIFA was invited to present to the Ad Hoc Committee, but was unable to participate on this occasion due to scheduling constraints. Mr. Klymenko noted that similar problems in other sports such as basketball, cricket and rugby had triggered some responses in other regions, like North America, Latin America and Asia. He told the Committee that Australian sport associations had, for example, developed frameworks for fighting discrimination, in particular homophobia, in team sports. Football associations in other regions were undertaking similar actions such as the independent monitoring used by the FARE network and that the network was open to assisting other regions, if requested. Nevertheless, he added, clearly not all stakeholders were engaged in the fight against racism.

9. The representative of Uruguay noted that racism and violence existed in football in Uruguay, mostly at the club level and noted a chain of responsibilities, which included the need to enhance the awareness of national federations.

10. The representative of the Republic of South Africa asked the experts to comment on the role of sport in healing, remembrance and reconciliation, with regard to racism. Mr. Burgheim recalled that dual aspects and values of sport were reflected in para. 86 and 218 of the DDPA, and noted that the symbolism and practice of sport could have a strong impact on reconciliation. Mr. Gasser noted that UEFA actively pursued reconciliation projects for example, in Eastern Europe or in the Middle East. In his view, the goal is to "wave a new social fabric for the next generation". Mr. Gasser explained that UEFA jurisdiction and its rules and regulations applied to UEFA competitions, and not national leagues, which complicated addressing national instances of racism in football. He did however; note some good practice examples that could share with the organizers of national competitions and national associations. He stated that improved cooperation was required on this and that UEFA was pleased to share its good practices, if asked. He added that UEFA was also involved in sponsoring tobacco-free matches, and public health issues such as childhood obesity.

11. In response to the questions, Mr. Gasser also noted that while racism was a very key component, the UEFA respect diversity approach set a wider consideration than race, as the organization was against any form of discrimination. Both he and Mr. Burgheim also stressed the need to involve local actors and stakeholders in anti-discrimination initiatives, underlining the very important local partnerships with organizations like FARE Network. Mr. Klymenko agreed that it was essential to reach out to all stakeholders involved in sports in order to involve them in anti-discrimination initiatives.

12. A representative of the International Basketball Federation (IBF) stated that perhaps there was no racism per se in sport, as rather sport offered a platform for sentiments which already existed in different societies. While noting the important role to be played by sports federations, such as IBF, he underlined the fact that it was for Member Stares to have regulations in place to prohibit and punish racism.

13. The experts agreed that while sport indeed mirrored society, racism was also present in the sport itself. Large sporting events, unfortunately, could provide giant venues for discrimination, underlining the importance of using these very same venues to combat discrimination through anti-discrimination campaigns and messages. Mr. Gasser explained that the effect of sport as an "opinion maker" could be assessed by the fact that advertisement time during prominent sport events, such as the Champions League matches, sold for millions of Euros.

14. The Chairperson-Rapporteur inquired as to why despite the practical measures being undertaken in the arena of sport, racist and xenophobic incidents continued to occur;

whether it was possible to link issues of awareness-raising to penalties in the initiatives being considered and carried out; and whether contexts like the media or political discourse could provoke these sentiments and violence at sports events. The Chairperson-Rapporteur also asked about whether the experts were involved in the FIFA "good behaviour barometer" and whether they had any comments on its scientific basis and effectiveness. Mr. Gasser replied that according to its own statistics, the number of incidents had increased, however this was a good sign as it meant that monitoring and tracking, in partnership with FARE Network were now more effective and that over time with the efforts undertaken, these figures would start to decrease. He cautioned that there was a limit to what could be asked of federations, as efforts against racism could backfire and fail. Football could not create peace; rather, the primary role was for Governments; federations, national associations and civil society were stakeholders who could assist within their jurisdictions and means. All society must contribute, and success could only come from interplay among all actors. Mr. Klymenko added that as civil society and governing bodies were making some good progress, the actions of football bodies now needed to be matched by the Governments and the United Nations,.

15. At the 3rd meeting on 8 October, the Chairperson of the Working Group of Experts on People of African Descent (WGEPAD), Ms. Mireille Fanon-Mendes France, presented on the topic of "Prevention and awareness-raising, including through human rights education and training, in the fight against racism, racial discrimination, xenophobia and related intolerance." She pointed out that several human rights instruments such as the International Covenant on Economic, Social and Cultural Rights (ICESCR), the International Convention on the Rights of the Child (CRC) and mechanisms such as the Special Rapporteur on Education pointed to the importance of education as a commodity and service to achieve other aims. She indicated Declarations such as the International Decade for Education in the field of human rights proclaimed in 1994 by the General Assembly; the guidelines for national education plans on human rights adopted by the General Assembly in 1996 and proclamation of the "World education program in the field of human rights". Despite such efforts by the international community, she pointed out that education was increasingly being commercialized and driven by the market economy, leading to the creation of social hierarchy.

16. Ms. Fanon-Mendes France provided an overview of the situation of human rights education in France and stated that while vocational training was being promoted and integrated into the business sector, it had left out important elements of human rights education "directed to the full development of the human personality and the sense of dignity" and "for anyone able to play a useful role in a free society" as stipulated in the major human rights conventions. Rather, education and training was seen primarily as a productive investment for businesses. She added that the results were overwhelming elsewhere as well: in Africa, human rights was not a part of the curricula in many countries; in both Europe and the Americas, very few countries had developed action plans in the area of human rights education; and in the Asia and the Pacific, only two countries had developed plans of action in the area. She listed a number of reasons behind the challenge in promoting human rights education such as the lack of political will of States, the lack of resources and specialists in this field, as well as prevailing political instability, corruption, endemic poverty and illiteracy in different countries.

17. Ms. Fanon-Mendes France also described the detrimental impact of racism on the promotion of human rights education, impinging upon universal values of non-discrimination. She gave a number of contemporary examples in French society that pointed to the need to increase awareness-raising not only for children, but adults as well as people from all walks of life, on the importance of receiving human rights education. Given the historical impact of racism, Ms. Fanon-Mendes France suggested that deconstructing the notion of racism was key to addressing the persistence of inequality and domination

related to racial distinctions in pluralistic contemporary societies. In this context, she also suggested that the international community had an important opportunity during the International Decade for People of African Descent to promote human rights education, including through awareness-raising activities to prevent and combat racism, racial discrimination, xenophobia and related intolerance.

18. The delegate of Morocco asked if the construction of memorials could serve as a vector to combat racial discrimination, and asked if education on human trafficking could be seen as an example of a preventive approach. The representative also asked about preventive measures to combat xenophobia. The representative of the European Union delivered a statement strongly condemning all forms of racism, racial discrimination, xenophobia and related intolerance and added that comprehensive legislation had been in place in the EU since 2000 which covered areas such as education, employment, housing, etc. It also protected people of African descent as well as individuals from direct and indirect forms of discrimination. The representative asked the presenter to assess the possibility of attaining progress and tangible results in the promotion of human rights education as part of the upcoming Decade.

19. The representative of Switzerland (on behalf of Argentina, Armenia, Brazil, Chile, Colombia, Japan, Mexico, Switzerland and Uruguay) stated that human rights education played a vital role in combating racism, racial discrimination, xenophobia and related intolerance. These delegations shared the view that the World Programme for Human Rights Education and the United Nations Declaration on Human Rights Education and Training, adopted in December 2011, provided a common framework for action for all relevant actors. It hoped that States would further develop their national action plans and initiatives in this area in order to raise the awareness of the public and shift society toward a more tolerant and respectful one. Schools, especially primary school, are the perfect place to start efforts. As called for by the Durban Declaration and Programme of Action and the outcome documents of the Durban Review Conference, States should be encouraged to take action in keeping with the World Programme for Human Rights Education and the UN Declaration.

20. The delegate of Switzerland asked for the presenters' views on the relationship between existing instruments, and the World Programme for Human Rights Education and whether there was a need for complementary standards. The representative of South Africa said that Paragraph 199 of the DDPA had already identified that there are gaps in the current instruments and asked the presenter for relevant recommendations related to elaborating instruments on prevention and human rights education. The representative of Cuba asked the presenter about ways to ensure increased prevention and awareness-raising on the subject and asked Ms. Fanon-Mendes France about the identification of gaps in the subject area. The representative of the USA stated that while the United States had made strides in combating racial discrimination, the example of the Trayvon Martin incident showed that more work needed to be done. While action needed to be undertaken to address gaps with respect to xenophobia at the international level, new treaties or modifications to existing treaties, were not required. The representative asked the expert if the existing tools were effective and adequate.

21. In response, Ms. Fanon-Mendes France said that it was crucial that the world community viewed the legacy of racism as a shared history not just limited to people of African descent. She noted that it was important effectively to enforce existing international laws and standards. She added that some of the issues which she felt were important to be elaborated upon further included the intersectionality of racial discrimination, xenophobia, the definition of Afrophobia and the phenomenon of racial profiling. All these areas required further definitions clarity and laws relating to these issues needed to be less vague and more enforceable, she added. Besides these three issues, it was important to address the

prevalence of structural racism, in order to reconcile the divisive gap between laws and practices. The representatives of the Republic of South Africa, Brazil and Uruguay expressed appreciation that the presenter had identified the issue of intersectionality in terms of combating racial discrimination.

22. In concluding the 3rd meeting, the Chairperson-Rapporteur said that Committee members thought that the ICERD was not sufficient to address the issue of xenophobia and therefore new standards were required, while others thought that the implementation of existing standards were sufficient to address xenophobia.

23. At the 4th meeting, Mr. Karel Fracapane, of the Section of Health and Global Citizen Education, Education Sector, at UNESCO briefed the Committee on UNESCO's work in the area of "Prevention of awareness-raising, including through human rights education and training, in the fight against racism, racial discrimination, and xenophobia and related intolerance." At UNESCO, he noted that human rights education (HRE) had a vital role in undermining prejudice, shaping attitudes and behaviours of tolerance, and cultivating respect for human rights of all people. He referred to the 1974 Recommendation concerning Education for International Understanding, Cooperation, Peace and Education relating to Human Rights and Fundamental Freedoms, which provided a normative framework for promoting values and principles of human rights in and through education. Member States were invited to report regularly on the implementation of the Recommendation. The 5th consolidated report on the implementation of the Recommendation had been submitted to the General Conference of UNESCO in 2013, and provided a vast overview of how themes and issues such as tolerance, women's rights, child protection, indigenous people's rights, social justice, violence at school, prevention of racism, discrimination and xenophobia, sexuality and health education, gender equality, etc. were addressed in the formal and non-formal educational sectors of the 55 reporting countries, as well as the challenges faced in their national contexts. He added that UNESCO and the OHCHR had jointly developed a self-assessment tool to help countries build their national plans of action on human rights education.

24. Mr. Fracapane explained that UNESCO had also developed a programme on global citizenship education (GCE), which included human rights education. GCE could be delivered through various modes and in all venues, including formal, non-formal and informal education, noting that in most countries, the formal education system would be the main mode of delivery. GCE should be integrated in education systems, either as a stand-alone subject, or as a component of existing programmes and/or the ethos of a learning environment and system.

25. He explained that the UNESCO project Teaching Respect for All (TRA) could be interesting to the Committee's work, as it was the project that created a set of guidelines to counter discrimination. Countries could adapt the content according to their contexts and needs. The project led to the elaboration of educational materials to address challenges such as racism, ethnic discrimination, xenophobia and prejudice based on gender, colour, descent or national, ethnic or religious identities.

26. Mr. Fracapane stated that an integral part of the human rights education work at UNESCO concerned Holocaust remembrance, and he outlined the features of the Education for Holocaust Remembrance project. He explained that UNESCO aimed at making the study of the past and the commemoration of victims meaningful to present generations. He stated that education about the Holocaust, genocide, and mass atrocity presented a good starting point for raising awareness about processes leading to violent conflicts. Analysing past and present examples of mass atrocities, Mr. Fracapane noted, would help raise awareness about the need to promote, preserve and nurture the fundamental rights of individuals. The Education for Holocaust Remembrance project was established to educate about the Holocaust and also combat Holocaust denial. It involved the commemoration of

the International Day in Memory of the Victims of the Holocaust on 27 January each year, as well as educational modules for ministries of educations around the world. It also aims to sensitize States and the general public on Holocaust remembrance and genocide prevention.

27. During the following discussion, the representative of Morocco underlined the importance of education and in particular human rights education. Answering a question posed by Morocco and Brazil, Mr. Fracapane noted that the Teaching Respect for All programme had now reached the end of its pilot phase, and that there were plans to expand the programme to a global level.

28. The representative of the USA inquired about the scope of the programme. Mr. Fracapane explained that the programme addressed various forms of discrimination and could be adapted to a local context – depending on which form of discrimination was dealt with. The programme per se covered among others racism, gender equality, homophobia or discrimination against handicapped people. Different countries made different uses of the programme.

29. Morocco inquired about the distinguishing characteristics of the Global Citizenship Education. Mr. Fracapane explained that the GCE methodology encompassed human rights education but had a broader focus. Global citizenship meant addressing a number of different areas that could not be separated of which a global citizen needed to be aware. Consequently, the programme encompassed sustainable development, health, education, human rights and other areas. The GCE initiative served as an umbrella under which all of those areas came together. The initiative also corresponded to a shift away from purely cognitive education.

30. The representative of Morocco noted the role of memorial processes and asked if UNESCO dealt with other atrocities, such as Rwanda or Srebrenica. Mr. Fracapane stated that the Holocaust was an important starting point to begin a discussion of "where discrimination can lead." Indeed, all instruments to prevent genocide were based on the Holocaust experience. The Holocaust was the universal example of a mass atrocity, and it was also a practical example, as there was a lot of material from which teachers could draw. The UNESCO expert stressed that there was an obvious link between different crimes against humanity. It was important to focus on "the drama of history" rather than one event. The Holocaust could also be used in order to grapple with a country's own history. He explained that Argentina, for example, had reformed school curricula and started to teach about the Holocaust, which allowed teachers to talk about the years spent under the rule of the military regime. Argentina was now proceeding to work on the issue of including crimes against indigenous populations in the curriculum. That was a practical example of how a country can tackle its own history by learning about the history of others.

31. The Chairperson-Rapporteur recalled that UNESCO was pioneering work on human rights education, in particular in the field of anti-racism, from the 1960s. A number of publications had been produced at that time which underlined one human race. The Chairperson-Rapporteur asked Mr. Fracapane to inquire with UNESCO headquarters if the impact of those various educational tools produced by UNESCO had been assessed. It would be important for the Committee to know which educational tools had been successful in the past, and which had failed in order not to repeat mistakes, but build on the achievements.

32. The Republic of South Africa noted that education was essential to anti-discrimination work and also stated that it was crucial to recognize the importance of the past. Three Holocaust memorials existed in South Africa, which were used for teaching purposes and served as a constant warning that silence (while someone was experiencing discrimination) could result in disaster. The representative urged the Committee to take the side of the victims and recalled that during the morning's session, five additional protocols

were discussed. The UNESCO expert was asked if Mr. Fracapane would be able to make any recommendations regarding the gaps in anti-racism law that could be addressed by the Committee.

33. The representative of the United States of America added that he would appreciate recommendations from the expert but did not agree with the South African position that there were gaps in the law. The UNESCO expert replied that, in his view, there was no need for new laws; as such laws were already in place. Countries were asked to report on the implementation of existing laws and it had become clear that there was a gap between the legal framework and the actual practice on the ground. The expert recommended that countries and stakeholders engage with UN system and agencies more intensively in order to develop programmes and ensure the implementation of the legal framework at all levels.

34. In response to the question of South Africa, Mr. Fracapane noted that discrimination resulted from a variety of factors. There was; however, a real gap between the legal framework and its implementation. One of the reasons was a lack of capacity and capacity-building measures, and a lack of focus by the international community. Regional and local communities, needed to participate in capacity-building – in particular when it came to human rights education. An important factor for future success would be to address informal education.

B. Summary of the expert presentations and initial discussions on the topic of "Special measures, including affirmative or positive measures, strategies or actions, to prevent, combat and eradicate all forms and manifestations of racism, racial discrimination, xenophobia and related intolerance"

35. In the afternoon of 9 October, the Ad Hoc Committee commenced a discussion on the topic of "Special measures, including affirmative or positive measures, strategies or actions, to prevent, combat and eradicate all forms and manifestations of racism, racial discrimination, xenophobia and related intolerance". This 6th meeting was chaired, exceptionally, by Mr. Ephrem B. Hidug of the Permanent Mission of Ethiopia to the United Nations Office at Geneva.

36. The presentation by the expert, Mr. Carlos Vazquez, a member of the CERD, was focused on the treatment of "special measures" in the Convention for the Elimination of All Forms of Racial Discrimination, as well as in the practice of the Committee on the Elimination of Racial Discrimination. The Committee's practice is reflected in its Concluding Observations and in its General Recommendation No. 32, on "The meaning and scope of special measures in the Convention on the Elimination of Racial Discrimination." In theory, the Committee might also have occasion to address special measures in individual communications against States parties that have opted into this procedure under article 14 of the Convention. However, to date the Committee has not addressed, in its decisions on individual communications, whether a State's decision to employ special measures, or its failure to do so, amounts to a breach of the Convention.

37. He clarified that the Convention uses the term "special measures" to describe a concept that is sometimes referred to by other terms, such as "affirmative action," "affirmative measures," or "positive measures," however, the meaning of these terms in certain legal systems can be different from the meaning in the Convention. "Special measures" is a broader term that includes, for example, programmes that draw distinctions along racial or ethnic grounds in order to benefit disadvantaged groups, and also programmes that seek to improve the position of disadvantaged groups by other means. He noted that although the CERD occasionally used these other terms, especially "affirmative

action," its preference, for the purpose of clarity, was to apply the wording of the Convention. He added that the one term that the Committee definitively rejected was the term "positive discrimination." This phrase, the Committee has said, is a contradiction in terms, since all racial discrimination is prohibited by the Convention and therefore cannot be "positive." Mr. Vazquez continued that the term "reverse discrimination" is more complicated and should be used cautiously, if at all. A measure pursued by a State party could in theory amount to reverse discrimination – if it failed to satisfy the conditions set forth in the Convention for using special measures. If a measure does satisfy the Convention's conditions, then the measure does not amount to discrimination, and hence is not reverse discrimination.

38. With regard to the text of the Convention, special measures are mentioned in two provisions: article 1, section 4, and article 2, section 2. Article 1 defines racial discrimination, which is prohibited by the Convention, and section 4 makes clear that special measures ordinarily do not constitute prohibited racial discrimination. Specifically, article 1, section 4 provides that "Special measures taken for the sole purpose of securing adequate advancement of certain racial or ethnic groups or individuals requiring such protection as may be necessary in order to ensure such groups or individuals equal enjoyment or exercise of human rights and fundamental freedoms shall not be deemed racial discrimination, provided, however, that such measures do not, as a consequence, lead to the maintenance of separate rights for different racial groups and that they shall not be continued after the objectives for which they were taken have been achieved."

39. Article 1, section 4 should be understood as a clarification of the definition of "racial discrimination" in article 1, section 1. Section 1 defines racial discrimination as "distinction[s], exclusion[s], restriction[s] or preference[s] based on race, colour, descent, or national or ethnic origin." Because special measures sometimes take the form of "preferences" based on race or ethnicity, they might be thought to be barred by article 1, section 1. Section 4, however, makes it clear that such preferences are not barred if they are adopted to secure the adequate advancement of groups requiring such protection, and if other conditions are satisfied. One might think that section 4 is an exception to the broad prohibition of racial discrimination. The Committee, however, views section 4 as instead a clarification of the meaning of section 1. Article 1, section 1 does not prohibit all preferences, but only those preferences "which ha[ve] the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life." The Committee elaborated on this definition in its General Recommendation 14, in which it observed that "differentiation of treatment will not constitute discrimination if the criteria for such differentiation, judged against the objectives and purposes of the Convention, are legitimate." Article 1, section 4 should be understood to clarify that preferences adopted for the purpose of securing the advancement of disadvantaged groups serve a legitimate purpose, and, if they meet the other conditions set forth in Article 1, section 4, they do not violate the Convention.

40. Mr. Vasquez explained the conditions that determine the validity of special measures. Article 1, section 4 refers to special measures taken for the "sole purpose" of securing the advancement of disadvantaged groups. According to the Committee's General Recommendation 32, the "sole purpose" language "limits the scope of acceptable motivations for special measures within the terms of the Convention." This raises potentially difficult questions when racial preferences are adopted for multiple purposes. For example, in some countries, racial preferences in university admissions are justified on the ground that it is important for the educational mission to expose students to a diverse range of viewpoints. The achievement of diversity would appear to be a motivation distinct from securing the advancement of disadvantaged groups. Do racial preferences adopted for the purpose of achieving diversity run afoul of the limitations of article 1, section 4,

because they are not taken for the "sole purpose" of securing the advancement of disadvantaged groups? The Committee's General Recommendation does not address this point, but the Committee's practice does not suggest that special measures are problematic because they serve this additional purpose. This may be an example of the Committee's interpretation of the Convention as a "living instrument." As measures rarely have a single purpose, a literal approach to the "sole purpose" criterion is therefore unrealistic.

41. Article 1, section 4 also provides that special measures must be adopted for the purpose of securing "adequate advancement" for disadvantaged groups. The General Recommendation indicates that this term refers to "goal directed programmes which have the objective of alleviating and remedying disparities in the enjoyment of human rights and fundamental freedoms affecting particular groups and individuals, protecting them from discrimination." These include "persistent or structural disparities and de facto inequalities were resulting from" historical circumstances. As there is a danger that communities themselves may not agree that special measures are necessary to secure their advancement, the General Recommendation provides that special measures should be designed and implemented on the basis of prior consultation with affected communities and the active participation of such communities. Special measures should not be imposed on disadvantaged groups against their wishes. He also noted also that Recommendation requires consultation with "affected communities," not just the beneficiaries of the special measures, representatives of races or ethnicities that would not be benefited by the special measure.

42. Article 1, section 4 imposes two additional conditions for the validity of special measures: they must be temporary and not lead to the maintenance of separate rights for different racial groups. This is in contrast to article 2(2) which provides that special measures "shall in no case entail as a consequence the maintenance of unequal or separate rights for different racial groups after the objectives for which they were taken have been achieved." Article 1(4) imposes two separate requirements – the measures must not maintain separate rights for different racial groups and they must be temporary; article 2(2) imposes one requirement – the wording indicates that measures may establish separate rights for different racial groups as long as they are temporary. The General Recommendation does not discuss the difference in language. In discussing article 1(4), the Recommendation interprets it to impose two separate requirements (that the measures not establish separate rights for different racial groups and that they be temporary). In discussing article 2(2), the Recommendation says that the limitations it imposes are "in essence the same" as those imposed by article 1(4). The General Recommendation does go on to say, however, that the obligation not to maintain special rights for different racial groups in "narrowly drawn" insofar as it refers only to "racial" groups, and thus and calls to mind the practice of Apartheid in South Africa.

43. The General Recommendation draws an important distinction between special measures, which must be temporary, and the permanent rights to which certain minorities might be entitled. For example, minorities have the right to enjoy their own culture, profess and practice their own religion and use their own language, and indigenous peoples have the right to use land traditionally occupied by them. Similarly, women have rights to non-identical treatment based on biological differences, such as maternity leave. These permanent rights should be distinguished from special measures, which are to be used only temporarily. The Recommendation also makes clear that these permanent rights recognized by international human rights law are not "special rights" within the meaning of article 1(4).

44. He noted that CERD practice on special measures has primarily been focused on urging States parties to put such measures in place more frequently. Although the Committee's Concluding Observations have at times expressed concern over special measures that have remained in place longer than necessary, or otherwise raise issues under

article 1(4), it is much more common for the Committee to express concern about a State party's failure to take special measures where they seem warranted. And the Committee's Concluding Observations rarely express views about the appropriateness of particular types of special measures as compared to others.

45. Mr. Vazquez summarized the nature of States parties' obligations under the Convention: Article 2(2), as the General Recommendation makes clear, means that it is mandatory – not discretionary – for States parties to employ special measures "when circumstances so warrant." States parties must initially determine whether the circumstances warrant special measures, and this is to be done by assessing whether there is a disparate enjoyment of human rights by persons or groups within the State party on the basis of race, colour, descent, or national or ethnic origin, and an ensuing need to correct such imbalance. This assessment is to be made on the basis of disaggregated data. Once the need for special measures has been determined, the State party must choose among the various types of special measures that might conceivably be employed. This determination must, inevitably, be sensitive to the particular situation of the various racial and ethnic groups in the State party, and must be done in consultation with such groups and other "affected parties." As the General Recommendation notes, the Convention must be interpreted in a context-sensitive manner, and "context-sensitive interpretation . . . includes taking into account the particular circumstances of States parties without prejudice to the universal quality of the norms of the Convention." The Committee recognizes that "[t]he nature of the Convention and the broad scope of the Convention's provisions imply that . . . the conscientious application of Convention principles will produce variations in outcome among States parties," although it has also stressed that "such variations must be fully justifiable in light of the principles of the Convention." In the end, the selection of special measures inevitably requires sensitive judgments by the State parties, but these judgments are to be exercised within the parameters and in compliance with the requirements of the Convention, as elaborated in General Recommendation 32.

46. Brazil speaking (on behalf of Argentina, Armenia, Brazil, Chile, Colombia, Mexico, Switzerland and Uruguay) stated that special measures, including affirmative or positive action, can be an important tool to prevent and eliminate racism, racial discrimination, xenophobia and related intolerance. The importance of special measures, and its framework, can be found in both the ICERD, in its articles 1(4) and 2, and in the DDPA and in the outcome of its Review Conference. The DDPA recognizes the necessity for special measures or positive actions for the victims of racism, racial discrimination, xenophobia and related intolerance in order to promote their full integration into society. Those measures for effective action, including social measures, should aim at correcting the conditions that impair the enjoyment of rights and the introduction of special measures to encourage equal participation of all racial and cultural, linguistic and religious groups in all sectors of society and to bring all onto an equal footing. Therefore, special measures and affirmative action can not only have corrective functions, but also an important preventive role. The delegation asked Mr. Vazquez whether he considered that there are gaps in the international framework that would require additional international norms on special measures, and invited him to share good practices in the area.

47. Mr. Hidug, in his role as Chairperson-Rapporteur, asked for Mr. Vazquez's views on why, given the mandatory nature of article 2(2) of the ICERD, it was only being implemented by some countries.

48. Mr. Vazquez expressed his agreement at the preventative, as well as corrective, function of special measures. He explained that the Committee considers that CERD is flexible enough to address any gaps in the international framework, and therefore a new instrument on standard on special measures, was not really needed. The Convention was detailed enough in its provisions for special measures and the Committee has developed

further guidance through General Recommendation 32, which is sufficient. Special measures are context specific and it is difficult to provide more detailed guidance than that provided in General Recommendation 32. The CERD could, if required, revisit the recommendation to add further details in the future.

49. In his personal view, a survey of the special measures undertaken by states around the world could be interesting. He stated that a significant number of States had taken special measures in different contexts such as in the area of employment, election to political office etc., adding that it was inaccurate to state that few States had implemented them. Although States report to CERD on special measures, due to word limit of the periodic report it was not possible to provide a lot of detail on special measures taken. Information about the type, context and nature of measures, would allow the Committee to analyse and compile best practices and provide States with further guidance on what available options and novel approaches which had not occurred to them.

50. The delegate of Mexico recalled that legislative measures were undertaken as part of national reforms in June 2014, including exclusion, inclusion and positive measures. The measures addressed physical access and communication barriers, and awareness-raising activities and training. Mexico is also taking steps to remove barriers through the distribution of documents in indigenous languages, and there is a policy to combat discrimination such as in the area of homophobia. Special temporary measures have been introduced for groups that face discrimination, particularly people of African descent and indigenous peoples. National councils to prevent discrimination are tasked with gathering information about the work of different institutions in this area.

51. The European Union underlined that ICERD is an important instrument and it reiterated its concern at delays in reporting under the Convention. The delegate inquired about how many states have recognized the communications procedure of CERD under article 14, and inquired whether any new General Recommendations were planned by CERD.

52. Mr. Vazquez appreciated the information provided about the new legislation in Mexico and the areas where action was being taken to ensure disadvantaged communities are not left behind. With regard to inclusion measures, he distinguished between permanent rights held by groups and special temporary measures. He added that special measures are dealt with by other committees and other conventions, and in those contexts special measures may take different forms.

53. In response to the EU, he noted that reporting in some cases is delayed and measures are being taken to address this. Regarding the number of States which have opted into the communications procedure there are approximately 55 states, which is a third of States parties and he encouraged more States to join. General Recommendation 35 on combatting racial hate speech was adopted and released in August 2013. During the April session in 2015, CERD will consider new topics for General Recommendations. CERD is in the process of looking at working methods with an aim to harmonize these with those of other treaty bodies and one of the areas to be harmonized concerns the adoption of General Recommendations.

54. Mexico provided clarification on its previous intervention regarding law reform and special measures. Only the last measure mentioned in her intervention is a temporary special measure.

55. At the 7th meeting on 10 October, Mr. Theodore Shaw, Professor and Director of the Center for Civil Rights of the Chapel Hill School of Law, University of North Carolina presented on the topic: Special Measures, including affirmative or positive measures, strategies or actions, to prevent, combat and eradicate all forms and manifestations of racism, racial discrimination, xenophobia and related intolerance. Mr. Shaw provided some

historical context and background to the issue recalling to the transatlantic slave trade and subsequent slavery in the USA, as well as the "Jim Crow" legal era which continued to exist in many parts of the country until the 1960s. He said that affirmative action began in the 1960s as a remedial imperative to address the effects of 350 years of segregation and slavery which had to be viewed as a continuum.

56. He also said that since its introduction in the United States, affirmative action in the education sector had faced repeated backlash in the form of lawsuits alleging "reverse discrimination". He cited the example of the case of *DeFunis v. Odegaard* (1974) concerning Marco DeFunis, an applicant to the University of Washington Law School, who alleged that he was discriminated against when he was not admitted although black and Latino minority group members had been accepted into the university. The case was ultimately found to be moot in 1974, as DeFunis had been provisionally admitted while the case was pending. He also gave the example of the *Board of Regents of the University of California v. Bakke* (1978), in which Mr. Bakke, an applicant to medical school had been rejected, while applicants from minority groups had been accepted. This landmark decision by the Supreme Court of the US upheld affirmative action but ruled that specific quotas were impermissible. More recently,, in 2003 the United States Supreme Court dealt with the case of *Grutter v. Bollinger* in which it also upheld the affirmative action policy of the University of Michigan Mr. Shaw added that in the United States these decisions were taken on the basis of a diversity rationale, rather than a remedial rationale. He provided different examples of the challenges in implementing affirmative action in the employment sector and stated that while the aim had been to achieve a country in which race did not subordinate people; there has been an ongoing struggle to fight against colour blindness to address the impact of racial discrimination.

57. The representative of Uruguay provided information about ongoing country initiatives to promote affirmative action in the education system for people of African descent, and asked about ways to continue to enforce and implement affirmative action to bring about lasting change in the future, given its temporary nature. The representative of Egypt asked the presenter what he considered to be the most appropriate steps at the international and the national levels to address gaps between existing laws and their enforcement. The delegate of Morocco asked for the presenter's view on the effectiveness of the justice system to address racism and best practices from US experience that could be replicated.. The representative of the Republic of South Africa provided information on the country's experience in applying affirmative action through the introduction of the Employment Equity Act and asked the presenter for reasons as to why there had always been a strong reaction to affirmative action policies and measures. Brazil highlighted its positive experience with the introduction of affirmative action, and asked the presenter for reasons behind the backlash against affirmative action. The representative of the United States of America expressed the Government's commitment to address disparities in the society including through federal measures, and requested the presenter to shed more light on his work with the National Association for the Advancement of Colored People (NAACP) Legal Defense Fund.

58. In response, Mr. Shaw emphasized that education was an engine of opportunity and that backlash in this sector was faced primarily through racial discrimination against black Americans. He observed that while several types of scholarships existed in the American educational system for people from different nationalities, groups and those with different interests, the policies most under attack were those opportunities availed to racial minorities. He emphasized that laws themselves were insufficient, and, based on his experience, there needed to be a broader embracing of the principle of anti-discrimination. Given the present day challenges faced by African-Americans as evidenced in the recent situation in Ferguson, Missouri, he stated that there remained significant challenges and problems to be addressed, in spite of there being legislation in place. He stated that the fight against racial

discrimination could not be won by lawyers but rather by politicians, and gave the example of Gandhi and Mandela, who despite being lawyers, were politicians who believed in equality and justice. According to Mr. Shaw, the backlash against affirmative action measures has been due to racial discrimination and the inability of people to deal with a long legacy of racism and to speak about it, by trying to leave it behind, including by ignoring what is an unpleasant part of a country's history. It is also a challenge to maintain affirmative action policies and programmes, as opportunity was often seen as a zero sum game. In conclusion, he gave a brief account of how the NAACP Legal Defense Fund had become the model for legal defence groups worldwide from its early days in the fight against racial discrimination.

59. At the 8th meeting on 10 October, Ms. Elisa Alonso Monçores, Researcher at the Instituto de Economia/UFRJ in Brazil gave a presentation on "Affirmative actions in Brazil: Recent experience and social indicators". The expert noted that her data stemmed from LAESER, a research group of the Federal University of Rio de Janeiro (UFRJ), working on race relations in Brazil (www.laeser.ie.ufrj.br).

60. She noted that Brazil had the second largest population of people of African descent in the world (after Nigeria) and the biggest "Afrodescendiente" population in the Americas. In the 2010 national census, 96.8 million Brazilians self-declared themselves as "Afrodescendientes", representing 50,7 per cent of the total population. Brazil's affirmative action policies were focused on the educational sector and access to public universities. She noted that over a period of time, the country's illiteracy rate had steadily declined; nevertheless, the comparative rates of illiteracy for "Afrodescendants" and whites remained highly unequal. In recent decades, there had been a pronounced increase in the average years of education for both people of African descent and the white population.

61. Ms. Monçores pointed out that generally there were more white students in private and public universities and at private schools. Private schools were considered of higher quality, whereas public universities were perceived as offering the best education. In 2013, statistics highlighted that 89.3 per cent of young "Afrodescendants" (between 18-24) were not attending university.

62. The expert explained that Law No. 12,711/2012, adopted in August of 2012 was the basis for affirmative action policies in Brazil. She noted that fifty per cent of all student slots at the public universities were reserved for people of African descent, and the remaining fifty per cent were subject to competition. This corresponded to the latest census of the Brazilian Institute of Geography and Statistics (IBGE). She added that as yet there was no affirmative action law with respect to the labour market. Draft Law 6783/13 had passed the House of Representatives on March 26th 2014 and was still pending in the Senate, reserving twenty per cent of public service posts for people of African descent. This Law would not apply to the legislature and the judiciary.

63. During the interactive discussion, the representative of Italy noted that the data presented by the expert did not indicate specific reasons for discrimination, as the discrimination and inequalities in access to university education could be attributed to race as well as to other socio-economic factors. The delegate inquired whether affirmative action policies of the State applied to poor white people in Brazil, and highlighted the problems faced by some European countries in the collection of disaggregated data.

64. Mexico requested data on the number of people of African descent and the delegate of the Republic of South Africa inquired about how long the affirmative action measures taken by Brazil would be kept in place, and what event or development had triggered the initiation of the affirmative action policies.

65. Responding to a question from the delegate of the Republic of South Africa about the efficiency of affirmative action, the expert noted that the impact of affirmative action

had not yet been assessed in Brazil. She explained that graduates that had entered through the quota system attained lesser results than their peers upon entering university. During the course of their studies, they would often adapt to the new environment and would graduate in greater numbers compared to other students. In general, she noted that it was important to promote education. A smaller number of people of African descent graduated from high school; therefore, fewer people of African descent could attend university. However, as society underwent changes and the level of education among the general population (which was to a large degree of African descent) increased, that problem would decrease. She added that the overall efficiency of affirmative action would be studied during the next ten years.

66. The representative of Morocco asked about lessons learned which could be replicated elsewhere and inquired about why affirmative action policies focused only on people of African descent, while it appeared that indigenous populations were not included. Ms. Monçores noted that the indigenous population was much smaller, whereas people of African descent represented more than half of the country's population. Her research group studied people of African descent, as research issues concerning the indigenous population were "complex". She noted that it was not common in Brazil to integrate the study of both groups and that quotas were introduced for both groups.

67. Answering a question from the South African representative, the expert provided some context and noted that plans for introducing affirmative action policies had commenced in 2003. She explained that affirmative action was supported by the strong "Black movement" which had been mobilized in the lead up to the Durban Word Conference against Racism. The delegate added that Brazil was never a true racial democracy, and that indeed strong racism existed not far below the surface. The implementation of affirmative action policies had resulted in more open discussions about race and racism in Brazilian society.

68. The Brazilian representative added that the history of racism in Brazil was characterized by invisibility. In the 1980s, the country still reported to CERD that there was no racism in Brazil. That attitude had changed after the process of democratization. People of African descent were very well organized and Brazil featured a Ministry for Racial Equality. The representative noted that the Durban World Conference against Racism and the subsequent processes were essential to the developments in the country. Some questions were complicated, such as how to correctly address the linkages between socio-economic status and race.

69. The delegate of Mexico inquired about the labour market, and the expert noted that some federal states had introduced quotas for public service – but that was not yet the case at the federal level. Currently, more white people served in the public service than people of African descent (approximately 60 per cent of the public service consists of white civil servants).

70. The representative of the Bolivarian Republic of Venezuela noted that similar problems existed in other countries of the region, which shared a similar history and same context pertaining to racism. He noted that the mandate of the Working Group of Experts on People of African Descent had been focused on precisely those issues noted in the expert's presentation. He mentioned that his country supported the policies presented by the expert. The representative of Uruguay also noted that the situation was similar in Uruguay. Affirmative action also existed, though only ten per cent of the population were of African descent. The law in Uruguay focused more on public service than the educational sector. The two countries were however, exchanging information regarding their experiences in that area. The representative also asked if Brazil had encountered the problem of "filling quotas". The expert replied that that was sometimes the case. Certain quotas existed (such

as a 30 per cent quota for female parliamentarians), but there were not enough women parliamentarians to fill that quota.

71. The Chairperson-Rapporteur noted that according to the expert's presentation, students who were disadvantaged in early life could do well later in life. He inquired if that meant that they would also have better employment opportunities and if so, were they consequently better integrated in society. The Chairperson-Rapporteur also asked if some structural analysis had been undertaken and if the question of class and race been looked at in order to create upward mobility in Brazilian society. The expert answered that the integration of those who had benefitted from special measures in society had yet to been studied. She expressed some caution about the assessing the intersection between class and race, in terms of an economic analysis. There was a strong linkage between various factors that could lead to discrimination, such as social class, economic status and race. She underlined the fact that all aspects were of importance and that economic models had difficulties isolating for the impact of these various social factors. Professor Shaw added that race and class were indeed very often interlinked, noting that inequality was on the rise, on the global level as well as within certain countries. He stated that the increasing inequality had already reached crisis proportions tearing apart the social fabric in some countries.

72. The representative of Ghana pointed out that many historical and current conflicts were not fought among people of different racial backgrounds, but that conflicts were regularly sustained by the perception of superiority of one or both sides to the conflict. The representative noted that respect for the individual must always be the cornerstone of any policy. He also expressed support for the work of the Committee in contributing to the topic of racism and sport.

73. On 13 October, during the 9th meeting, Ms. Dimitrina Petrova, Executive Director of the Equal Rights Trust gave a presentation on Special Measures, including affirmative or positive measures, strategies or actions, to prevent, combat and eradicate all forms and manifestations of racism, racial discrimination, xenophobia and related intolerance.

74. She introduced the concept of a unified human rights framework on equality which offered a holistic approach, recognizing both the uniqueness of each different type of inequality and the overarching aspects of different inequalities. The unified framework brought together: a) types of inequalities based on different grounds, such as race, gender, religion, nationality, disability, sexual orientation and gender identity, among others b) types of inequalities in different areas of civil, political, social, cultural and economic life, including employment, education and the provision of goods and services and c) status inequalities and socio-economic inequalities. This conceptual framework was expressed in the Declaration of Principles on Equality adopted at an expert meeting in 2008 and subsequently endorsed by various experts and activists on equality and human rights from around the world.

75. She explained that, in her view, the synonymous concepts of special measures, affirmative action and positive action should be seen in the light of the modern understanding of non-discrimination and equality as legal rights. As such, positive action is a necessary element of the right to equality. But it was very important to note the growing trend of interpreting "special measures" as part of, rather than an exception to, equal treatment. For example, the Committee on the Elimination of Discrimination against Women (CEDAW) in its General Recommendation No. 25 stated that under the Convention, temporary special measures "should target discriminatory dimensions of past and current societal and cultural contexts which impede women's enjoyment of their human rights and fundamental freedoms." The notion of positive action should be similarly applied in the context of the rights to race-based equality and non-discrimination protected by the ICERD. The CERD General Recommendation No. 32 went a long way toward defining

special measures as mandatory in a substantive equality paradigm, departing decisively from interpreting them as a supplementary afterthought. Having identified patterns of substantive inequality, including on the grounds of race, ethnicity and nationality, States should be required to take positive action measures to address them.

76. Special measures could be classified into different categories according to the purpose, or the compelling public interest they satisfy. She outlined different typologies of special measures identified both in the academic literature and in legislation. Professor Christopher McCrudden had identified five different types of affirmative action: (i) eradication of practices that have the effect of disadvantaging a particular group, such as a word-of-mouth hiring; (ii) policies that seek to increase the proportion of members of a previously excluded or under-represented group; (iii) outreach programmes, designed to attract members of under-represented groups; (iv) preferential treatment, or reverse discrimination in favour of a certain group; (v) redefining merit by altering the qualifications necessary for a post so as to encourage recruitment or promotion of members of a disadvantaged group. It should be noted, however, that "reverse discrimination" was increasingly excluded from the scope of legitimate special measures, as was the synonymous "positive discrimination" – justly described by CERD as a contradiction in terms.

77. She added that the countries which have significant experience in applying positive action measures included Canada, South Africa, some of the Member States of the European Union, the USA, and India. But there were also cautionary tales, such as Malaysian experience, where measures seemingly developed into entrenched privileges.

78. She recommended that: (i) UN mandate holders should engage in an effort to consolidate, harmonize and update the international human rights framework related to equality, in order to position special measures/positive action in the new, holistic legal framework, which was capable of reflecting both the overarching aspects and the "inter-sectionalities" of racism, racial discrimination, xenophobia and related intolerance with all other forms of bias and discrimination; and (ii) UN mandate holders, particularly the treaty bodies, should issue interpretative guidance to construe the denial of special measures as a form of discrimination, by analogy with the denial of reasonable accommodation in CRPD. The lack of positive action (also known as affirmative action or special measures) to overcome past disadvantage and accelerate progress towards equality of particular groups could constitute a violation of the right to non-discrimination or the right to equality. She explained that was not a new standard, but simply a corollary of the recognition of special measures as a necessary part of the right to non-discrimination, and of their mandatory character (the expert referenced CERD General Recommendation 32, paras. 20 and 30). Positive action measures were most commonly used to promote equality within the ambit of socio-economic rights such as, for example, education, work, housing or health. Examples included the recognition of special protection and special consideration to the needs of the Roma due to their different lifestyle (*Orsus v. Croatia*, European Court of Human Rights).

79. She noted that, in her view there were no significant substantive nor procedural gaps in the international human rights legal system related to special measures. Rather there was: (i) a need to update, harmonise and unify the international legal framework related to equality, and (ii) a need to fill certain interpretative gaps, and provide guidance on certain aspects of "special measures", including through explicit recognition that the denial of special measures, where they were mandatory (in order to realise the rights to non-discrimination and equality) constituted a form of discrimination.

80. During the discussion that followed, Brazil recalled efforts in Latin America to consolidate the laws on discrimination. Countries aimed, under the OAS umbrella, at drafting one convention that would encompass all forms of discrimination. As there was no

consensus on some questions, two conventions were drafted and adopted as a solution. The representative of Brazil also asked if new norms on special measures were needed.

81. Ms. Petrova responded that while she saw no substantive or procedural gaps in the existing legal framework, there may be a need for further interpretation on how special measures and equality were related. Such an "interpretation gap" could be addressed in the form of another general recommendation by the CERD.

82. The representative of Morocco asked if the existing analysis of special measures in a number of countries could be compiled in one study. The expert noted that such compilation was possible, however its value would be hard to assess, as there was no rigorous quantitative assessment on the efficiency of special measures. That lack of quantitative assessment was also due to a lack of reliable statistics and in many regions, statistics on ethnicity were very controversial. There were also issues concerning data protection, as well as the quality of existing statistics was at doubt. Countries often used self-identification in order to determine ethnicity, which could be very insufficient; and it was not clear if data were comparable across borders.

83. Asked about her personal assessment of quotas, Ms. Petrova noted that she was not in support of them, as they often created more problems than benefits. In her view, it was advisable to empower people, through outreach programmes, clear targeting initiatives, mainstreaming and other measures, than to introduce quotas.

84. The representative of the United States noted that special measures needed to fit the local context and that consequently a certain amount of State discretion was required. Ms. Petrova replied that the best bodies for assessing the validity of special measures were the courts. It should be kept in mind that special measures were always purpose-driven, and designed for a specific purpose.

85. The Chairperson-Rapporteur noted that in many countries the group facing discrimination was in the minority; however, there were other countries such as South Africa or Brazil were those that were subject to discrimination were the majority of the population. The expert noted that the key issue was that of disadvantage, rather than the proportion of the population. With the development of equality law, the empowerment of the weakest had increasingly become the purpose of this law. In her view, the trend was moving in the direction of transformative equality and protection of the weaker members of society.

C. Summary of the expert presentation and initial discussion on the topic of "Establishment, designation or maintaining of national mechanisms with competences to protect against and prevent all forms and manifestations of racism, racial discrimination, xenophobia and related intolerance"

86. At the 10th meeting on 13 October, Mr. Pedro Mouratian, President, Instituto Nacional contra la Discriminación, la Xenofobia y el Racismo (INADI), Argentina, briefed the Committee on the work of his organization under the topic of "National mechanisms". Mr. Mouratian noted that the institute was one of few specialized bodies in the region of Latin America. It was founded in 1995 pursuant to the Law on National Institution against Racism. He added that INADI's history is strongly linked to the Durban process, during which Argentina committed to drawing up a national plan against racism. Since the inception of that plan, equality had become a cross-cutting policy issue in Argentina.

87. He explained that INADI was a decentralized organization, present in all of Argentina's provinces and had a staff of 470 civil servants working full time.. It was

governed by an advisory body (10 representatives of civil society) and a board (that also included representatives of the States and civil society). While the president and the vice president were nominated by parliament, INADI, although a state institution enjoyed considerable independence and had its own budget. Working under the Human Rights Secretariat, the institute focused on two issues: i) the substantive matters of discrimination; and ii) the receipt of complaints, that were followed up by the delivery of opinions. He underscored the fact that INADI had cross-cutting mandate – addressing many areas of life.

88. The goal of INADI was to change societal behaviour which has a human rights or discriminatory approach and that its substantive work was directed at the promotion of equality. The institute cooperated closely with civil society organizations that fought discrimination and it also coordinated civil society networks. The institute also monitored legislative proposals. He cited three laws as particularly noteworthy: The 2004 Migration Act, the Equal Marriage Act, and the General Equality Act.

89. He underscored the fact that every kind of discrimination was considered a State matter in Argentina, and that INADI was consulted on bills before their submission to Parliament. He also highlighted INADI's work in the area of awareness-raising, including specialized materials which integrated non-discriminatory practices. Mr. Mouratian also commented on the issue of invisibility of people of African descent in Argentina, noting that these communities although historically large in number, now were a much smaller population, often hidden from view. He stated that the national institution for statistics and the national census were gathering statistics and those measures were aimed at awareness-raising and to reaching these communities which had been victims of serious discrimination over the centuries.

90. Mr. Mouratian told delegates that one of the problematic issues in Argentina was discrimination in football and that INADI was targeting it by observing football matches. INADI also conducted awareness-raising campaigns together with UNICEF and cooperated with sports journalists to spread anti-discrimination messages. He explained that this work was proving successful. In 2010, one third of all football matches had to be suspended due to discrimination and xenophobia, while now only one of six matches was suspended.

91. During the discussion which followed, Pakistan inquired whether guidelines or complementary standards at the international level were required to achieve uniformity of objectives so that countries had a standard by which to assess their national situation. Mr. Mouratian noted that each country was different, that there were many laws already in place, and that was important to use those laws and conventions in order to promote national legislation.

92. Further to Mr. Mouratian's presentation, the European Union underscored its full commitment to the rights of LGBT persons and recognized the important role played by civil society in this regard. The delegate further stressed the importance of national mechanisms and inquired if guidelines for setting up new national mechanisms would be useful. Mr. Mouratian agreed that national mechanisms were of importance, acknowledged the UN's role in assisting the creation of such institutions and national plans, and also emphasised the importance of networking among those institutions to create synergies and exchange experiences.

93. Asked about the role of the media by the European Union, Mr. Mouratian noted that the media played a key role in awareness-raising; however, media outlets could also create stigmatization and confirm societal prejudices. INADI consequently published handbooks for journalists to avoid such stereotyping, and it also observed national broadcasting in order to analyse media content and issue recommendations. He underlined that in doing so, INADI was careful to avoid any infringements on the independence of media and the freedom of expression and opinion.

94. The delegate of Morocco inquired about the division of labour between INADI and the Ombudsman of Argentina. Mr. Mouratian explained that the Ombudsman, created following constitutional reform, had the main task of follow-up on individual complaints. While INADI and the Ombudsman cooperated on a number of issues, issues related to discrimination were automatically referred to INADI.

95. The representative of Bolivarian Republic of Venezuela noted that INADI was setting a good example in the region. Venezuela had been learning from these good practices, and would soon be joining the network of national mechanisms to improve institutional cooperation and the exchange of experiences. The representative acknowledged the issue of racism in sport, supported further cooperation in that area, and fully supported the mandate of the Ad Hoc Committee to draw up international standards.

96. Brazil acknowledged its national-level cooperation with INADI, noting that several institutions for the promotion of racial equality, such as the SEPPIR existed in Brazil but pointed out that despite the close cooperation the two institutions also differed, in that they served different societies, with different populations. Brazil faced similar challenges regarding sports and football, as there were episodes of racism at Brazilian matches. A major team was expelled from national competition due to actions of supporters of that team. The delegate suggested that the Committee could further discuss this topic as a theme, and while perhaps not elaborate a standard, guidelines or plan of action could be considered.

97. A representative of the non-governmental organization "African Reporters for defence of human rights" complimented INADI for its work and noted that it was important for people of African descent to find their place in Argentinian society. The 1st of January 2015 marked the beginning of the Decade for People of African Descent, and he asked the expert to elaborate on any cases of discrimination that he had handled involving people of African descent. Mr. Mouratian replied that he had handled several such cases, highlighting the case of an Argentinian of African descent returning to Argentina with a valid passport, detained by immigrations officials who did not realize that there were Argentinians of African descent.

98. A representative of the non-governmental organization "Indian Council of South America" inquired about INADI activities to address issues concerning racial discrimination and violations of the right of self-determination of indigenous peoples. Mr. Mouratian replied that Argentina had taken steps to acknowledge its indigenous heritage. The 2006 Law on Expropriation of Land was an example in that regard, as it was an attempt to change the culture of the country.

99. The representative of Chile requested more information regarding the suspension of football matches, and inquired how INADI convinced football leagues to join human rights campaigns. The expert noted that discrimination in football was widespread, and confirmed that it was important to work with associations, and noting he importance of political decisions in that regard. In addition, cooperation with international agencies, such as UNICEF, was highly important and was responsible for good results.

100. In answer to questions from Morocco, the expert noted that INADI currently had 23 provincial offices in addition to its headquarters in Buenos Aires. He explained that resources were distributed according to needs in the country based on where discrimination was particularly prominent.

D. Summary of the expert presentation and initial discussion on the topic of "Xenophobia"

101. The topic of "Xenophobia" was discussed at the 11th meeting on 14 October. A presentation was made by Mr. Ioannis Dimitrakopoulos, Head of the Equality and Citizen's Rights Department at the EU Fundamental Rights Agency. He provided an overview of the work of the Fundamental Rights Agency (FRA), which is a body of the European Union, created in 2007. He stated that FRA undertakes data collection and analysis to assist EU institutions and Member States in their efforts, as duty bearers, to comply to European and international human rights standards reflected in the EU treaties and the EU Charter of Fundamental Rights.

102. He explained that the Agency's mandate was to collect reliable, comprehensive and comparable data through a series of EU-wide surveys on discrimination and hate crime by interviewing large random samples of different target populations. The surveys target specific population groups, such as migrants and minorities, and select random samples who are asked how they are treated, if they experience discrimination and intolerance, and if their human rights are fulfilled. The surveys gave individual rights holders a voice through FRA reports which reach decision and policy makers, assisting the development of evidence-based legal and policy responses.

103. He pointed out that data published by law enforcement agencies and criminal justice systems in the EU Member States show great fluctuation between 2011 and 2012 in officially recorded crime in the EU with racist, xenophobic, anti-Roma, anti-Semitic or Islamophobic/anti-Muslim motives. In some countries there was a decrease in officially recorded racist crimes, while an increase of the same in other countries. Mr. Dimitrakopoulos noted that official data are not comparable, as they are collected using different methodologies, they are also not always comprehensive and cannot show the full extent of the problem, as hate crime tends to be both under-reported and under-recorded.

104. Mr. Dimitrakopoulos highlighted the fact that the results of large-scale surveys carried out by FRA, which target specific population groups, show that hate crime and discrimination remain a problem for a sizeable proportion of respondents. At the same time, the results also show that victims and witnesses of such crimes and discriminatory treatment often do not report, to law enforcement, the criminal justice system, other competent public bodies, NGOs or victim support groups. Between 57% and 74% of incidents of assault or threats experienced by members of minority or migrant groups surveyed in the EU were not reported to the police. He said that the main reasons for non-reporting for all these respondents include that "nothing would change" by reporting incidents, that "such incidents happen all the time", and that they "did not trust the police".

105. In order to tackle the problem of hate crime, the EU has put in place a broad set of legal and policy measures, including criminal legislation penalizing public incitement to violence or hatred on the basis of race, colour, religion, descent or national or ethnic origin; legislation prohibiting discrimination on the grounds of racial or ethnic origin and religion; and also the provision of financial support to address racism, xenophobia, and related intolerance through financial instruments, such as the Fundamental Rights and Citizenship Programme and the Programme for Employment and Social Solidarity. In 2012, a directive establishing minimum standards on the rights, support and protection of victims of crime required individual assessments to take into account personal characteristics of the victim, including ethnicity, race, religion, sexual orientation, disability, residence status, and gender identity or expression. The assessments should also take account of whether it is a hate crime, or a crime committed with a discriminatory motive.

106. He stated that these responses are apparently not sufficient. At the level of legislation, hate crime should recognize the motivations underlying it and the effect it has on victims. At the policy level, this means implementing policies that will lead to collecting reliable data on hate crime that would record, at a minimum, the number of incidents of hate crime reported by the public and recorded by the authorities; the number of convictions of offenders; the grounds on which these offences were found to be discriminatory; and the punishments issued to offenders. This should be supplemented by practical mechanisms to encourage victims and witnesses to report incidents of hate crime, as well as mechanisms that would show that authorities are taking hate crime seriously. He noted that the Fundamental Rights Agency has recently been asked to work together with Member States, at their request, to assist them in efforts to develop effective methods to encourage reporting and ensure proper recording of hate crimes.

107. According to the speaker, what is currently necessary, in the EU context, is not additional legal standards, but rather the implementation of existing standards and effective monitoring. The FRA seeks to achieve this by developing specific indicators based on the model developed by the OHCHR, for measuring implementation of human rights standards. He said that in future, FRA will work on indicators concerning racism, xenophobia and related intolerance focusing on hate crime. He stated that indicators are neither designed, nor suitable for, ranking Member States, but that their objective is to highlight the norms and principles of fundamental rights enshrined in the EU treaties and translate these into contextually relevant indicators for implementing and measuring progress made at national level. He suggested that developing such indicators and populating them with data can contribute decisively in promoting human rights standards by strengthening accountability and empowering those most vulnerable and marginalized.

108. The delegate of Pakistan, on behalf of Organization for Islamic Cooperation, stated that there has been an increase in religious intolerance and discrimination in many parts of the world, and asked the speaker to elaborate on concrete steps taken by the FRA to curb religious intolerance and discrimination in European Union Member States. With regard to the collection of data, the delegate inquired about evidence regarding incitement to imminent violence.

109. The representative of the USA requested additional information on quantitative indicators, including their usefulness, advantages and limitations.

110. The delegate of the Republic of South Africa, on behalf of the African Group, pointed out that the speaker's comment on the need for complementary standards was a moot point, as the World Conference against Racism in Durban had already identified a need to elaborate complementary standards, in the form of an additional protocol or a convention, and that now the question was how this would occur.

111. In his reply to the delegates' questions, Mr. Dimitrakopoulos emphasized that the FRA applies existing definitions, as it is not a standard-setting institution. He noted that during the FRA's surveys rights-holders are questioned directly, through a detailed questionnaire which asks them whether they had experienced unequal treatment, rather their general views on the subject matter. With regard to religious intolerance, the presenter said that the survey respondents sometimes were not able to distinguish whether the discrimination they faced was ethnic, racial or religious discrimination. He said that in 2009, the FRA published a report analysing the survey data of Muslim respondents and in 2012, a FRA survey focused on Jewish people living in nine EU Member States. He cautioned that a survey is a snapshot at time, and therefore FRA is committed to repeat surveys over a regular period of time to identify trends. These trends allow Governments to target their measures more efficiently. He also said that developing indicators is not an easy task, however, measurement of factors tends to attract notice. He stated that human rights implementation is measurable.

112. The representative of Morocco stated that anti-discrimination policies often failed to materialize at two levels, in EU Member States and in the European Union Commission and he inquired about whether there were issues of political will or differences across Member States. The delegate added that the Rabat Plan of Action could be a blueprint for OHCHR action in the area of incitement to racial, national and religious hatred and asked whether the FRA incorporated the Plan in its work.

113. The EU stated that the FRA produces reliable and comparable data, helping the EU institutions and Member States at the national and regional level and its work is transparent and publicly available. It was noted that racism is a global issue, affecting every society and country everywhere in the world, and urged other regions to share similar experiences with regard to data collection.

114. The United States of America highlighted the fact that there is no need for new standards, rather better implementation of existing standards was required. With reference to LGBT issues, the delegate also requested information about how the FRA decided which specific grounds would be covered in their survey and data collection work, and whether it was on the basis of European Union law or regulation.

115. The delegate of Pakistan, on behalf of the OIC, stated that religious intolerance in many parts of the world was increasing and emphasized that ICERD does not have a definition of xenophobia, which created several loopholes in the existing standards.

116. The delegate of Algeria asked whether the FRA interacted with the European Commission "European barometer work" and whether racial discrimination is considered in those surveys. The delegate inquired how the European Charter was implemented on the ground, and whether the FRA analysed the implications of case law related to xenophobia and hate crime. Adding that preventative approaches, such as human rights education and good practices are useful, there are, nonetheless, certain limits which require legal and policy measures and that legal issues are part of a preventative approach. It was added that when victims are forced to take their cases to the European Court of Human Rights, there is likely a lack of protection.

117. In reply, the presenter noted that concerted and continuous efforts are required, particularly in the area of education, as that is where young people learn how to live in multicultural societies. He said that moving from a homogeneous to a multi-ethnic society will take some time. He stated that the manifestation of Islamophobia varied, depending on the Member State, and that there could be different reasons why Muslims would be treated differently. The fact that victims could not distinguish between ethnic or religious discrimination shows that they are intertwined. He noted that it is important to empower victims to seek redress and improve the way police handle hate crimes. He added that definitions could be discussed at length; however, it was important to see what people experienced on the ground. In his view, there is sufficient case law that provides definitions.

118. The delegate of Morocco highlighted the fact that perhaps victims were unable to distinguish the exact grounds for the discrimination they faced because they faced multiple forms of discrimination. He noted that surveys might not be the appropriate approach to collect data about racial discrimination. He emphasized the need for victim-centred approaches, as the victim of the discrimination might not be in a position to reply adequately to the survey and that the understanding of a question, and hence the responses, could change from one survey respondent to another.

119. The delegate of the Republic of South Africa pointed out that it had not been stated that racism, racial discrimination, xenophobia and related intolerance are necessarily attributed to one particular region, and noted that the persistence of xenophobia is a rejection of multiculturalism.

120. The delegate of Pakistan, on behalf of the OIC, stated that only when a crime is defined and identified could it be tackled in a comprehensive manner. If there is sufficient case law, additional international standards would unify such evidence that could be applied in all countries and not only in certain regions, and that these additional standards would bring about significant changes.

121. The delegate of the Bolivarian Republic of Venezuela stated that there is a need for additional standards as there is an increase of new forms of discrimination which must be combated in a systematic and multi-fashioned level. He noted that there has been an increase of incitement to hatred in recent times.

122. In his comments, Mr. Dimitrakopoulos stated that EU policies had come a long way and pointed out that both policies and data are needed to guide policy makers, adding that it the issue is not only protection on paper, but how it is translated in real practice. He informed the meeting that victims' support services data are collected and available on the website of the FRA for each Member State. The second wave of surveys, following up on previous surveys should illustrate whether victims are willing to use and enforce their rights. He noted that there is a certain fatigue as victims state that discrimination happens repeatedly. He added that improved police training is necessary and in the EU context, it is important to eliminate impunity and to monitor systematically the implementation of existing standards.

123. The Chairperson-Rapporteur referred to historical experiences of slavery, colonialism, apartheid, and the post-colonial period which occurred in many different regions of the world, highlighting their impact on racial discrimination as it developed in the 20th century and onward. He noted that the post-independence period and ensuing immigration witnessed racism and racial discrimination in developed countries. He stated that a victim was often a victim based solely on appearance, and highlighted instances of racial profiling in different regions and locations, including airports. He added that for this reason, surveys directed at victims did not always capture this dynamic or reveal the mind-set and mentality of perpetrators or violations. Therefore, surveys, such as those collected by the FRA, should reflect perpetrators' viewpoints well. He also stated that survey results could also seemingly highlight the lack of confidence in State structures and institutions. He stated that at times, the value of drafting of new laws could represent a moral barometer, telling society that certain behaviour will not be tolerated. The Chairperson-Rapporteur inquired whether in addressing racial discrimination and xenophobia, the objective was to eliminate racism, or just to reduce it, and inquired how far racism should be tolerated.

124. Mr. Dimitrakopoulos agreed that it would be useful to study the issue and profile of perpetrators, especially since they are often thought to be bigots, racists and extremists when in fact they are often regular people. There were good grounds to look at larger social groups and how they manifest their political convictions. He underlined the importance of victims and their right to seek redress and the necessity of building trust in order that victims report crimes, so that the system can respond effectively.

E. Summary of the expert presentation and initial discussion on the topic of "Procedural gaps to the ICERD"

125. At the 13th meeting on 15 October, Mr. Anwar Kemal of the Committee on the Elimination of Racial Discrimination, made a presentation on "Procedural Gaps with regard to the ICERD." He noted that CERD had been following the discussions of the Ad Hoc Committee with keen interest, recalling that in previous sessions, CERD Committee members Mr. Alexey Avtonomov and Ms. Fatimata Binta Dah had shared valuable insights on the issue of procedural gaps; Mr. Patrick Thornberry interacted with the Ad Hoc

Committee on the subject of xenophobia; and Mr. Carlos Vazquez had presented on the subject of special measures, just the week prior. Mr. Kemal recalled the 2007 study by CERD (A/HRC/4/WG.3/7) which outlined possible measures to strengthen the implementation of the Convention, including a proposal to adopt an optional protocol to provide for an inquiry procedure. He continued that Mr. Alexey Avtonomov, in his capacity as CERD's Chairperson had emphasized the fact that the Committee believes that the substantive provisions of the ICERD are sufficient to combat racial discrimination in contemporary conditions and that in the near future it ought to be able to address any problems without amending the Convention, substantially.

126. He stated that Mr. Avtonomov had also suggested, however, the possibility of an optional protocol to the Convention adopting procedures to make possible to undertake country visits to selected countries for the purposes of investigating and evaluating the situations. He concurred that implementation of the ICERD could be strengthened if supported by the optional protocol to establish an inquiry procedure. Such an inquiry procedure already existed for the Committee against Torture, CEDAW, the Committee on the Rights of Persons with Disabilities, the Committee on Enforced Disappearances, the Committee on Economic, Social and Cultural Rights, and the Committee on the Rights of the Child. He noted that ICERD, adopted almost 50 years ago, remained relevant to new challenges faced today, and provided guidance on relevant and applicable standards owing to its flexible working methods, including through days of discussion, adoption of general recommendations, responding to urgent situations through early warning and urgent action procedures.

127. Mr. Kemal further highlighted the important role of General Recommendations that assist States Parties in interpreting the articles of the Convention and effectively implementing their obligations. CERD had adopted 35 general recommendations, including the most recent general recommendation on racist hate speech adopted in 2013. He stressed the fact that the Committee had been able to apply the Convention effectively to address new and emerging facts of discrimination based on race, colour, descent or national or ethnic origin. He noted that the biggest obstacle to effectiveness was that a large number of countries did not submit reports at all, or their reports were chronically overdue. The second obstacle was the non-implementation of CERD's recommendations, followed by the third obstacle which are reservations to ICERD.

128. Mr. Kemal also noted that CERD did not deal with discrimination on the grounds of religion. The Committee acted only if "intersectionality" were present. That meant that if persons belonging to another racial or ethnic group were also discriminated against on grounds of religion and gender – only then would such situation fall under CERD's competence. CERD was also active when it came to early warning and urgent action, Mr. Kemal noted. CERD for example, adopted Decision 1(85) under its Early Warning and Urgent Action Procedure responding to the current turmoil in Iraq. In that decision, CERD denounced massacres and other human rights abuses by terrorist that called themselves "Islamic State".

129. Brazil (on behalf of Argentina, Armenia, Brazil, Chile, Colombia, Mexico, the Republic of Korea and Switzerland) stated that CERD's views were central to discussing procedural gaps with regard to the ICERD. These delegations were of the view that in order to prevent and combat racism, racial discrimination, xenophobia and related intolerance, the best use of the existing international instruments must be made, and the implementation at national level (particularly the ICERD and the DDPA) secured. It recalled that Mr. Kemal had stated that there were procedural gaps with regard to ICERD, in areas such as visits to countries, evaluation and follow-up procedures. By dealing with these gaps, both the implementation and monitoring of ICERD would be improved. This would also have positive impacts on other the topics that had been discussed by the Committee, such as

prevention and human rights education, special measures, xenophobia and national mechanisms. The presentation of Mr. Kemal had shown that the Ad Hoc Committee should keep discussing the issue of procedural gaps and that there was clear room for improvement. That idea had already been stressed by the "study of CERD on possible measures to strengthen implementation through optimal recommendation or the update of its monitoring procedures" in 2007. The group believed that the topic of procedural gaps should be further discussed in future sessions of the Ad Hoc Committee, in order to find ways to address those concretely.

130. The United States of America noted that Mr. Kemal proposed a protocol to ICERD that would allow country visits. The representative asked if other treaties contained similar provisions for country visits and how such visits would be organized. The expert noted that other treaty bodies indeed used country visits. An improved inquiry procedure would be beneficial to CERD as racism had become a global phenomenon and CERD would need to inquire in various parts of the world. The expert explained that he was not in a position to explain the "mechanics" of a country visit, and that CERD would rely on the Secretariat to undertake work with regard to this issue when the need arose. He agreed that such visits might be expensive if all members of CERD would decide to travel, but the Protocol could be drafted in such a way to avoid this.

131. The representative of Uruguay asked if the article 14 procedure was used frequently and if the procedure could be made more effective. Mr. Kemal explained that less than 60 countries had accepted the article 14 procedure and that CERD received very few complaints on the basis of article 14. The procedure was not well-known, and individuals might consider the procedure not worth the effort, or they might fear it. He added that many complaints were, rejected because domestic remedies had not been exhausted. Nevertheless, CERD might consider taking some action in order to support the victim, if the Committee was of the opinion that the case had some merit.

132. Brazil inquired how CERD dealt with discrimination based on religion. The expert noted that in his view sometimes religion could be linked to ethnicity, and the aspects of ethnicity and religion became fused. CERD tended to treat issues of religious discrimination on a case-by-case basis, and only if there were multiple aspects of discrimination that were linked to ethnicity.

133. The delegate of Pakistan, on behalf of the OIC, reminded the Committee that a 2006 study noted that an optional protocol would be helpful. The representative asked Mr. Kemal how the Committee should proceed in his opinion. The expert noted that it was important to consult on the way forward with the CERD, following a decision made by the Committee.

134. The Republic of South Africa stated that multiple reservations made to key articles of ICERD impeded the Convention's implementation. The representative emphasized that ICERD was mainly an aspirational document for many countries that had made reservations, as the Convention was not enforceable. That constituted a protection gap. Implementation made sense only if human rights could be adjudicated, and reservations defeated that purpose. Implementation of ICERD was, however, not enough as paragraph 199 of the DDPA had held. That mandate still obliged the Committee to update the existing legal framework. The expert assured South Africa that recommendations by countries (for general comments) were considered by CERD, and that the Committee had recently published a comment on hate speech because it saw the need, and this need had also been expressed by several countries.

135. The European Union noted that the expert confirmed that CERD was able to address all new and arising challenges under the current Convention. His point that there was no substantial gap was important information for the Committee. The representative further asked what obstacles hindered full implementation according to the expert. The expert

referred to his statement and noted that the lack of responses to CERD from countries was a major obstacle as was non-reporting by countries. Furthermore, countries did not respond to concluding observations. In addition, often implementation did not take place, and reservations weakened the treaty.

136. The representative of Ghana drew attention to the African Peer Review Mechanism (APRM), and noted there might be gaps in the legal framework when it came to migrants. The expert thanked the representative on the information regarding this mechanism and noted that CERD was interested to hear about developments in various regions and would appreciate receiving more information. On migrant workers, the expert noted that it was essential that countries that had not yet done so, joined the treaty. Ghana asked about the role of genocide in CERD's work, the expert stated that during the 1990s CERD became very mindful of genocide – because of massacres – and the Committee took action when a situation deteriorated. CERD had also become more sensitive to the problems of indigenous people and had taken those up in an early warning procedure.

137. Namibia noted that ICERD was not a stagnant instrument but should be subjected to constant evolution. Namibia had experienced drastic forms of racism, including hate speech which was particularly disturbing and the root causes of hate speech should be addressed. Data should be collected on the circumstances in which hate speech could arise. The representative also held that the importance of article 7 of ICERD had not diminished. An educational approach was essential to address indoctrination and inadequate education.

138. The Republic of South Africa, on behalf of the Africa Group, stated that when analysing the proposals for the future work of the Committee, one noticed that there were gaps in ICERD. The representative asked the expert about the key elements of an additional protocol. The delegate noted that ICERD was a living instrument as many forms of discrimination could not have been foreseen when it was created in the 1960s. Mr. Kemal suggested that an improved inquiry mechanism could rely on the existing procedures of other mechanisms. Country visits were needed because of the serious problems that existed when it came to implementing ICERD.

139. Italy remarked that the idea of country visits was interesting. Such visits could be important tools to increase the ICERD's implementation. However, the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance had already undertaken 35 country visits. The added value of CERD visits was not clear, particularly since closer cooperation between CERD and the Rapporteur could result in an improved exchange of information. The proliferation of mechanisms and visits could in practice create problems. Italy also inquired about the level of cooperation between the Special Adviser on the Prevention of Genocide and CERD when it came to early warning. The expert noted that CERD and the special rapporteurs cooperated as closely as possible, reports and information were exchanged and improved cooperation would require additional resources. Regarding country visits, the expert noted that countries would have to consent to any visit. He agreed that they had to be planned well, and in advance.

140. Morocco noted that it had regularly called upon the various human rights mechanisms not to work in separate silos, but to cooperate closely. Cooperation, such as the cooperation between CERD and the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance should increasingly feed into the UPR process. The representative also asked if CERD planned a general comment on "Islamophobia". Mr. Kemal agreed that the UPR played a crucial role and that all mechanisms would nurture each other. Regarding the recommendation to draft a general comment on "Islamophobia" Mr. Kemal noted that the topic and "phobias" relating to other religions were already referenced in CERD's comment on hate speech. He underlined that CERD was concerned with vulnerable people regardless of which group or religion they belonged to. Action was taken in every regard. The most troubling aspect about hate speech

was its use by politicians. In quite a few countries such hate speech was punished by voters, but that was not always the case. Religion was not the mandate of CERD, but the Committee was alert to all injustices and would act when forms of discrimination intersected with ethnic discrimination.

141. The representative of Pakistan remarked that CERD had covered procedural gaps by drafting general comments. However, States did not regard general comments as legally binding. Consequently, the representative doubted how general comments could cover substantive gaps that had emerged. Mr. Kemal noted that it was a "question of degree", as in fact, ICERD was not fully implemented, despite the fact that it was binding. As international law did not know enforcement machinery, it was impossible to force countries to respect some international frameworks. General comments were also not intended to punish countries, but assist them.

142. Egypt requested clarification on the gaps in ICERD and inquired if the Committee could tackle those procedural gaps by drafting a single optional protocol or several. The representative also asked if the Committee should address substantive gaps. Mr. Kemal underlined that ICERD was comprehensive enough and that during the last forty years CERD had taken an activist approach. The Convention, as a living document, was flexible and had covered all issues. One single protocol on country visits as suggested by the CERD, was enough to further the implementation of the Convention.

143. The Chairperson-Rapporteur recalled that during the World Conference against Racism in Durban there was a consensus that there were gaps in the ICERD. Some countries appeared to have subsequently moved away from that agreement. He added that ICERD was subject to many reservations. He stated that it could be argued that the bulk of these reservations constituted a gap. Important new phenomena such as the surge of racism in and around football pitches also needed to be addressed. The Chairperson-Rapporteur asked if CERD had addressed such issues. The expert noted that the application of peer pressure could help address the issue of reservations. It was also important to note that regarding ICERD, countries would also insist on securing freedom of expression and opinion despite the dangers of hate speech, in particular, which used by politicians remained. He noted that punishment, as had sometimes been the case, came via the voting process where voters rejected those politicians. In some other countries, such a reaction had not materialized and CERD noted those situations.

Annex II

Agenda

1. Opening of the session.
2. Election of the Chairperson-Rapporteur.
3. Adoption of the agenda and programme of work.
4. Presentations and discussions on the topics.
5. General discussion and exchange of views.
6. Adoption of the report.

Annex III

Programme of work

1st Week					
	Monday 06.10	Tuesday 07.10	Wednesday 08.10	Thursday 09.10	Friday 10.10
10:00-13:00	UN Holiday	Item 1 Opening of the Session by the High Commissioner for Human Rights Item 2 Election of the Chair Item 3 Adoption of the Agenda and Programme of Work General statements	Item 4 Prevention and awareness-raising, including through human rights education and training, in the fight against racism, racial discrimination, xenophobia and related intolerance [Mireille Fanon-Mendes, Chairperson, United Nations Working Group of Experts on People of African Descent]	Item 5 Questionnaire [introduction of the reissued summary and discussion] –	Item 6 Special Measures, including affirmative or positive measures, strategies or actions, to prevent, combat and eradicate all forms and manifestations of racism, racial discrimination, xenophobia and related intolerance [Theodore Shaw, Director, Center for Civil Rights, Chapel Hill School of Law, University of North Carolina, US]
15:00-18:00	UN Holiday	Item 4 Prevention and awareness-raising, including through human rights education and training, in the fight against racism, racial discrimination, xenophobia and related intolerance [Patrick Gasser, UEFA] [Jonas Burgheim, UN Office on Sport for Development & Peace] [Pavel Klymenko, FARE Network]	Item 4 Prevention and awareness-raising, including through human rights education and training, in the fight against racism, racial discrimination, xenophobia and related intolerance [Karel Francapane, Section of Health and Global Citizen Education, Education Sector, UNESCO Paris]	Item 6 Special Measures, including affirmative or positive measures, strategies or actions, to prevent, combat and eradicate all forms and manifestations of racism, racial discrimination, xenophobia and related intolerance [Carlos Vazquez, CERD member] – General discussion and exchange of views	Item 6 Special Measures, including affirmative or positive measures, strategies or actions, to prevent, combat and eradicate all forms and manifestations of racism, racial discrimination, xenophobia and related intolerance [Elisa Alonso Monçores, Researcher, Instituto de Economia /UFRJ, Brazil]

2nd week					
	Monday 13.10	Tuesday 14.10	Wednesday 15.10	Thursday 16.10	Friday 10.10
10:00-13:00	Item 6 (*continued*) Special Measures, including affirmative or positive measures, strategies or actions, to prevent, combat and eradicate all forms and manifestations of racism, racial discrimination, xenophobia and related intolerance [Dmitrina Petrova, Executive Director; Equal Rights Trust, UK]	Item 8 Xenophobia [Ioannis Dimitrakopoulos, Head of the Equality & Citizens' Rights Department, EU Fundamental Rights Agency]	Item 9 Procedural gaps with regard to ICERD [Anwar Kemal, CERD member]	Conclusions and Recommendations – General discussion and exchange of views – Item 10 Discussion on the introduction of new/list topics… consideration of new/list topics	Conclusions and Recommendations – General discussion and exchange of views
15:00-18:00	Item 7 National Mechanisms [Pedro Mouratian, President, Instituto Nacional contra la Discriminación, la Xenofobia y el Racismo (INADI), Argentina]	General discussion and exchange of views	General discussion and exchange of views – Conclusions and Recommendations	Compilation of the Report	Item 11 Adoption of the report of the 6th session

Annex IV

List of attendance

A. Member States

Algeria, Argentina, Armenia, Austria, Belgium, Brazil, Bulgaria, Chile, China, Colombia, Costa Rica, Cuba, Egypt, Ethiopia, Finland, France, Germany, Greece, India, Italy, Japan, Jordan, Korea (Republic of), Kuwait, Latvia, Lesotho, Malaysia, Mexico, Morocco, Namibia, Nicaragua, Nigeria, Norway, Pakistan, Paraguay, Portugal, Romania, Russian Federation, Saudi Arabia, Senegal, Slovenia, South Africa, Spain, Sri Lanka, Sweden, Switzerland, Togo, Tunisia, Turkey, Viet Nam, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay, Venezuela (Bolivarian Republic of)

B. Non-Member States represented by observers

Holy See, State of Palestine

C. Intergovernmental Organizations

African Union, European Union

D. Non-governmental organizations in consultative status with the Economic and Social Council

Action internationale pour la paix et le développement dans la région des Grands Lacs (AIPD-GL)

African Commission of Health and Human Rights Promoters

Indian Council of South America (CISA)

Indigenous Peoples and Nations Coalition

Rencontre Africaine pour la Défense des Droits de l'Homme

E. Non-governmental organizations not in consultative status with the Economic and Social Council

International Basketball Federation

Rugby Club Geneva