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Conseil des droits de l'homme
Vingt-huitième session
Point 9 de l'ordre du jour
Racisme, discrimination raciale, xénophobie et formes connexes d'intolérance, suivi et mise en œuvre de la Déclaration et du Programme d'action de Durban

Rapport du Comité spécial chargé d'élaborer des normes complémentaires siégeant lors de sa sixième session*, **

Président-Rapporteur: Abdul Samad Minty (Afrique du Sud)

Résumé

Le présent rapport est soumis en application de la décision 3/103 et des résolutions 6/21 et 10/30 du Conseil des droits de l'homme. Il s'agit d'un résumé des travaux et des débats du Comité spécial chargé d'élaborer des normes complémentaires à sa sixième session. Avec la contribution de plusieurs experts des différents domaines de compétence, des consultations de fond se sont tenues sur les principaux thèmes retenus à la cinquième session. Au cours de la session, le Comité spécial a également étudié le questionnaire communiqué par le Haut-Commissariat aux droits de l'homme et le résumé actualisé des réponses reçues à ce questionnaire, établi par le Président-Rapporteur en application de la résolution 21/30 du Conseil.

* Les annexes au présent rapport sont distribuées telles que reçues, dans la langue originale seulement.
** Soumission tardive.

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I. Introduction

1. Le Comité spécial chargé d'élaborer des normes complémentaires soumet le présent rapport en application de la décision 3/103 et des résolutions 6/21 et 10/30 du Conseil des droits de l'homme.

II. Organisation de la session

2. Le Comité spécial s'est réuni du 7 au 17 octobre 2014 pour sa sixième session, au cours de laquelle il a tenu 15 séances.

A. Participants

3. Étaient présents lors de cette session des représentants d'États Membres, d'États non Membres représentés par des observateurs, d'organisations intergouvernementales et d'organisations non gouvernementales (ONG) dotées du statut consultatif auprès du Conseil économique et social.

B. Ouverture de la session

4. La 1re séance de la sixième session du Comité spécial chargé d'élaborer des normes complémentaires a été ouverte par le Chef de la Section de la lutte contre la discrimination du Haut-Commissariat aux droits de l'homme (HCDH). Le Haut-Commissaire aux droits de l'homme a fait une déclaration liminaire dans laquelle il a rappelé que le Comité spécial avait pour mission de réfléchir aux moyens de renforcer la protection de toutes les personnes contre les fléaux que sont le racisme, la discrimination raciale, la xénophobie et l'intolérance qui y est associée, dans la droite ligne de la Déclaration et du Programme d'action de Durban, qui continuaient à guider le HCDH dans ses travaux. La tâche du Comité consistait à indiquer de quelle manière la communauté internationale pouvait agir en faveur d'une plus grande solidarité humaine à l'égard des millions de victimes de ces violations − et donc garantir à ces dernières davantage de dignité, d'égalité et d'équité. Il s'est dit certain que le Comité spécial continuerait à progresser lors de cette session, à s'acquitter de son mandat et à aller de l'avant, en développant ses orientations quant aux moyens de lutter plus efficacement contre le racisme, la discrimination raciale, la xénophobie et l'intolérance qui y est associée.

C. Élection du Président-Rapporteur

5. Lors de la 1re séance, M. Abdul Samad Minty, Représentant permanent de l'Afrique du Sud auprès de l'Office des Nations Unies à Genève, a été élu Président-Rapporteur du Comité spécial par acclamation.

6. Le Président-Rapporteur a remercié le Haut-Commissaire de sa participation et de sa déclaration liminaire, puis a remercié le Comité spécial de l'avoir réélu, en précisant qu'il travaillerait collectivement avec tous les partenaires et membres du Comité spécial. Au paragraphe 199 du Programme d'action de Durban, la Conférence mondiale avait recommandé à la Commission des droits de l'homme d'élaborer des normes internationales destinées à renforcer et actualiser la législation internationale contre le racisme, la discrimination raciale, la xénophobie et l'intolérance qui y est associée sous toutes leurs formes. Les débats du Comité spécial se poursuivraient suivant l'approche graduelle adoptée aux précédentes sessions en offrant aux membres la possibilité de continuer

à approfondir l'étude des questions en jeu, à la lumière du mandat du Comité spécial et du paragraphe 199 du Programme d'action. La forme que prendrait le document final de la session serait à déterminer en fonction des discussions qui auraient lieu tout au long de celle-ci. Sur la base du consensus qui s'était dégagé lors des deux précédentes sessions, le Président-Rapporteur a encouragé le Comité spécial à continuer à mettre l'accent sur la situation des victimes et à faire en sorte que la dignité humaine soit respectée de manière inconditionnelle. Dans cet esprit, il jugeait utile d'envisager la possibilité de mettre en place un cadre réglementaire international concernant la xénophobie, car les manifestations plus agressives de ce phénomène appelaient des mesures plus énergiques. Il a relevé en particulier que dans de nombreux pays, des actes patents de racisme et de xénophobie continuaient à être commis dans les stades et à l'occasion des matchs de football parce que les actions entreprises pour y mettre fin étaient insuffisantes.

D. Adoption de l'ordre du jour

7. À sa 1re séance, le Comité spécial a adopté l'ordre du jour de sa sixième session.

E. Organisation des travaux

8. Le Président-Rapporteur a présenté le projet de programme de travail. Le programme de travail (voir l'annexe III) a été adopté à la 1re séance.

9. Le Président-Rapporteur a invité les délégations et les participants à faire des déclarations d'ordre général au sujet de la session. Nombreuses ont été les délégations à saluer chaleureusement la déclaration liminaire et la participation du Haut-Commissaire.

10. Le représentant de l'Éthiopie, s'exprimant au nom du Groupe des États d'Afrique, a redit l'engagement du Groupe à prendre part aux travaux du Comité spécial et a appelé l'attention sur la décision 3/103 du Conseil des droits de l'homme, dans laquelle ce dernier avait chargé le Comité spécial d'élaborer, à titre prioritaire et pour répondre à une nécessité, des normes complémentaires qui, sous la forme soit d'une convention soit d'un ou de plusieurs protocoles additionnels à la Convention internationale sur l'élimination de toutes les formes de discrimination raciale (ci-après la Convention), combleraient les lacunes actuelles de la Convention et proposeraient également de nouveaux textes normatifs visant à combattre toutes les formes du racisme contemporain, notamment l'incitation à la haine raciale et religieuse. Le Groupe demeurait préoccupé par le peu de progrès accomplis dans l'élaboration d'une norme complémentaire à la Convention, du fait de débats inutiles sur le bien-fondé même de normes complémentaires. Le représentant a souligné qu'il était indispensable de se saisir de la question des victimes de profilage dans les domaines définis dans la liste des thèmes de la deuxième session, car ces victimes attendaient du Comité spécial une meilleure protection, des voies de recours optimales et l'élimination totale de l'impunité pour ces actes de racisme. Le Groupe des États d'Afrique a appelé tous les groupes régionaux à faire preuve de davantage de volonté politique pour s'entendre sur des normes complémentaires et renforcer la lutte contre le racisme, la discrimination raciale, la xénophobie et l'intolérance qui y est associée.

11. L'Ambassadeur du Brésil a proposé l'appui de la Mission permanente du Brésil auprès de l'Office des Nations Unies à Genève pour les travaux du Comité spécial. Il a souligné l'importance que revêtaient la Déclaration et le Programme d'action de Durban pour le Brésil, pays pluriculturel et pluriracial, la contribution de cet instrument à la lutte contre le racisme, la discrimination raciale, la xénophobie et l'intolérance qui y est associée. Il a indiqué que les mesures de discrimination positive étaient au cœur de la politique intérieure du Brésil en matière de lutte contre le racisme.

12. L'Ambassadeur du Pakistan, au nom de l'Organisation de la coopération islamique (OCI), a déclaré que la discrimination à l'égard des musulmans allait croissant et qu'une tendance générale à l'islamophobie se faisait jour dans le monde entier, ce qui faisait obstacle à un esprit de solidarité pacifique. Il a souligné l'importance du paragraphe 199 du Programme d'action de Durban et de la résolution 16/18 du Conseil, qu'il considérait comme riches d'enseignements pour la lutte contre le racisme, la discrimination raciale, la xénophobie et l'intolérance qui y est associée. Il a souligné combien il était nécessaire d'ériger en infraction pénale l'incitation à la haine raciale, nationale et religieuse, et a affirmé que le Plan d'action de Rabat sur l'interdiction de l'appel à la haine nationale, raciale ou religieuse qui constitue une incitation à la discrimination, à l'hostilité ou à la violence était un point de départ utile pour les débats à venir.

13. L'Ambassadeur de l'Algérie a déclaré que l'Algérie reprenait à son compte les déclarations faites par le représentant de l'Éthiopie et l'Ambassadeur du Pakistan, respectivement au nom du Groupe des États d'Afrique et de l'OCI. Il a dit constater une montée de la xénophobie et du nombre d'actes racistes et évoqué l'impact de cette tendance sur les migrants, les réfugiés et les demandeurs d'asile. Le phénomène de la xénophobie s'étendait partout dans le monde et le nombre des victimes était lui aussi en hausse, ces victimes étant touchées aussi bien moralement que physiquement. L'Algérie apportait son soutien au mandat du Comité spécial et appelait ce dernier à adopter dans ses travaux une démarche tournée vers les victimes. Il importait de se pencher sur la spécificité des instruments existants.

14. Le représentant du Maroc a indiqué que son pays appuyait les déclarations faites au nom du Groupe des États d'Afrique et de l'OCI. Le Maroc attachait une importance toute particulière aux travaux du Comité spécial. Face à la montée des idées et des actes racistes et xénophobes de par le monde, le représentant a mis en garde contre une approche unidirectionnelle des travaux du Comité spécial. Il a fait observer que le cadre déjà en place était sérieusement menacé et que la Déclaration et le Programme d'action de Durban, ainsi que la Déclaration et le Programme d'action de Vienne, constituaient de précieuses sources d'information. Le représentant a évoqué la nécessité d'un meilleur équilibre dans la communauté internationale et a remercié les délégations qui avaient contribué utilement aux travaux du Comité spécial. Le Plan d'action de Rabat offrait une approche solide des questions traitées par le Comité.

15. La représentante de l'Union européenne a déclaré que le racisme, la discrimination raciale, la xénophobie et l'intolérance qui y est associée allaient à l'encontre des principes qui sous-tendaient l'Union européenne et qui étaient des valeurs communes à l'ensemble de ses États membres: respect de la dignité humaine, liberté, démocratie, égalité, primauté du droit et respect des droits de l'homme. Elle a cité la déclaration faite au nom de l'Union européenne par la Haute Représentante de l'Union pour les affaires étrangères et la politique de sécurité à l'occasion de la Journée internationale pour l'élimination de la discrimination raciale: «Nous devons lutter de manière plus résolue contre toutes les formes d'intolérance, de racisme, de xénophobie et contre toute autre discrimination. En période de crise économique, les dangers d'une montée du racisme et de la xénophobie, stimulés en partie par l'augmentation du chômage et un avenir incertain, sont réels. En ces temps difficiles, notre détermination à combattre le racisme doit être sans faille.». La priorité devrait être donnée à la mise en œuvre effective du droit international des droits de l'homme existant, en particulier de la Convention.

16. Le représentant de la République bolivarienne du Venezuela a proposé l'appui de son pays aux travaux du Comité spécial et exprimé le regret que certains pays n'apportent toujours pas leur soutien au Comité spécial. Il a plaidé pour l'approbation et la mise en œuvre de ce qui avait été convenu par consensus au paragraphe 199 du Programme d'action de Durban, afin de lutter contre le racisme, la discrimination raciale, la xénophobie et l'intolérance qui y est associée, partout dans le monde.

17. Le représentant de la Suisse, s'exprimant également pour le compte de l'Argentine, de l'Arménie, du Brésil, du Chili, de la Colombie, du Japon, du Mexique et de l'Uruguay, s'est félicité des travaux préparatoires réalisés et de l'appui apporté au programme de travail dans l'intersession et a dit attendre avec intérêt les exposés des experts durant la session. Il a souligné l'importance que revêtaient la Déclaration et le Programme d'action de Durban pour les travaux de la session et a déclaré que les délégations au nom desquelles il s'exprimait s'engageraient dans une réflexion constructive pour déterminer si le cadre normatif présentait des lacunes et, le cas échéant, comment elles devaient être traitées au cours de la session.

18. La représentante de l'Afrique du Sud a indiqué que sa délégation reprenait à son compte la déclaration générale faite par le représentant de l'Éthiopie au nom du Groupe des États d'Afrique. Elle s'est dite favorable à l'approche graduelle des sujets proposée par le Président-Rapporteur. L'Afrique du Sud demeurait préoccupée par les contestations dont faisait l'objet le paragraphe 199 du Programme d'action de Durban ainsi que par le peu de progrès accomplis dans l'élaboration de normes complémentaires à la Convention. Elle a rappelé quel était le mandat du Comité spécial, en citant la décision 3/103. De l'avis de l'Afrique du Sud, le rôle du Comité spécial était de combler les lacunes; c'est pourquoi la représentante a instamment invité les délégations à ne pas camper sur leurs positions, mais au contraire à aller de l'avant pour offrir une protection et des voies de recours appropriées aux victimes de racisme et mettre fin à l'impunité pour les actes de racisme, de discrimination raciale, de xénophobie et d'intolérance. Elle a dit tout l'engagement de sa délégation à travailler de manière constructive pour accélérer l'élaboration de normes complémentaires à la Convention, qui n'avait déjà que trop tardé.

19. Le représentant de l'Indonésie a fait valoir que les phénomènes du racisme, de la xénophobie et de l'intolérance qui y est associée perduraient et, dans certains cas, s'étaient intensifiés et diversifiés. Il importait que le Comité spécial parvienne à définir concrètement ce qui devait être entendu par «normes complémentaires à la Convention». Il fallait s'intéresser aux discours de haine à connotation religieuse ou ethnique. La question avait trait à l'articulation entre liberté de religion et liberté d'expression et d'opinion. L'Indonésie accordait un grand prix à la liberté de religion et à la liberté d'expression et pensait que ces libertés pouvaient aller de pair dans le cadre de l'application à l'échelon national du droit international des droits de l'homme. L'Indonésie avait également conscience que ces phénomènes présentaient un caractère transfrontière, en partie du fait du développement rapide des technologies de l'information et de la communication, et était d'avis qu'un instrument international était peut-être nécessaire pour prévenir efficacement l'incitation à l'hostilité et à la violence fondées sur la religion ou la croyance.

20. Le représentant des États-Unis d'Amérique a déclaré que le racisme était incompatible avec les valeurs de son pays. Il a souligné l'importance des travaux du Comité spécial, en faisant observer qu'en vertu de son mandat, celui-ci devait favoriser l'adoption de plans d'action par consensus et ne devait pas s'employer à l'élaboration de nouveaux instruments de droit international qui seraient source de confusion. La xénophobie était un grave problème; pour autant, l'enjeu n'était pas d'adopter de nouveaux traités ou de réviser des traités mais bien de faire appliquer le droit des droits de l'homme existant. Sa délégation avait le sentiment que telles étaient bien les conclusions qui ressortaient des opinions exprimées par les experts qui s'étaient précédemment adressés au Comité spécial.

21. Le représentant du Nigéria a repris à son compte la déclaration faite au nom du Groupe des États d'Afrique. Il a mis l'accent sur les problèmes de la stigmatisation et de la xénophobie ainsi que sur l'importance qu'il y avait à renforcer la protection internationale pour les victimes de ces atteintes, en soulignant que les réfugiés, les demandeurs d'asile et les migrants y étaient particulièrement exposés. Il a souligné l'importance des travaux du Comité spécial.

III. Débat général et débats thématiques

A. Prévention et sensibilisation

22. À la 2e séance du Comité spécial, Patrick Gasser, responsable de l'unité Football et responsabilité sociale de l'Union européenne des associations de football (UEFA), Jonas Burgheim, Chef adjoint du Bureau des Nations Unies pour le sport au service du développement et de la paix, et Pavel Klymenko, représentant du réseau Football against Racism in Europe (FARE), ont présenté des exposés sur le point de l'ordre du jour «Prévention et sensibilisation, y compris grâce à des mesures éducatives et à des formations à la lutte contre le racisme, la discrimination raciale, la xénophobie et l'intolérance qui y est associée», sous l'angle du sport.

23. À la 3e séance, la Présidente du Groupe de travail d'experts sur les personnes d'ascendance africaine, Mireille Fanon-Mendès-France, a présenté un exposé au titre du même point de l'ordre du jour. À la 4e séance, Karel Fracapane, de la Section de l'éducation pour la santé et la citoyenneté mondiale à l'Organisation des Nations Unies pour l'éducation, la science et la culture (UNESCO), a présenté au Comité spécial les travaux menés par son organisation qui intéressaient ce point de l'ordre du jour.

24. Des résumés de ces exposés et des débats qui ont suivi avec les participants sont présentés à l'annexe I, section A.

B. Questionnaire élaboré en application du paragraphe 4 de la résolution 21/30 du Conseil des droits de l'homme

25. À la 5e séance, le Président-Rapporteur a donné un aperçu du résumé actualisé des réponses reçues au questionnaire qui avait été établi en application du paragraphe 4 de la résolution 21/30 du Conseil des droits de l'homme et avait été redistribué par la suite. Dans une note verbale du 21 juillet 2014, il avait invité les missions permanentes à Genève et à New York qui n'avaient pas encore communiqué de réponses à ce questionnaire à le faire et avait indiqué que tout complément d'information serait le bienvenu de la part des États y ayant déjà répondu.

26. Au total, 13 réponses supplémentaires avaient été reçues à la date limite du 19 septembre 2014. Le Président-Rapporteur a proposé que le questionnaire et le résumé des réponses soient examinés de manière collective, ce qui pourrait aider le Comité spécial à améliorer les informations communiquées dans le résumé actualisé des réponses et à se pencher sur ses lacunes pour faire des suggestions d'amélioration. Les deux approches possibles des travaux du Comité spécial − adoption ou non d'une convention supplémentaire − avaient leur place dès l'instant que le résultat était une amélioration de la situation des victimes.

27. Le Président-Rapporteur a présenté le document résumant les réponses reçues au questionnaire et a invité les participants à réfléchir à la suite à donner à ces résultats pour aller de l'avant. Les réponses n'étaient toujours pas représentatives; elles étaient quelque peu anecdotiques mais étaient cependant utiles pour différents aspects de la discussion. Le texte des réponses reçues au questionnaire pouvait être consulté sur le site Web du HCDH.

28. Le Président-Rapporteur a soulevé diverses questions, à propos du rôle des institutions et de la législation, des dispositions constitutionnelles, des recours accessibles aux victimes et des mesures positives. Il a relevé que la plupart des réponses nouvellement reçues contenaient des informations intéressantes sur la question de la xénophobie, qui se révélait préoccupante pour un grand nombre de pays de par le monde. Il s'est enquis à cet égard des initiatives adoptées à l'échelon national et a demandé s'il était possible que certains pays ou régions ne soient pas confrontés à des problèmes liés à la xénophobie.

Il s’est enquis de la différence entre crimes motivés par la haine et crimes xénophobes et s’est interrogé sur la nature même de la xénophobie: s’agissait-il d’un sentiment ou de la motivation sous-tendant un acte? Il a invité les participants à envisager la xénophobie comme un spectre. Le Président-Rapporteur a également demandé si la lutte contre l’extrémisme était synonyme de lutte contre la discrimination et la xénophobie, a interrogé les participants sur l’efficacité des mécanismes nationaux et a demandé si la définition du «mécanisme national» était à interpréter strictement ou largement et si l’action du Comité pour l’élimination de la discrimination raciale était efficace, en particulier en ce qui concernait la xénophobie. Il a également demandé quelles recommandations de ce Comité avaient été mises en œuvre par les États et si les réserves avaient constitué de réels obstacles à l’application de la Convention.

29. La représentante de l’Union européenne, faisant part de ses premières observations, s’est dite déçue du taux toujours faible de réponse au questionnaire. Elle a souligné que certaines régions restaient sous-représentées dans les réponses et a indiqué que l’Union européenne souhaitait avoir un retour d’informations de leur part. Appelant l’attention sur l’importance de la Convention, elle a réaffirmé que les États qui n’y avaient toujours pas adhéré ou qui ne l’avaient pas encore ratifié devaient le faire. La position adoptée de longue date par l’Union européenne était que la pleine mise en œuvre des normes existantes était capitale. Une seule des nouvelles réponses reçues mentionnait la nécessité d’adopter des normes complémentaires.

30. La représentante du Brésil a déclaré qu’au vu des réponses reçues, tant la xénophobie que les mécanismes nationaux étaient sources de préoccupation pour les pays. Il n’y avait pas pour autant de consensus à ce jour sur la question des lacunes. Des débats plus poussés s’imposaient sur les deux sujets, et il était capital de tenir compte des avis du Comité pour l’élimination de la discrimination raciale. Le Comité spécial pourrait aussi réfléchir à la possibilité de favoriser l’élaboration de plans d’action et de directives, entre autres, sur ces questions. Pour ce qui était des lacunes de procédure, il ressortait des réponses au questionnaire que le Comité pour l’élimination de la discrimination raciale n’avait toujours pas été officiellement mandaté pour entreprendre des actions telles que des missions dans les pays et la surveillance de la suite donnée à ses recommandations, pourtant importantes pour l’exercice de ses fonctions. Les organes conventionnels créés ultérieurement pouvaient, eux, s’appuyer sur des dispositions pour ce faire. Il pourrait donc s’avérer nécessaire d’adopter des normes supplémentaires dans ce domaine.

31. Le représentant de la République bolivarienne du Venezuela a insisté sur l’importance de nouvelles normes complémentaires, pour lutter contre le racisme, la discrimination raciale, la xénophobie et l’intolérance qui y est associée, et a mentionné la nécessité d’incriminer la discrimination sous toutes ses formes. La société vénézuélienne était pluriethnique et le Gouvernement était résolu à faire appliquer la loi de 2011 de lutte contre la discrimination raciale, dont l’article 11 portait sur la xénophobie et les actes racistes. Le représentant a également rendu hommage au rôle constructif joué par la société civile pour la prévention et l’éradication de la discrimination raciale, et a signalé que dans le but de mettre efficacement en œuvre les dispositions de la Convention et de la Déclaration et du Programme d’action de Durban, une institution nationale de lutte contre la discrimination raciale avait été créée. Le Gouvernement ne ménageait pas ses efforts pour collecter des données ventilées et le recensement mené en 2011 apporterait des informations plus détaillées encore sur la population.

32. Le représentant de la Fédération de Russie a lui aussi plaidé en faveur de normes additionnelles, faisant valoir que les normes internationales existantes se révélaient inefficaces. Il a invité les délégations à envisager la rédaction de nouvelles normes complémentaires tout en se penchant sur les moyens d’améliorer l’efficacité des mécanismes existants.

33. Le représentant du Maroc a fait savoir que son pays avait adopté une nouvelle politique migratoire, appelant à une approche fondée sur les droits de l'homme. Les migrants devaient obtenir une reconnaissance légale et exercer leurs droits dans des domaines comme l'accès au logement et à l'éducation. Cette nouvelle politique était exhaustive et visait aussi les demandeurs d'asile et les réfugiés. Il fallait selon le représentant sortir d'une logique sécuritaire conduisant à ériger des forteresses; son pays rencontrait des problèmes de collecte de données, mais il avait entrepris un recensement qui devait avoir un effet positif pour l'élaboration des politiques publiques. Les statistiques de l'état civil étaient particulièrement importantes.

34. Le Président-Rapporteur a demandé si les constitutions et les législations étaient suffisantes pour régler la question du racisme, de la discrimination raciale, de la xénophobie et de l'intolérance qui y est associée et comment les gouvernements pouvaient passer des mesures législatives à la protection des victimes sur le terrain. Il a invité les participants à faire part des bonnes pratiques et des difficultés rencontrées à cet égard.

35. Le représentant du Maroc a dit que lutter contre le racisme, la discrimination raciale, la xénophobie et l'intolérance qui y est associée passait par différentes approches. Les dispositions inscrites dans la Constitution pour combattre la discrimination étaient une chose. L'aspect opérationnel en était une autre; les faits concrets devaient être pris en considération, le Maroc étant un pays d'origine, de transit et de destination de migrants. Cette combinaison de facteurs expliquait le grand nombre de migrants en situation irrégulière présents au Maroc. Une nouvelle politique de l'asile et des migrations était indispensable. À cet égard, un rapport avait été soumis au Gouvernement, qui avait décidé d'adopter une nouvelle politique. Le représentant a indiqué que des questions concrètes qui se présentaient au jour le jour devaient être réglées. Des alertes précoces avaient fait comprendre la nécessité de réviser l'arsenal juridique. De nouveaux projets de loi sur les migrations et les réfugiés avaient été adoptés. Tout l'enjeu était maintenant de traduire ces normes juridiques en actions concrètes.

36. Le représentant de l'Italie a mis en avant le fait que la Constitution italienne contenait des principes fermes appliquant les directives de l'Union européenne créatrices d'obligations. Des institutions comme l'Office national contre la discrimination raciale étaient chargées de protéger les victimes. Celles-ci avaient facilement accès au site Internet de l'Office, et une permanence téléphonique fonctionnait vingt-quatre heures sur vingt-quatre. Le représentant a reconnu que des ressources supplémentaires étaient nécessaires. Évoquant la question 2 vi) du questionnaire sur l'article 14 de la Convention, il a dit que l'on ne disposait d'aucune information sur le nombre d'États ayant accepté l'article 14. Il a estimé que le grand nombre de rapports dont le délai de présentation au Comité pour l'élimination de la discrimination raciale était dépassé constituait un problème grave, ajoutant que de nombreux pays n'avaient jamais soumis de rapport ou étaient très en retard à cet égard.

37. Le Président-Rapporteur a confirmé que le retard pris dans la soumission d'un grand nombre de rapports était un problème concernant tous les organes conventionnels, qui avait été reconnu lors du processus de l'Examen périodique universel. Certains pays ne disposaient pas des ressources nécessaires pour soumettre des rapports.

38. Le représentant de l'Égypte a indiqué que son pays était une société cohérente dans laquelle les races et religions vivaient en bonne intelligence et que la dernière Constitution ne soulevait aucun problème concernant les minorités en termes de discrimination raciale. Tous les citoyens étaient égaux entre eux et devant la loi. Il n'y avait pas de xénophobie et les citoyens se considéraient comme des Égyptiens, même s'ils avaient une autre origine. Le Conseil national des droits de l'homme était un organe indépendant chargé de traiter toutes les questions relatives aux droits de l'homme, qui recevait les plaintes de victimes de violations et disposait des ressources nécessaires. Le Conseil national transmettait les

plaintes aux autorités judiciaires et aux tribunaux et facilitait l'accès à la procédure judiciaire.

39. Le représentant de l'Uruguay a dit que son pays avait ratifié la Convention. Outre la Constitution, il existait en Uruguay plusieurs lois spécifiques portant sur des questions relatives à la discrimination, notamment sur les migrants et leurs droits, le regroupement familial et l'interdiction de la discrimination quel qu'en soit le motif. Un programme de réaction rapide avait été mis en place par les autorités chargées des migrations, leur permettant de délivrer des documents d'identité en quarante-huit heures. En 2004, une loi relative à la discrimination raciale avait été adoptée et une commission sur le racisme et la discrimination avait été créée pour la mise en œuvre de celle-ci. Des politiques de prévention de la discrimination étaient également menées. La commission avait présenté au Parlement un projet de loi instituant un quota pour les personnes d'ascendance africaine, qui avait été adopté. Lors de l'Examen périodique universel concernant l'Uruguay, le Gouvernement s'était engagé à élaborer un plan d'action contre la discrimination raciale. Ce projet se trouvait dans sa deuxième phase, axée sur la rédaction du plan.

40. La représentante de l'Afrique du Sud a souligné le fait que la Constitution de 1996 reconnaissait les injustices du passé, mettait l'accent sur l'unité de la nation dans sa diversité et visait à l'harmonie entre les races. Une commission pour la promotion et la protection des droits des communautés culturelles, religieuses et linguistiques avait été créée en application du chapitre 9 de la Constitution. En 2002, le pays avait accueilli le Sommet de l'Union africaine visant à renforcer la cohésion entre les peuples africains. En 2012, il avait accueilli le Sommet mondial de la diaspora africaine, qui avait donné un sens concret au concept de construction d'«une et une seule famille». L'Afrique du Sud avait également joué un rôle important dans le Nouveau Partenariat pour le développement de l'Afrique (NEPAD).

41. Le représentant de l'Algérie a déclaré que la Constitution algérienne prenait en compte la discrimination raciale et qu'il existait des lois donnant effet au principe de non-discrimination. L'article 29 de la Constitution interdisait toute forme de discrimination; il en allait de même de tous les codes, y compris le Code pénal et les codes électoraux. Le représentant a souligné l'importance de l'égalité entre les personnes et a déclaré que les problèmes relatifs aux migrants et à leur famille faisaient l'objet d'une attention toute particulière. Des mesures législatives et institutionnelles étaient en place pour éliminer la discrimination. L'accès à la justice civile n'était plus soumis à condition pour les étrangers, qui pouvaient bénéficier de services d'interprétation et d'une aide juridictionnelle.

42. Le représentant de la Suisse a déclaré que la xénophobie n'était pas un terme juridique en droit national et que le service public devait respecter les droits fondamentaux. La discrimination raciale était punissable en Suisse. La loi garantissait une protection suffisante contre la discrimination, mais il importait de renforcer l'application de la législation actuelle. Le représentant a donné des informations aux participants sur trois institutions: a) la Commission fédérale contre le racisme, créée en 1995, qui contrôlait les activités menées afin de détecter le racisme et la discrimination raciale, en s'employant à promouvoir une meilleure entente entre les personnes, en mettant l'accent sur la prévention et en étant à l'écoute des préoccupations des minorités; b) le Service de lutte contre le racisme, qui encourageait la coordination et mettait en place des mesures de lutte contre le racisme depuis 2001; et c) la Commission fédérale pour les questions de migration qui, depuis 2008, établissait des passerelles entre les autorités et la société civile sur les questions de migration.

43. Le représentant de la Grèce a annoncé au Comité que, trois semaines auparavant, le Parlement grec avait adopté une nouvelle loi contre le racisme, qui interdisait les discours racistes et la violence contre les personnes fondée sur la race ainsi que d'autres formes de discrimination et comprenait plusieurs mesures et sanctions, parmi lesquelles des peines

d'emprisonnement et des amendes. Le fait qu'un fonctionnaire se rende coupable de tels actes était considéré comme un facteur aggravant, et la sanction était alors doublée. Le représentant a également signalé l'importance des mesures de sensibilisation et a informé les participants de certaines initiatives organisées à Genève par la Mission permanente de la Grèce, en citant notamment une réunion parallèle au Conseil des droits de l'homme sur l'égalité et le sport et une manifestation organisée conjointement avec la Mission permanente de l'Afrique du Sud autour de Georges Bizos, l'avocat de feu le Président Nelson Mandela.

44. Le Président-Rapporteur a souligné le rôle que jouait l'appareil judiciaire dans l'interprétation de la loi. Il a dit qu'il serait intéressant d'examiner la jurisprudence pour voir comment le pouvoir judiciaire avait pris ses responsabilités et créé un précédent pour d'autres affaires. Il a dit également que le mandat des mécanismes nationaux leur était conféré par des dispositions légales; il était cependant important d'examiner leur efficacité ainsi que la manière dont la population était représentée dans ces institutions. Il a en outre évoqué les lacunes de procédure relatives à la Convention, concernant particulièrement la xénophobie.

45. Le représentant de la Fédération de Russie a souligné le fait que les réserves à la Convention avaient une incidence négative sur la mise en œuvre de celle-ci. Par exemple, s'agissant de l'article 4, on constatait un développement du discours de haine à l'ère des technologies modernes qui rendait nécessaire le retrait des réserves à cet article. La Fédération de Russie n'avait pas émis de réserves.

46. La représentante du Brésil a estimé que le Comité spécial devait approfondir la question des éventuelles lacunes de fond dans la Convention. S'agissant des lacunes de procédure, les experts du Comité pour l'élimination de la discrimination raciale avaient noté au cours des deux dernières sessions qu'ils n'avaient pas de mandat pour effectuer des visites de pays et qu'il leur serait utile qu'un tel mandat leur soit conféré dans un document additionnel. La question avait également été soulevée dans les réponses au questionnaire.

47. Le représentant des États-Unis a estimé que la meilleure manière de répondre au discours de haine était de lui opposer d'autres discours. Il a fait observer que la Convention interdisait clairement la discrimination et les actes de violence et qu'il n'y avait pas de lacune du point de vue juridique concernant la xénophobie. Il existait de toute évidence des carences dans la mise en œuvre efficace des obligations existantes; il s'agissait là d'un domaine fertile pour la suite des débats que les États-Unis attendaient avec intérêt.

48. La représentante de l'Afrique du Sud a rappelé que les réserves étaient valides à moins qu'elles ne soient incompatibles avec le traité; cela s'appliquait aux réserves à l'article 4. Elle a souligné le fait que, en l'absence de normes supplémentaires, les formes contemporaines de racisme et de discrimination raciale continueraient à être impunies, et a noté l'importance de la Recommandation générale n° 15 (2004) du Comité pour l'élimination de la discrimination raciale concernant la discrimination contre les non-ressortissants.

49. La représentante de l'Union européenne a déclaré que les États membres de l'Union européenne étaient tenus, en application des directives, de créer des organismes spécialisés en matière d'égalité, sous la forme d'organismes indépendants habilités, entre autres, à mener des enquêtes indépendantes, publier des rapports indépendants et faire des recommandations. Equinet était un réseau européen d'organismes de promotion de l'égalité qui comprenait 38 organisations. S'agissant du discours de haine, le plein respect de la liberté d'expression et l'importance du cadre international existant ont été soulignés. La représentante a évoqué la décision-cadre du Conseil de l'Union européenne sur la lutte contre certaines formes et manifestations de racisme et de xénophobie au moyen du droit pénal, qui considérait que l'incitation publique intentionnelle à la haine ou la violence

raciste ou xénophobe tombait sous le coup du droit pénal et exigeait que celui-ci soit modifié en conséquence.

50. Le représentant du Maroc a souligné la nécessité de contrôler les discours de haine sur Internet; il s'agissait là d'une préoccupation majeure pour de nombreux États, qui ne devait cependant réduire en aucune façon les efforts déployés par les États pour lutter contre les discours de haine véhiculés par les médias classiques. Le Maroc s'était doté de dispositions juridiques, notamment l'article 6 de sa Constitution, qui consacraient l'égalité devant la loi, ainsi que d'un code pénal et d'un code de la presse. Les journalistes incitant à la haine contre les étrangers étaient sanctionnés. Il était important d'avoir une communication efficace avec le Comité pour l'élimination de la discrimination raciale et de lui soumettre régulièrement des rapports.

51. Le représentant des États-Unis a déclaré que son pays désapprouvait fortement les restrictions à la liberté d'expression. Il a souligné le fait que ces restrictions étaient dangereuses et que les gouvernements ne devaient pas contrôler l'expression. Les gouvernements non démocratiques faisaient mauvais usage de telles mesures.

C. Mesures spéciales

52. Lors de sa 6e séance, le Comité spécial a entamé un débat sur le thème des «Mesures spéciales, y compris les mesures, stratégies ou actions positives ou correctives visant à prévenir, lutter et éliminer toutes les formes et manifestations de racisme, de discrimination raciale, de xénophobie et de l'intolérance qui y est associée». La séance était présidée à titre exceptionnel par M. Ephrem B. Hidug de la Mission permanente d'Éthiopie auprès de l'Office des Nations Unies à Genève. Au cours de cette séance, un membre du Comité pour l'élimination de la discrimination raciale, M. Carlos Vázquez, a présenté un exposé sur le traitement des mesures spéciales dans la Convention internationale sur l'élimination de toutes les formes de discrimination raciale et dans la pratique établies du Comité.

53. Lors de la 7e séance, M. Theodore Shaw, professeur et Directeur du Centre pour les droits civils de la faculté de droit de Chapel Hill (Université de Caroline du Nord), a également présenté un exposé sur le thème des mesures spéciales. À la 8e séance, Mme Elisa Alonso Monçores, chercheuse à l'Institut d'économie de l'Université fédérale de Rio de Janeiro (Brésil), a fait un exposé sur «les mesures de discrimination positive au Brésil: expérience récente et indicateurs sociaux».

54. À la 9e séance, Mme Dimitrina Petrova, Directrice exécutive d'Equal Rights Trust, a fait un exposé sur le thème inscrit à l'ordre du jour.

55. Un résumé des exposés et des débats respectifs qui ont suivi avec les participants est présenté à l'annexe I, section B.

D. Mécanismes nationaux

56. Lors de la 10e séance, M. Pedro Mouratian, Président de l'Institut national de lutte contre la discrimination, la xénophobie et le racisme (INADI) en Argentine, a exposé au Comité spécial les travaux de son organisation sur le thème «Création, désignation ou maintien de mécanismes nationaux chargés de fonctions de protection et prévention à l'égard de toutes les formes et manifestations de racisme, de discrimination raciale, de xénophobie et de l'intolérance qui y est associée».

57. Un résumé de l'exposé et du débat qui a suivi avec les participants est présenté à l'annexe I, section C.

E. Xénophobie

58. Le thème de la xénophobie a été abordé à la 11e séance. Un exposé a été fait par M. Ioannis Dimitrakopoulos, chef du Département de l'égalité et des droits des citoyens de l'Agence des droits fondamentaux de l'Union européenne.

59. Un résumé de l'exposé et du débat qui a suivi avec les participants est présenté à l'annexe I, section D.

F. Débat général et échange de vues, 12e séance

60. Le Comité spécial a tenu un débat général et un échange de vues à sa 12e séance.

61. La représentante de l'Union européenne a fait quelques observations liminaires et estimé que le nouveau questionnaire avait produit un résultat très similaire, quant au fond, au premier questionnaire. Certaines régions étaient bien représentées, notamment les pays européens, alors que l'on manquait encore d'informations en provenance d'autres régions. Les débats au sein du Comité spécial confirmaient la persistance de certains problèmes. De nombreuses mesures positives et des bonnes pratiques mises en œuvre dans différentes parties du monde étaient également mises en évidence. Les situations étaient différentes et les solutions visant à lutter contre le racisme et les questions connexes revêtaient différentes formes selon les pays, si bien qu'il n'existait pas de méthode universelle. S'agissant de la question des normes complémentaires, la représentante a indiqué que, selon l'Union européenne, la sixième session avait confirmé l'idée que les États et les parties prenantes devaient redoubler d'efforts pour mettre en œuvre et surveiller l'application des normes existantes de manière plus énergique. La Convention restait le principal instrument international en la matière et l'Union européenne regrettait qu'elle ne soit pas universellement ratifiée. L'Union européenne estimait que rien ne prouvait que l'absence de normes juridiques internationales constituerait un obstacle dans la lutte contre ces phénomènes.

62. Le représentant des États-Unis, évoquant le débat qui s'était déroulé lors de la 11e séance, a indiqué que la réforme de l'immigration était une priorité de son gouvernement, qui avait souligné la nécessité de trouver un moyen d'accès à la citoyenneté pour les 11 millions d'immigrants clandestins aux États-Unis. S'agissant du grand nombre d'enfants non accompagnés, une question qui avait suscité beaucoup d'attention, les États-Unis s'employaient avec les gouvernements des pays voisins concernés à traiter les causes profondes de l'émigration et à mener un travail d'information sur les risques des migrations.

63. La représentante du Brésil a proposé que le Comité commence à élaborer des documents, comme des plans d'action ou des directives, pour combler les lacunes en matière d'interprétation soulignées par Mme Petrova dans son exposé. Elle a déclaré que le souci d'améliorer les conditions de vie des victimes devait avoir la priorité absolue et qu'elle attendait avec intérêt le débat sur les lacunes de procédure.

64. Le représentant de l'Union africaine a souligné que l'élaboration de normes complémentaires entrait dans le cadre du mandat du Comité spécial tel qu'il avait été défini. Il n'était pas du ressort du Comité d'examiner si de telles normes étaient nécessaires ou s'il existait des lacunes, dans la mesure où ces questions avaient déjà été tranchées dans la Déclaration et le Programme d'action de Durban et par le Conseil des droits de l'homme. Différentes opinions avaient été exprimées au cours de la sixième session et des sessions précédentes, et il était temps d'aller de l'avant et d'élaborer un certain nombre de dispositions. Le Comité ne devrait pas continuer à discuter sans fin, mais il devait s'appuyer sur les conclusions existantes et se conformer à son mandat. Évoquant la

question de l'immigration soulevée par le représentant des États-Unis, le représentant a estimé important de réaliser des progrès dans ce domaine. Un domaine important dans lequel le Comité pouvait apporter une contribution était celui du racisme et du sport.

65. La représentante de l'Afrique du Sud, s'exprimant au nom du Groupe des États d'Afrique, a rappelé que, dans le cadre de la décision 3/103, le Conseil des droits de l'homme avait établi le Comité spécial en lui donnant pour mandat clair d'élaborer «à titre prioritaire», des conventions ou des protocoles additionnels à la Convention. Il n'était pas question dans cette décision d'examens ou de débats concernant d'éventuelles lacunes ou la nécessité d'adopter des normes. Le paragraphe 199 du Programme d'action de Durban ne laissait lui non plus aucune place à de telles considérations. Le Comité était clairement investi du mandat d'élaborer des normes complémentaires. Cet objectif ne laissait place à aucun doute. Le Groupe des États d'Afrique considérait que le débat en cours et l'insistance mise sur l'application de la Convention étaient inappropriés dans la mesure où des normes supplémentaires avaient été, dans de nombreux autres cas, élaborées par la communauté internationale. Les victimes de profilage racial devaient être mieux soutenues; il était temps d'éliminer totalement l'impunité pour les auteurs d'actes ou de propos racistes. Ce ne serait qu'à force de volonté politique que des normes complémentaires ne pourraient être élaborées. Il fallait trouver cette volonté, car il était nécessaire d'aller de l'avant.

66. Le représentant de l'Algérie a estimé que le cadre juridique comportait des lacunes, notamment concernant les droits des victimes. Par conséquent, il fallait s'efforcer d'adopter une approche axée sur les victimes de la lutte contre le racisme, la discrimination raciale, la xénophobie et l'intolérance y relative. Le représentant a demandé à toutes les délégations de s'attacher surtout au sort des victimes. Les exposés présentés au cours des sessions précédentes avaient fourni suffisamment d'éléments, plusieurs questionnaires avaient été diffusés, des débats avaient également eu lieu dans le cadre du Conseil des droits de l'homme, et l'on ne pouvait prétendre que le nombre de contributions sur lesquelles s'appuyer était insuffisant pour aller plus loin. Des questions comme les migrations devaient retenir l'attention du Comité, et le représentant a évoqué la question récurrente des méthodes de travail du Comité et d'autres comités du Conseil. Les mandats étaient régulièrement remis en cause. Ce n'était cependant pas le rôle du Comité spécial, qui avait un mandat clair, et il était temps de faire des progrès sur le mandat précis qui avait été négocié à Durban.

67. La représentante du Pakistan, s'exprimant au nom de l'OCI, a noté que des contributions importantes avaient été faites par des experts au cours de la session, et a déclaré qu'il était impossible de remettre en cause le mandat du Comité. On comprenait mal, en écoutant les exposés, pourquoi le Comité avait débattu de la nécessité d'élaborer des normes complémentaires, alors que son mandat partait de l'hypothèse qu'il existait une telle nécessité. L'OCI estimait que les normes complémentaires sont nécessaires. Au cours de la vingt-cinquième session du Conseil des droits de l'homme, un représentant de l'OCI avait recommandé, au titre du point 9 de l'ordre du jour, qu'un protocole facultatif soit élaboré, qui prenne en compte toutes les formes de racisme, de discrimination raciale et de xénophobie et les formes d'intolérance qui y sont associées. Par conséquent, l'OCI recommandait qu'un tel protocole additionnel à la Convention soit élaboré, qui prenne en compte le racisme d'une manière globale, et que la prochaine session du Comité spécial soit consacrée aux lacunes de fond. Du point de vue de l'OCI, il était temps de définir la voie à suivre et d'examiner les nouvelles formes d'intolérance, y compris l'intolérance religieuse.

68. Le représentant de la Suisse a dit que d'après lui, les positions étaient partagées entre ceux qui défendaient le mandat, sans avoir une idée précise de ce qu'étaient les lacunes, et ceux qui répétaient que la mise en œuvre était essentielle et que la Convention n'avait pas besoin de nouveaux protocoles. La Suisse avait essayé de déterminer dans quels domaines des lacunes pouvaient être decelées, mais n'avait pu y parvenir. Par conséquent,

elle ne remettait pas en question le mandat, mais avait des doutes quant à son exécution. Il n'était pas envisageable d'établir une nouvelle version de la Convention puisque rien ne justifiait au fond les nouvelles dispositions qui étaient réclamées. La question de la xénophobie avait déjà été clarifiée deux ans auparavant et les outils permettant de lutter contre ce phénomène, entre autres, étaient en place. Il n'existait pas de solution adaptée à toutes les situations et il n'était pas judicieux d'imposer à tous les États un système préconçu offrant peu d'options. Les principaux principes qui orienteraient la lutte contre le racisme existaient; il s'agissait maintenant essentiellement d'une question de mise en œuvre.

69. Le représentant de la République bolivarienne du Venezuela a réitéré le ferme soutien de sa délégation au mandat du Comité spécial. Le Comité était à l'œuvre depuis six ans et avait examiné les normes internationales ainsi que le non-respect de ces normes. La Déclaration et le Programme d'action de Durban fournissaient le mandat adéquat pour combler les lacunes concernant les nouvelles formes de discrimination, et le Comité devait faire porter ses efforts sur ce domaine. Le représentant s'est associé aux déclarations faites par la représentante de l'Afrique du Sud au nom du Groupe des États d'Afrique et par la représentante du Pakistan au nom de l'OCI et a demandé instamment au Comité de travailler davantage sur les questions de fond. Il estimait que les différents exposés avaient démontré qu'il existait de nouvelles formes de racisme, et que le contenu de ces exposés permettrait au Comité d'élaborer de nouvelles normes complémentaires à la Convention. Le mécanisme devait être amélioré pour prendre en compte les nouvelles formes de racisme, de xénophobie, de discours de haine et d'incitation à la haine, y compris à l'égard des migrants.

70. Le représentant de l'Allemagne a estimé que le Comité devait trouver un moyen d'avancer et que l'échange en cours dans la salle était important. À son avis, il convenait cependant d'écouter les experts invités qui avaient tous affirmé qu'il n'était pas nécessaire de se doter de nouvelles normes pour lutter contre des phénomènes tels que la xénophobie. L'Allemagne appuyait pleinement la déclaration de l'Union européenne d'après laquelle il n'existait pas de lacune de fond dans la Convention; mais les pays devaient améliorer leur mise en œuvre de la Convention. Il en allait de même dans d'autres domaines relatifs aux droits de l'homme. Il n'était pas d'usage de remettre automatiquement en question les normes fondamentales dans ces domaines, mais insister sur la mise en œuvre constituait une bonne pratique. À cet égard, le représentant s'associait à la déclaration de la Suisse.

71. Le représentant de l'Égypte a estimé que l'existence même du Comité spécial prouvait la nécessité d'une mise à jour du cadre législatif. Il était nécessaire de recenser les lacunes existantes dans la législation et de réfléchir à la manière de les combler. Le représentant appuyait la proposition faite par la représentante du Pakistan au nom de l'OCI concernant l'élaboration d'un protocole additionnel, car le Comité franchirait ainsi une étape essentielle.

72. Le représentant de l'Indonésie a estimé que la question de la mise en œuvre devait être examinée, tout comme la nécessité de disposer de normes complémentaires. L'idée de normes complémentaires avait été acceptée lorsque le Comité spécial avait été établi et cela ne devait pas créer de polémique. Sur les questions de fond, le représentant s'est associé aux déclarations faites par la représentante du Pakistan au nom de l'OCI et par le représentant de l'Égypte. En Indonésie il existait de réelles lacunes en raison des problèmes transfrontières liés à l'incitation à la haine. L'Indonésie considérait que les coupables n'étaient pas sanctionnés mais que leurs actes avaient des conséquences importantes sur la situation interne du pays, de nature à provoquer des troubles. Il était donc clairement avéré qu'il existait des lacunes de fond concernant l'incitation transfrontière à la haine fondée sur la religion.

73. Le représentant du Maroc a dit que la raison pour laquelle le Comité spécial existait était claire et que les résolutions et décisions applicables et la Déclaration et le Programme d'action de Durban constituaient une solide base juridique. Il n'y avait pas lieu d'avoir un débat sur la nécessité de l'existence du Comité. La Déclaration et le Programme d'action de Durban avaient été adoptés en 2001 et aujourd'hui, treize ans plus tard, le racisme était toujours vivant, comme cela avait été souligné dans plusieurs interventions. Le Comité était non seulement tenu de contenir le racisme mais aussi de l'éliminer, et il ne pouvait rester inactif. Le Comité avait tenu six sessions et devait de toute évidence s'attaquer à une tâche de grande ampleur. Le Comité devait renforcer la législation internationale et le consensus ne portait pas sur la réécriture mais sur le perfectionnement de la Déclaration et du Programme d'action de Durban. Le Maroc considérait que l'inaction du Comité signifiait qu'il ne remplissait pas son mandat et commettait une «infraction». Le travail du Comité était nécessaire et pouvait prendre plusieurs formes; il appartenait au Comité de décider laquelle privilégier.

74. Le représentant de la Tunisie a appuyé les déclarations faites par la représentante de l'Afrique du Sud au nom du Groupe des États d'Afrique et par la représentante du Pakistan au nom de l'OCI. Le cadre international actuel n'était pas adéquat car il y avait de nouvelles formes de racisme et des mouvements politiques dont les programmes se nourrissaient de la haine à l'égard des étrangers. Aucun acte de racisme ne pouvait rester impuni et la communauté internationale devait compléter son arsenal juridique. Ainsi que cela avait été exposé au Comité, les victimes étaient souvent réticentes à signaler les incidents ou à engager des poursuites. Depuis l'adoption de la Convention, le racisme avait changé, faisant souvent surface en association avec des actes de discrimination fondés sur des motifs économiques ou religieux. Les crises économiques en cours aggravaient la discrimination raciale. De nombreux autres facteurs, dont la religion, n'étaient pas traités dans la Convention. Comme l'avait noté la représentante de l'Afrique du Sud, le Comité n'était pas en mesure de réinventer les règles juridiques, mais il devait combattre le racisme sous sa forme actuelle. En outre, la révolution de la communication était un facteur nouveau.

75. La représentante du Pakistan a précisé que la position de l'OCI n'était pas de dire que l'élaboration d'un protocole facultatif signifiait une refonte de la Convention. Néanmoins, un certain nombre de conventions relatives aux droits de l'homme étaient dotées de protocoles facultatifs. La représentante du Pakistan proposait donc que, pendant sa prochaine session, le Comité spécial tienne un débat de fond sur les lacunes de fond auxquelles il fallait remédier. Le Comité disposait d'une quantité suffisante de «matière première» dans laquelle il pouvait puiser.

76. Le représentant de l'Allemagne a dit que dans la pratique, rien n'empêchait les pays de prendre des mesures pour lutter contre le racisme. Une fois de plus, les questions centrales étaient de savoir si la Convention était mise en œuvre et si les instruments nationaux étaient mis en conformité avec les normes internationales relatives aux droits de l'homme.

77. Le représentant de la Suisse a dit une nouvelle fois qu'à l'issue du débat qu'il avait mené pendant six sessions, le Comité n'avait pas encore recensé de lacune de fond rendant urgente l'élaboration de normes complémentaires. Toutefois, la Suisse considérait que le message du Comité était clair: les pays devaient lutter contre les manifestations de racisme. La Suisse doutait que des normes complémentaires, quelles qu'elles soient, entraînent l'adoption de nouvelles mesures. En outre, la plupart des protocoles facultatifs portaient sur les communications et répondaient à des besoins clairement définis.

78. Le représentant de l'Algérie a déclaré que la nécessité de normes était une évidence et qu'il fallait remédier aux lacunes qui avaient été notées pendant les sessions précédentes. Le Comité avait été engagé à plusieurs reprises à renforcer la mise en œuvre de la

Convention, mais il existait des limites évidentes à la mise en œuvre des instruments existants. De l'avis de l'Algérie, la discussion générale avait fait ressortir que les instruments actuels n'étaient pas suffisants pour lutter contre toutes les formes de discrimination.

79. Le représentant de la Tunisie a ajouté que le fait de travailler à l'élaboration d'un projet de protocole facultatif n'empêchait pas les pays de mettre en œuvre la Convention. Toutefois, les lacunes existantes devaient être comblées et la question de la xénophobie et du profilage racial faisait partie de ces lacunes. Le représentant s'est déclaré optimiste quant à la possibilité pour le Comité spécial d'aller de l'avant et a fait observer que les travaux menés par le Comité n'empêchaient aucunement les pays de prendre des mesures à l'échelon national.

80. La représentante de l'Union africaine a déclaré que la création d'une règle n'était que la première étape vers sa mise en œuvre, étant donné qu'une règle pouvait ne pas être universellement acceptée. Les États pouvaient toujours décider de l'opportunité de devenir parties à un traité.

81. Le Président-Rapporteur a résumé la discussion et noté que des différences d'opinion subsistaient. Il lui semblait que plutôt que d'examiner les éléments de preuve fournis, les délégations étaient restées sur leurs positions de principe initiales.

82. La Déclaration et le Programme d'action de Durban avaient été adoptés par consensus et aucune objection à ce document n'avait été formulée lors de la Conférence mondiale contre le racisme, la discrimination raciale, la xénophobie et l'intolérance qui y est associée, tenue à Durban en 2001. Les États qui avaient participé à l'adoption de cette décision devaient entretenir l'esprit de bonne volonté qui s'était manifesté à l'époque.

83. Le Comité spécial s'était réuni un grand nombre de fois en raison des différences et des divisions qui étaient apparues entre certains groupes d'États. Un groupe insistait sur le fait qu'un nouveau texte juridique n'était pas nécessaire et jugeait préférable de mettre l'accent sur le renforcement de la mise en œuvre. Un autre point de vue était que l'on pouvait viser à l'amélioration de la mise en œuvre mais que cela n'était pas suffisant. Ce groupe insistait sur la nécessité d'un protocole portant sur les phénomènes nouveaux.

84. Le Président-Rapporteur a souligné que selon différents intervenants, le racisme était allé croissant dans un certain nombre d'instances, de secteurs et de régions. Comme cela avait été expliqué pendant la session, on observait un racisme marqué dans certains secteurs, dont le football, et la Fédération internationale de football association (FIFA) et d'autres fédérations avaient déjà engagé un débat sur les moyens de lutter contre ce problème.

85. Le Président-Rapporteur a exprimé sa réticence à rester perpétuellement dans une impasse et a demandé aux délégations de réfléchir au chemin à prendre pour identifier une solution avant la fin de la session. Il a levé la séance pour permettre au Comité spécial de tenir une réunion informelle avec les coordonnateurs régionaux et les délégations intéressées.

G. Lacunes de procédure concernant la Convention internationale sur l'élimination de toutes les formes de discrimination raciale

86. À la 13e séance, Anwar Kemal, membre du Comité pour l'élimination de la discrimination raciale, a présenté un exposé sur les lacunes de procédure dans le cas de la Convention internationale sur l'élimination de toutes les formes de discrimination raciale. Un résumé de cet exposé et du débat qui a suivi est présenté à l'annexe I, section E.

H. Débat général et échange de vues, 14e séance

87. Pendant sa 14e séance, le Comité spécial a une nouvelle fois tenu un débat général et un échange de vues. Le Président-Rapporteur a rappelé la nécessité de réfléchir aux décisions à prendre sur la liste des sujets nouveaux et à propos du questionnaire.

88. Le représentant des États-Unis a abordé la question des réserves à la Convention, de l'objectif du Comité spécial et de ses travaux futurs. S'agissant des réserves, des critiques avaient été émises pendant les discussions à l'égard des États ayant formulé des réserves à la Convention, en particulier à l'article 4. Le représentant a noté que, selon le site Web de la collection des traités des Nations Unies, une vingtaine d'États avaient fait des réserves à l'article 4. Des États très divers, dont les États-Unis, avaient fait des réserves. Lorsque la liberté d'expression croisait les lois de lutte contre la discrimination, cela créait des problèmes délicats; toutefois, les États-Unis n'accepteraient aucune obligation qui limiterait les libertés fondamentales protégées par sa Constitution. Ainsi, les États-Unis avaient autorisé une marche controversée menée par le parti nazi dans un quartier majoritairement peuplé de juifs et avaient également protégé le droit d'autres personnes de protester contre cette marche. Le représentant a souligné que les réserves aux conventions étaient généralement autorisées. S'agissant du mandat du Comité spécial, le représentant a souligné que la décision 3/103 du Conseil des droits de l'homme, dans laquelle celui-ci avait demandé au Comité spécial d'élaborer une nouvelle convention, avait été adoptée à l'issue d'un vote et non pas par consensus. En outre, au paragraphe 199 du Programme d'action de Durban, il n'était pas demandé d'élaborer une nouvelle convention mais «d'élaborer des normes internationales complémentaires», et le type de document n'était pas précisé. Le travail effectué par le Comité spécial pour combler d'éventuelles lacunes était intéressant mais, dans la Déclaration et le Programme d'action de Durban, le Comité avait été prié d'élaborer, non pas un nouveau traité ou un protocole, mais des normes complémentaires, lesquelles pouvaient prendre des formes différentes. Dans les résolutions qu'il avait plus récemment adoptées par consensus, notamment la résolution 21/30, le Conseil s'était référé au paragraphe 199 du Programme d'action de Durban en soulignant qu'il était nécessaire que le Comité spécial établisse des normes complémentaires. Les États-Unis ne voyaient pas la nécessité d'un nouvel instrument juridiquement contraignant. Toutefois, d'autres normes complémentaires pouvaient être éventuellement nécessaires et les États-Unis étaient prêts à examiner les formes que pourraient prendre des normes susceptibles d'améliorer la protection dans ces domaines.

89. La représentante du Brésil a noté que grâce aux exposés présentés pendant la session, le Comité disposait d'un important volume d'informations qu'il pourrait utiliser pour aller de l'avant. Dans son exposé sur les lacunes de procédure, M. Kemal avait souligné qu'il importait de renforcer la mise en œuvre de la Convention en remédiant à ces lacunes, notamment par le biais d'un protocole facultatif à la Convention prévoyant des visites de pays. La représentante a souligné que le Comité pour l'élimination de la discrimination raciale avait soumis cette question au Comité spécial à plusieurs reprises et qu'il était temps que le Comité spécial intervienne sur cette question afin que ses travaux aient un impact.

90. La représentante du Pakistan, intervenant au nom de l'OCI, a accueilli avec intérêt l'idée que le moment était venu pour le Comité spécial de donner suite à la recommandation du Comité pour l'élimination de la discrimination raciale et d'examiner la question d'un protocole facultatif à la Convention visant à combler les lacunes de procédure. Elle a également accueilli avec intérêt la position du représentant des États-Unis selon laquelle il était temps d'examiner les formes que pouvaient prendre des normes complémentaires. Le Pakistan a souligné que les Recommandations générales du Comité pour l'élimination de la discrimination raciale, qui portaient notamment sur des lacunes de

fond, n’étaient pas considérées comme juridiquement contraignantes mais plutôt comme des orientations, et que les normes complémentaires pourraient reprendre les questions visées dans les Recommandations générales pour les inclure dans un protocole facultatif. La représentante a recommandé au Comité spécial de consacrer du temps, pendant sa prochaine session, à l’examen: a) des formes des normes complémentaires; b) d’un protocole facultatif à la Convention visant à remédier aux lacunes de procédure; et c) d’un protocole facultatif à la Convention visant à remédier aux lacunes de fond, en tenant compte des questions abordées par le Comité pour l’élimination de la discrimination raciale dans ses Recommandations générales.

91. Le représentant du Chili a dit que son pays était favorable à toute proposition pouvant faire avancer les travaux du Comité spécial et qu’il appuyait l’intervention faite précédemment par la représentante du Brésil.

92. La représentante de l’Afrique du Sud, au nom du Groupe des États d’Afrique, a une nouvelle fois indiqué que les réserves aux articles 2, 4 et 14 de la Convention créaient des lacunes et dit qu’il fallait y remédier. Elle a proposé que le Comité pour l’élimination de la discrimination raciale soit invité à fournir des informations sur les réserves et sur la manière dont elles influaient sur la mise en œuvre de la Convention. La représentante a souligné que la Convention était un document vivant qui faisait l’objet de 35 Recommandations générales, ce qui montrait bien qu’il y avait des lacunes de fond dans la Convention. Celles-ci devraient être examinées par le Comité spécial à sa prochaine session. Le Comité spécial devrait aussi examiner les aspects essentiels des lacunes de procédure existant dans la Convention que le Comité pour l’élimination de la discrimination raciale avait mis en lumière en matière de contrôle et de visites de pays; il faudrait en outre prier le Comité de faire un exposé sur cette question à la prochaine session du Comité spécial. La représentante a également suggéré qu’à la septième session du Comité spécial, le HCDH soit invité à présenter une analyse comparée des mécanismes des organes conventionnels et à expliquer en quoi les procédures découlant de la Convention sur l’élimination de toutes les formes de discrimination raciale s’en distinguaient, afin que les lacunes puissent être corrigées.

93. La représentante de l’Union européenne a souligné à nouveau que l’Union européenne était prête à tenir un débat sur les lacunes possibles et à trouver des manières constructives de mettre en œuvre les dispositions qui existaient déjà pour lutter contre le racisme. Depuis la création du Comité spécial, des progrès importants avaient été réalisés dans l’Union européenne aux échelons national et régional, et la législation développée par l’Union européenne allait, dans certains cas, au-delà du cadre établi par les Nations Unies. Lors de la discussion sur les méthodes de travail du Comité spécial, les représentants de l’Union européenne avaient souligné la nécessité d’aller de l’avant en se fondant sur des faits et non pas sur des souhaits. Les futurs travaux visant à identifier les lacunes éventuelles devaient être fondés sur des analyses et des faits. Les normes complémentaires ne devaient pas nécessairement prendre la forme d’un protocole facultatif ou d’une nouvelle convention; il pourrait aussi s’agir de nouvelles directives, de bonnes pratiques et de Recommandations générales du Comité pour l’élimination de la discrimination raciale. La représentante a demandé que soient présentés des faits concernant les lacunes de fond auxquelles la Convention ne permettrait pas de remédier, en notant que les membres du Comité pour l’élimination de la discrimination raciale avaient indiqué à plusieurs reprises que le Comité regrettait que les États ne s’acquittent pas des obligations qui leur incombaient en matière de communication de rapports et de mise en œuvre des recommandations.

94. Le Président-Rapporteur a conclu la séance en notant qu’il existait différentes perceptions, que l’examen de normes complémentaires supposait que l’on envisage de nouveaux protocoles ou conventions et que les normes juridiques pouvaient notamment

prendre la forme de pratiques de référence et de directives. Dans des présentations et des rapports, le Comité pour l'élimination de la discrimination raciale avait demandé aux pays de réexaminer leurs réserves, ce qui montrait clairement qu'il y avait des problèmes relatifs aussi bien aux réserves qu'à la présentation de rapports, autrement dit dans des domaines propres à améliorer le respect des dispositions de la Convention. Une autre considération tenait à une interprétation ou un jugement d'ordre factuel. Les États ne seraient pas obligés d'approuver une nouvelle norme juridique, car c'était à eux qu'il revenait d'envisager de ratifier cet instrument.

95. La séance a été levée afin de permettre aux coordonnateurs régionaux d'examiner les propositions formulées pour déterminer dans quels domaines il serait possible de parvenir à des conclusions et des recommandations à la sixième session, et de formuler des propositions au sujet du niveau de consensus et d'accord.

IV. Adoption du rapport

96. Le Président-Rapporteur a ouvert la 15e séance le 17 octobre au matin. La séance a été levée afin que le Comité puisse consacrer davantage de temps à des discussions informelles, l'objectif étant de parvenir à un accord.

97. La séance a été reprise ultérieurement, dans l'après-midi du même jour. À la suite des discussions informelles, le Comité spécial a décidé que les sujets suivants seraient examinés à la septième session du Comité:

a) Questions relatives à la mise en œuvre de la Convention:

i) Adhésion universelle à la Convention et ratification de cet instrument;

ii) Analyse du nombre, de la portée et du fondement des réserves visant différents articles et incidence de ces réserves; évaluation de l'utilisation du mécanisme de plainte au titre de l'article 14;

iii) Problèmes, enjeux et meilleures pratiques se rapportant à la présentation de rapports au titre de la Convention;

iv) Mise en œuvre des recommandations adressées aux États;

b) Lacunes de procédure concernant la Convention:

i) Poursuite de l'élaboration des vues du Comité pour l'élimination de la discrimination raciale au sujet des aspects essentiels des lacunes de procédure et des meilleurs moyens d'y remédier (suivi de l'étude de 2007 et des différents exposés présentés et propositions faites au Comité spécial conformément à son mandat);

ii) Exposé du HCDH: examen comparatif des procédures applicables découlant d'autres traités;

c) Mécanismes nationaux, régionaux et sous-régionaux:

i) Table ronde visant à fournir une approche comparative des mécanismes nationaux, régionaux et sous-régionaux;

d) Exposé et débat sur le but des Recommandations générales du Comité pour l'élimination de la discrimination raciale et sur le processus menant à leur publication dans le contexte de la mise en œuvre effective de la Convention, et lacunes éventuelles;

e) Discussions d'ordre général avec un ou plusieurs membres du Comité pour l'élimination de la discrimination raciale.

98. Le Comité spécial a approuvé les conclusions générales ci-après sur le racisme et le sport:

a) Le racisme, la discrimination raciale, la xénophobie et l'intolérance qui y est associée augmentent dans le monde entier. Des manifestations virulentes de ces fléaux ont également été observées et enregistrées dans des manifestations sportives et dans l'univers du sport, notamment sur des terrains de football dans toutes les régions;

b) Le football est un sport spectaculaire de portée mondiale, qui a la capacité d'attirer un très large public et impressionne des millions de personnes dans toutes les régions du monde;

c) Les fédérations internationales de football et les associations nationales de football ont conscience des problèmes de discrimination raciale qui existent dans ce sport et s'efforcent de lutter contre ce fléau;

d) Le sport, et en particulier le football, peut être utilisé pour amplifier les messages visant à lutter contre la discrimination et pour appuyer les mesures primaires prises par les gouvernements et par les membres de la société civile pour lutter contre le racisme;

e) Le Comité spécial encourage le Conseil des droits de l'homme à inviter le HCDH, en particulier la Section antidiscrimination, à continuer d'accorder, dans ses travaux, la priorité aux problèmes liés au racisme dans le sport, en mettant l'accent sur le football. À cet égard, le Comité considère que des ressources devraient être mises à la disposition du HCDH pour mener à bien les activités relatives au racisme dans le sport.

99. Toujours à la 15e séance, le rapport de la sixième session a été adopté *ad referendum*, étant entendu que les délégations communiqueraient par écrit au secrétariat d'ici au 31 octobre 2014 les corrections d'ordre technique devant être apportées à leurs interventions. Le Président-Rapporteur a invité les participants à faire des déclarations d'ordre général.

100. La représentante du Pakistan, au nom de l'OCI, a exprimé ses remerciements au Président-Rapporteur pour son remarquable rôle d'impulsion d'orientation durant la session.

101. La représentante de l'Afrique du Sud, au nom du Groupe des États d'Afrique, a remercié le Président-Rapporteur d'avoir assumé la direction de la session et a reconnu les progrès qui avaient été réalisés ainsi que le climat plus constructif de la sixième session. Elle a rappelé que le mandat du Comité spécial devait être guidé par le paragraphe 199 du Programme d'action de Durban et la décision 3/103 du Conseil des droits de l'homme, ainsi que la résolution 10/30 du Conseil. Elle a de nouveau souligné que la position du Groupe des États d'Afrique était que ces orientations devaient être privilégiées par le Comité dans le cadre de ses travaux.

102. La représentante de l'Union européenne a remercié le Président-Rapporteur d'avoir contribué à l'instauration d'un climat constructif et à un riche échange de vues, et d'avoir aussi, grâce à sa grande expérience, aidé le Comité à trouver un terrain d'entente au sujet de la voie à suivre. S'agissant des deux nouveaux sujets examinés pendant la session, à savoir la prévention et la sensibilisation et les mesures spéciales, l'Union européenne a noté que les experts invités les avaient traités de façon approfondie et qu'aucun d'entre eux n'avait indiqué qu'un domaine particulier n'était pas couvert par le cadre juridique international existant de lutte contre le racisme et les problèmes s'y rapportant. Sur la question de la xénophobie, la représentante a souligné que ce problème était combattu par le biais de différentes mesures de lutte contre la discrimination pour divers motifs et que l'Union européenne continuait de ne voir aucun intérêt à ce que le Comité travaille sur une définition juridique de ce phénomène. Au sujet des mécanismes nationaux, il restait nécessaire d'étudier plus avant dans quelle mesure ces mécanismes pouvaient améliorer la

mise en œuvre des normes internationales existantes, ce qui garantirait leur efficacité. S'agissant des lacunes de procédure, la représentante a souligné que, dans un premier temps, le Comité pour l'élimination de la discrimination raciale avait pu travailler efficacement dans le cadre des procédures existantes. Le degré de coopération consenti par les États parties n'était pas toujours satisfaisant, ce qui expliquait pourquoi il fallait commencer par améliorer la mise en œuvre des procédures existantes. La représentante a également proposé que le Comité spécial présente ses réflexions au Conseil des droits de l'homme sur la question du nombre des séances allouées au Comité. Concernant la prochaine session, la représentante a dit que les travaux du Comité gagneraient à porter sur les sujets consensuels, ce qui permettrait aux États de toutes les régions de mettre en commun leurs données d'expérience sur l'application des normes et des règles existantes.

103. Le représentant de la Chine a salué la sagesse du Président-Rapporteur et exprimé sa gratitude à tous les collègues du Comité spécial et du secrétariat qui avaient travaillé dur au cours des deux semaines écoulées. Le racisme était une grave atteinte aux droits de l'homme et la communauté internationale assistait à une montée préoccupante du racisme, de la discrimination raciale, de la xénophobie et de l'intolérance qui y est associée. La communauté internationale devait défendre le cadre international établi pour lutter contre le racisme et, partant, manifester sa volonté politique d'appliquer la Déclaration et le Programme d'action de Durban et le document final de la Conférence d'examen de Durban. Il importait de promouvoir l'harmonie et la coexistence entre les différentes races et sociétés du monde. Dans le même temps, il fallait élaborer de nouvelles normes complémentaires pour pouvoir lutter contre les formes contemporaines de racisme, de discrimination raciale, de xénophobie et de l'intolérance qui y est associée. Le Comité spécial était instamment engagé à obtenir des résultats tangibles à cette fin.

104. La représentante du Brésil a remercié le Président-Rapporteur du rôle qu'il avait joué en aidant le Comité spécial à parvenir à un consensus pour l'adoption des conclusions de la session. Elle a fait part de l'optimisme que lui inspiraient les priorités du Comité spécial; elle ne doutait pas que les travaux qu'il entreprendrait à l'avenir seraient conformes au mandat que lui avait confié le Conseil des droits de l'homme. Elle accueillait en particulier avec satisfaction les conclusions et la proposition de tenir un débat sur la question des lacunes de procédure dans le cas de la Convention.

105. Le représentant des États-Unis a également remercié le Président-Rapporteur de l'état d'esprit et de l'autorité dont il avait fait preuve durant la sixième session du Comité spécial, et il a rendu hommage à tous les collègues pour les efforts qu'ils avaient déployés afin de parvenir à un consensus au cours de la session.

106. Avant de clôturer la session, le Président-Rapporteur a remercié les participants de leurs témoignages de reconnaissance à son égard, en soulignant que les progrès réalisés pendant la session étaient le fruit du travail ardu accompli par les délégations.

Annexes

[*Anglais seulement*]

Annexe 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.

Annexe 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.

Annexe 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

Annexe 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