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31^{er} período de sesiones

Tema 9 de la agenda

**Racismo, discriminación racial, xenofobia y formas
conexas de intolerancia, seguimiento y aplicación de
la Declaración y el Programa de Acción de Durban**

Informe del Comité Especial sobre la Elaboración de Normas Complementarias acerca de su séptimo período de sesiones* **

Presidente-Relator: Sr. Abdul Samad Minty (Sudáfrica)

Resumen

Este informe se presenta de conformidad con la decisión 3/103 y las resoluciones 6/21 y 10/30 del Consejo de Derechos Humanos. El informe es un resumen de las deliberaciones del séptimo período de sesiones del Comité Especial sobre la Elaboración de Normas Complementarias y los debates sustantivos que tuvieron lugar durante el período de sesiones, incluido el examen por el Comité del cuestionario y el resumen de las respuestas de conformidad con la resolución 21/30 del Consejo.

* Este informe se presenta con retraso para poder incluir en él la información más reciente.

** Los anexos del presente informe se reproducen como se recibieron, únicamente en los idiomas en que se presentaron.

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I. Introducción

1. El Comité Especial sobre la Elaboración de Normas Complementarias presenta este informe de conformidad con la decisión 3/103 y las resoluciones 6/21 y 10/30 del Consejo de Derechos Humanos.

II. Organización del período de sesiones

2. El séptimo período de sesiones del Comité Especial tuvo lugar del 13 al 24 de julio de 2015. Durante el período de sesiones, el Comité celebró 16 sesiones.

A. Asistencia

3. Asistieron al período de sesiones representantes de los Estados Miembros y de los Estados no miembros en calidad de observadores, organizaciones intergubernamentales y organizaciones no gubernamentales (ONG) reconocidas como entidades consultivas por el Consejo Económico y Social.

B. Apertura del período de sesiones

4. La primera sesión del séptimo período de sesiones del Comité Especial fue inaugurada por su secretario. El Jefe de la Sección de Lucha contra la Discriminación Racial de la Oficina del Alto Comisionado de las Naciones Unidas para los Derechos Humanos (ACNUDH) hizo una declaración introductoria en la que señaló que la discriminación racial era a la sazón demasiado frecuente en las sociedades modernas de todo el mundo y revestía muchas formas contemporáneas. La labor del Comité como tal no consistía meramente en acordar nuevas normas, sino en definitiva en buscar formas de reforzar la protección de todas las personas contra los flagelos del racismo, la discriminación racial, la xenofobia y las formas conexas de intolerancia, como se enunciaba en la Declaración y el Programa de Acción de Durban. El orador recordó las observaciones introductorias del Alto Comisionado de las Naciones Unidas para los Derechos Humanos en el período de sesiones anterior a los efectos de manifestar que la labor del Comité consistía en indicar de qué modo la comunidad internacional podía asegurar a los millones de víctimas de esas vulneraciones un mayor grado de decencia, es decir, unas condiciones más dignas, igualitarias y equitativas.

C. Elección del Presidente-Relator

5. En su primera sesión, el Comité Especial eligió Presidente-Relator por aclamación a Abdul Samad Minty, Representante Permanente de la República de Sudáfrica ante la Oficina de las Naciones Unidas en Ginebra.

6. El Presidente-Relator agradeció su reelección al Comité Especial y manifestó que trabajaría conjuntamente con todos los asociados y miembros del Comité. Recordó que, en el párrafo 199 del Programa de Acción de Durban, la Conferencia Mundial contra el Racismo, la Discriminación Racial, la Xenofobia y las Formas Conexas de Intolerancia había recomendado que la Comisión de Derechos Humanos preparara normas internacionales complementarias que fortalecieran y actualizaran los instrumentos internacionales contra el racismo, la discriminación racial, la xenofobia y las formas conexas de intolerancia en todos sus aspectos. Dijo que los debates del Comité proseguirían

con el enfoque gradual adoptado en los períodos de sesiones anteriores. A este respecto, consideraba conveniente estudiar la posibilidad de establecer un marco normativo internacional sobre la xenofobia, en vista de que, por sus manifestaciones más agresivas, se requería la adopción de medidas más enérgicas. Destacó, en particular, los flagrantes actos de racismo y xenofobia que se seguían observando en los campos de fútbol y sus inmediaciones en muchos países debido a que no se habían adoptado medidas adecuadas para contrarrestarlos.

D. Aprobación del programa

7. Durante la primera sesión, el Comité Especial aprobó el programa del séptimo período de sesiones (A/HRC/AC.1/7/1).

E. Organización de los trabajos

8. El Presidente-Relator presentó el proyecto de programa de trabajo (véase el anexo III), que fue aprobado en la primera sesión.

9. El Presidente-Relator invitó a las delegaciones y los participantes a que formularan declaraciones generales sobre el período de sesiones.

10. El Embajador del Brasil manifestó que su país atribuía gran importancia a la aplicación plena y efectiva de la Declaración y el Programa de Acción de Durban y del documento final de la Conferencia de Examen de Durban, tras de lo cual señaló que los mecanismos de seguimiento desempeñaban un papel capital al respecto. El Embajador manifestó su reconocimiento por el hecho de que el Comité Especial siguiera examinando en el período de sesiones la cuestión de las lagunas de procedimiento de la Convención Internacional sobre la Eliminación de todas las Formas de Discriminación Racial y acogió favorablemente el debate propuesto con miembros del Comité para la Eliminación de la Discriminación Racial sobre cuestiones como las de las reservas, la presentación de informes y las recomendaciones generales. El Brasil tenía interés en escuchar las opiniones del Comité sobre los elementos fundamentales respecto de las lagunas de procedimiento y las mejores formas de subsanarlas. Además, el Brasil tomó nota con reconocimiento de la inclusión de la cuestión del racismo y el deporte en el programa del Comité Especial y acogió favorablemente las conclusiones al respecto del informe del sexto período de sesiones. El Brasil subrayó su apoyo al Decenio Internacional de los Afrodescendientes, que había comenzado el 1 de enero de 2015 con el tema “Afrodescendientes: reconocimiento, justicia y desarrollo”, así como a la ejecución de su programa de actividades.

11. El representante de Argelia, hablando en nombre del Grupo Africano, dijo que los actos de racismo, xenofobia, intolerancia e islamofobia, que anteriormente habían sido discretos, se realizaban a la sazón abiertamente, habían pasado a ser frecuentes y se manifestaban de manera palmaria y sin limitaciones en los discursos políticos, en los medios de comunicación y en Internet. El aumento de los actos racistas y xenófobos afectaba a los migrantes, los refugiados y los solicitantes de asilo, que eran los más vulnerables ante esos fenómenos, así como a sus derechos, razón por la que era imperativo establecer un enfoque centrado en las víctimas. A pesar de sus seis períodos de sesiones celebrados, el Comité no había podido cumplir su mandato, a saber, la elaboración de normas complementarias de la Convención. Habida cuenta de tales debates, se observaba que había deficiencias de procedimiento y sustantivas en los instrumentos vigentes. A falta de normas adicionales, las medidas adoptadas por los Estados podían carecer de coherencia y no estarían en consonancia con las normas y los principios de derechos humanos. El

Grupo Africano seguía estando convencido de la necesidad de permitir que el Comité Especial cumpliera su mandato, tras de lo cual agregó que el concepto de lagunas en los instrumentos internacionales vigentes no debería interpretarse en términos absolutos. Sería importante examinar las lagunas que había en las normas vigentes con miras a abarcar las formas y manifestaciones contemporáneas de racismo y proteger a las víctimas. El Grupo confiaba en que el Comité permitiría finalmente que los interesados se centrasen en la situación de las víctimas del racismo, la xenofobia y la intolerancia, cuyo número estaba aumentando y cuya suerte debía ser un motivo de preocupación para todos.

12. El representante de la República Bolivariana de Venezuela reiteró su apoyo y su colaboración a los efectos del desempeño del importante mandato del Comité Especial. Este se hallaba comprometido con la lucha contra el racismo, la discriminación y la intolerancia conexa y, en lo que era a la sazón su octavo año de existencia, el Comité había reafirmado la necesidad de elaborar normas complementarias para reforzar y actualizar el marco jurídico internacional y, de esa forma, combatir las nuevas expresiones de discriminación racial e intolerancia conexa y proteger a las víctimas. La delegación lamentó la falta de apoyo de algunos países en este mandato crucial a lo largo de los años y reiteró su llamamiento a los Estados Miembros para que procediesen a la aplicación efectiva de la Declaración y el Programa de Acción de Durban. La delegación resaltó la importante interacción con los miembros del Comité para la Eliminación de la Discriminación Racial a los efectos de detectar lagunas y otros problemas pertinentes en el marco de la Convención.

13. La representante de Sudáfrica manifestó su coincidencia con la declaración formulada por Argelia en nombre del Grupo Africano. Señaló que el diálogo que el Comité Especial había mantenido desde su constitución le había brindado una amplia oportunidad para reflexionar sobre las lagunas sustantivas y de procedimiento de la Convención a las que se suponía que harían frente el instrumento o instrumentos requeridos. La representante recordó las diferentes cuestiones temáticas clave que el Grupo Africano y Sudáfrica habían señalado durante años como manifestaciones contemporáneas de racismo, que incluían la xenofobia, la islamofobia, el antisemitismo, la propagación de ataques racistas y xenófobos en el ciberespacio (ciberdelincuencia), el control policial con sesgo racista y la incitación al odio racial, étnico y religioso. Las víctimas del control policial con sesgo racista en esos ámbitos requerían una mejor protección, reparaciones máximas y la eliminación total de la impunidad de los autores de esos actos de racismo. Las víctimas de tales delitos no necesitaban que el Comité celebrase debates académicos acerca de si era necesario o no establecer normas complementarias. Por ello, la representante opinaba que tales debates no serían pertinentes y carecerían de utilidad. La representante consideró que lo único que se necesitaba era aplicar el párrafo 199 de la Declaración y el Programa de Acción de Durban, en el que la Conferencia Mundial había dado instrucciones a la Comisión en 2001 para que elaborara normas complementarias. Sudáfrica sostenía que todo intento de negar esas instrucciones era ciertamente un intento de renegociar el documento final. El Comité no podía eludir su responsabilidad de proteger a las víctimas del racismo y la discriminación racial, ya que, de darse ese caso, equivaldría a abandonar a su suerte a las víctimas de tales lacras. La delegación reiteró su llamamiento para que se pusiera fin a la retórica sobre la lucha contra el racismo y, a este respecto, se emprendieran acciones concretas para erradicar esos males sociales, al tiempo que manifestó que esperaba con interés la celebración de debates constructivos y bien fundados para abordar el tema tan importante que tenía ante sí el Comité.

14. La representante de la Unión Europea dijo que todas las formas de las manifestaciones de racismo y xenofobia eran incompatibles con los valores fundacionales de la Unión, a saber, el respeto de la dignidad humana, la libertad, la democracia, la igualdad, el estado de derecho y el respeto de los derechos humanos. La Unión Europea seguía firmemente resuelta a luchar contra esos fenómenos dentro de su territorio y en todo el mundo. La representante recordó el quincuagésimo aniversario de la aprobación de la

Convención, en la que eran partes todos los Estados miembros de la Unión Europea, y dijo que la Convención era el pilar en que se asentaba la lucha mundial contra la discriminación racial. La representante manifestó que la Unión Europea seguía estando plenamente comprometida con la defensa de los objetivos primarios y los compromisos contraídos en la Conferencia Mundial contra el Racismo y con la colaboración con el Grupo de Trabajo de Expertos sobre los Afrodescendientes, el Comité Especial y el Grupo de Trabajo Intergubernamental sobre la Aplicación Efectiva de la Declaración y el Programa de Acción de Durban. No obstante, planteaba la cuestión de determinar si las seis semanas de reuniones anuales del Grupo de Trabajo constituían el modo más efectivo de emplear los recursos de la lucha contra el racismo. En cuanto al período de sesiones en curso del Comité Especial, la Unión Europea manifestó que las cinco consultas oficiosas con coordinadores regionales y políticos entre períodos de sesiones no habían contado con la participación ni la contribución de muchos grupos. La Unión Europea confiaba en que el Comité seguiría ocupándose de los temas indicados en el programa de trabajo y en que todos podrían participar constructivamente en los debates. A tal efecto, la Unión Europea estaba dispuesta a compartir sus experiencias sobre el modo de abordar tales cuestiones y tenía interés en escuchar contribuciones de todas las partes del mundo.

15. El Embajador de Etiopía manifestó el apoyo de su país a la declaración formulada por Argelia en nombre del Grupo Africano. Etiopía compartía la opinión de que, a pesar de algunos progresos realizados hasta el momento por el Comité Especial a fin de delimitar las cuestiones básicas que habían de abordarse, quedaba mucho por hacer para cumplir plenamente su mandato de manera más ágil. El Embajador se refirió al mandato del Comité, tal como había sido recordado por el Consejo en su resolución 6/21. Aunque el Comité estaba aún lejos de llegar a la etapa deseada de elaborar las normas complementarias esperadas a causa de varias diferencias, Etiopía consideraba que el sexto período de sesiones del Comité había resultado efectivo a fin de delimitar los principales temas que había que examinar, incluidos los del período de sesiones en curso. Durante sus deliberaciones, el Comité se encontraría en una posición mucho mejor para abordar tales diferencias, particularmente las cuestiones temáticas fundamentales de las formas y las medidas de racismo, discriminación racial, xenofobia e intolerancia conexa. El Embajador reiteró que Etiopía estaba resuelta a actuar de manera cooperativa y constructiva con todas las demás delegaciones que perseguían objetivos similares, consistentes en seguir promoviendo las tareas colectivas cruciales a los efectos de elaborar las tan necesarias normas complementarias para la aplicación efectiva y eficiente de la Convención.

16. El representante de los Estados Unidos de América destacó el compromiso de su Gobierno respecto del tema primordial del período de sesiones: luchar contra el racismo y la discriminación racial. El representante se hizo eco de anteriores declaraciones en que se citaban el quincuagésimo aniversario de la Convención y el Decenio Internacional de los Afrodescendientes. Manifestó que los últimos acontecimientos ocurridos en los Estados Unidos habían puesto de relieve la pertinencia y la oportunidad de la labor del Comité sobre ese importante tema. El representante reiteró la posición de larga data de su país de que no consideraba necesario contar con nuevos instrumentos jurídicos internacionales de carácter sustantivo que fueran vinculantes en esa esfera. No obstante, su país consideraba que el mandato del Comité incluía la promoción de iniciativas como los planes de acción de consenso. Aunque había diferencias en relación con varias cuestiones, los Estados Unidos esperaban con interés el desarrollo de un diálogo productivo y el intercambio de opiniones durante el sexto período de sesiones del Comité Especial. El Embajador esperaba que resultará útil para el Consejo de Derechos Humanos el examen de la cuestión de la duración de los períodos de sesiones del Comité Especial y señaló que nueve días parecían ser más que suficientes para lo que necesitaba el Comité.

17. El Embajador del Pakistán, hablando en nombre de la Organización de Cooperación Islámica (OCI), dijo que, en 2007, la resolución 6/21 había recordado el mandato del

Comité Especial de elaborar, como cuestión prioritaria y necesaria, normas complementarias en forma de convención o uno o varios protocolos adicionales de la Convención, que subsanaran las lagunas de esta y que establecieran una nueva normativa para combatir todas las formas del racismo contemporáneo, incluida la incitación al odio racial o religioso. En los seis últimos períodos de sesiones, el Comité había celebrado debates sobre varias esferas temáticas. El Embajador tomó nota de las esferas temáticas seleccionadas para el período de sesiones en curso, en particular la presentación y el debate sobre el propósito de las recomendaciones generales formuladas por el Comité para la Eliminación de la Discriminación Racial y antecedentes de su formulación en el contexto de la aplicación efectiva de la Convención, y posibles deficiencias.

18. El Embajador del Pakistán observó con preocupación que el Comité Especial no había podido cumplir su mandato básico, a saber, elaborar normas complementarias en forma de un protocolo adicional de la Convención. Habida cuenta de los intensos debates de los últimos seis períodos de sesiones, la OCI consideraba que había lagunas en la Convención que únicamente podían subsanarse mediante la elaboración de un protocolo adicional. A falta de ese protocolo, las medidas adoptadas por los Estados no serían universales, uniformes, objetivas, coherentes ni acordes con las normas y los principios internacionales de derechos humanos. El Embajador dijo que la OCI consideraba que el período de sesiones en curso del Comité debería centrarse en racionalizar los elementos de un protocolo adicional, lo que incluía, entre otras cosas, establecer para la Convención un procedimiento de investigación similar al de otros instrumentos de derechos humanos; reforzar los mecanismos nacionales; penalizar el discurso de odio o la incitación al odio que ocasionase una violencia inminente y penalizar los actos xenófobos; establecer recursos efectivos, en particular respecto de la indemnización/reparación a las víctimas; y luchar contra el control policial selectivo y la discriminación por motivos raciales y religiosos. Para concluir, el Embajador pidió al Presidente-Relator que preparase, sobre la base de las deliberaciones de los siete períodos de sesiones del Comité Especial, elementos de un proyecto de protocolo adicional entre los períodos de sesiones y que lo diese a conocer a los Estados Miembros antes del octavo período de sesiones del Comité para que lo examinasen.

III. Deliberaciones generales y temáticas

A. Evaluación del uso del mecanismo de denuncia en virtud del artículo 14

19. En la segunda sesión, celebrada el 13 de julio, Marc Bossuyt, miembro del Comité para la Eliminación de la Discriminación Racial, presentó una ponencia sobre la evaluación del uso del mecanismo de denuncia en virtud del artículo 14 de la Convención. En el anexo I del presente informe figura un resumen de su ponencia y del debate posterior con los participantes en la sesión.

B. Problemas, dificultades y mejores prácticas respecto de la presentación de informes con arreglo a la Convención Internacional sobre la Eliminación de Todas las Formas de Discriminación Racial

20. En su tercera sesión, celebrada el 14 de julio, el Presidente-Relator recordó que, en el informe sobre su sexto período de sesiones¹, el Comité Especial había acordado

¹ Véase el documento A/HRC/28/81, párr. 97 a).

examinar, en su séptimo período de sesiones, problemas, dificultades y mejores prácticas respecto de la presentación de informes con arreglo a la Convención. Según lo convenido por los coordinadores de los grupos regionales, se invitó a todos los Estados a ofrecerse voluntarios para informar al Comité Especial sobre sus experiencias a título individual a este respecto en el séptimo período de sesiones. Durante el período de sesiones, suministraron información los representantes de Bélgica, el Ecuador (en su propio nombre y en nombre de la Comunidad de Estados Latinoamericanos y Caribeños (CELAC)), los Estados Unidos, Guatemala, México, Noruega, el Pakistán y Sudáfrica. En el anexo I del presente informe figura un resumen de las ponencias y del debate posterior con los participantes en la sesión.

C. Presentación y debate sobre el propósito de las recomendaciones generales formuladas por el Comité para la Eliminación de la Discriminación Racial

21. En su cuarta sesión, celebrada el 14 de julio, Anastasia Crickley, Vicepresidenta del Comité para la Eliminación de la Discriminación Racial, presentó una ponencia sobre el objetivo de las recomendaciones generales formuladas por el Comité y antecedentes de su formulación en el contexto de la aplicación efectiva de la Convención. En el anexo I del presente informe figura un resumen de su ponencia y del debate posterior con los participantes en la sesión.

D. Comparación de los procedimientos pertinentes de otros tratados

22. En su quinta sesión, celebrada el 15 de julio, Simon Walker, Jefe de la Sección de Derechos Civiles, Políticos, Económicos, Sociales y Culturales de la División de Tratados de Derechos Humanos del ACNUDH, presentó un cuadro comparativo de los procedimientos pertinentes de los órganos de tratados. En el anexo I del presente informe figura un resumen de las ponencias y de los debates posteriores con los participantes en la sesión.

E. Lagunas de procedimiento en relación con la Convención Internacional sobre la Eliminación de Todas las Formas de Discriminación Racial

23. En su séptima sesión, celebrada el 16 de julio, el Comité Especial examinó el tema titulado “Exposición más detallada de las opiniones del Comité para la Eliminación de la Discriminación Racial sobre los elementos fundamentales respecto de las lagunas de procedimiento y mejores formas de subsanarlas (seguimiento del estudio llevado a cabo en 2007 y las diferentes presentaciones realizadas y propuestas formuladas al Comité Especial de conformidad con su mandato)” (véase el documento A/HRC/28/81, párr. 97 b) i)). En el anexo I del presente informe figura un resumen del debate sobre ese tema.

F. Deporte y racismo

24. En la novena sesión, celebrada el 20 de julio, el Comité examinó la cuestión del racismo y el deporte. Todd Crosset, Profesor de la Universidad de Massachusetts, Delia Douglas, Profesora de la Universidad de Columbia Británica, y Benjamin Cohen, Director de Gobernanza y Asuntos Jurídicos de la Federación Internacional de Baloncesto, presentaron ponencias sobre el tema. El debate sobre el racismo y el deporte prosiguió más

tarde durante ese día en la décima sesión, en la que Gerd Dembowski, Director de Diversidad y Antidiscriminación del Departamento de Sostenibilidad de la Fédération Internationale de Football Association (FIFA), Daniela Wurbs, de la organización Football Supporters Europe, y Des Tomlinson, de la Football Association of Ireland, presentaron ponencias al Comité Especial. En el anexo I del presente informe figura un resumen de las ponencias y del debate posterior con los participantes en la sesión.

G. Mesa redonda para proporcionar una perspectiva comparativa de los mecanismos nacionales, regionales y subregionales

25. En su 11ª sesión, celebrada el 21 de julio, tuvo lugar una mesa redonda para proporcionar una perspectiva comparativa de los mecanismos nacionales, regionales y subregionales. Lamentablemente la persona que estaba previsto que hablara sobre el sistema de derechos humanos de la Unión Africana desde la perspectiva de la lucha contra el racismo, la discriminación racial, la xenofobia y la intolerancia conexas, Michelo Hansungule, del Centro de Derechos Humanos de la Universidad de Pretoria, no pudo asistir al período de sesiones de Ginebra a causa de problemas de desplazamiento. Participaron en la mesa redonda Linda Ravo, de la Dirección de Derechos Fundamentales y Ciudadanía de la Unión de la Comisión Europea, y Lyal S. Sunga, Director del Programa sobre el Estado de Derecho del Instituto de La Haya para la Justicia Mundial. En el anexo I del presente informe figura un resumen del debate.

H. Debate general e intercambio de opiniones, 12ª sesión

26. El 21 de julio, el Comité Especial celebró un debate general y un intercambio de opiniones en su 12ª sesión. El Presidente-Relator pidió a las delegaciones que examinaran el modo de avanzar en el tema del cuestionario y las respuestas recibidas. Se refirió a la baja tasa de respuestas, pero consideró que el proceso estaba casi terminado e invitó a las delegaciones, en preparación de la próxima reunión del período de sesiones, a que reflexionasen acerca de las propuestas sobre la base de la interacción con los expertos.

27. La representante del Brasil transmitió su reconocimiento al Presidente-Relator por el modo en que desempeñaba sus funciones directivas y acogió favorablemente la organización de las ilustrativas ponencias presentadas. La representante manifestó que, en relación con las lagunas de procedimiento, las ponencias que se habían presentado en los últimos días, particularmente por miembros del Comité para la Eliminación de la Discriminación Racial, habían puesto de manifiesto que el Comité seguía careciendo de un mandato oficial para poner en marcha medidas, como las visitas a países y las medidas de seguimiento de sus recomendaciones, que resultaban esenciales para el debido desempeño de sus funciones y el pleno cumplimiento de las obligaciones contraídas con arreglo a la Convención. Otros órganos de tratados creados después del Comité ya habían adoptado disposiciones sobre cuestiones conexas. Así pues, podía ser necesario contar con normas adicionales en esta esfera, razón por la que era menester seguir debatiendo al respecto. La representante acogió favorablemente la idea de un informe actualizado del Comité sobre esa cuestión. Agregó que la cuestión del racismo y el deporte debería recogerse en los documentos finales del séptimo período de sesiones. La delegación del Brasil era partidaria de la elaboración de un plan de acción o directrices, etc. La representante concluyó señalando que el Brasil sería anfitrión de la primera conferencia regional del Decenio Internacional de los Afrodescendientes, que se celebraría en Brasilia, en diciembre de 2015.

28. La representante de Sudáfrica dijo que, en opinión de su delegación y a la vista de las diversas ponencias, había lagunas en la Convención, particularmente de procedimiento.

En los futuros períodos de sesiones, el Comité Especial debería avanzar en la elaboración de normas complementarias para subsanar tales lagunas.

29. La representante del Pakistán, hablando en nombre de la OCI, dio las gracias al Presidente-Relator por haber conseguido la participación de expertos como oradores ante el Comité Especial en el período de sesiones y destacó que hasta el momento se habían examinado importantes esferas temáticas que iban desde el deporte y el racismo a los mecanismos nacionales. Habida cuenta de los debates de los seis períodos de sesiones anteriores y del período de sesiones en curso, la OCI opinaba que no cabía duda de que existían lagunas sustantivas y de procedimiento. La oradora estaba de acuerdo con las representantes del Brasil y de Sudáfrica en que se necesitaba establecer una forma de normas complementarias. En cuanto a la posición del Comité para la Eliminación de la Discriminación Racial sobre las lagunas de procedimiento, dicho Comité únicamente había propuesto que se examinaran esas lagunas porque consideraba que sus 35 observaciones generales subsanaban las lagunas sustantivas de la Convención. No obstante, a juicio de la OCI el análisis interpretativo del Comité no era suficiente para aplicar la Convención a los efectos de luchar contra la xenofobia, establecer mecanismos nacionales de igualdad y elaborar planes de acción nacionales contra la discriminación racial, todo lo cual daba lugar a importantes lagunas. Por consiguiente, era necesario unificar y uniformar esos procesos. Sin un protocolo adicional que articulase las normas y los principios universalmente acordados, sería difícil que los Estados racionalizaran y elaboraran leyes, políticas, planes de acción nacionales y mecanismos y que, además, luchasen contra el racismo, la discriminación racial, la xenofobia y las formas conexas de intolerancia en el plano nacional. En cuanto al discurso de odio y los delitos motivados por prejuicios, la representante destacó la necesidad de contar con normas complementarias en forma de un protocolo adicional y dijo que la OCI consideraba que era importante comenzar a examinar elementos tales como un protocolo. En los días siguientes y en el próximo período de sesiones del Comité, había que examinar a fondo el camino a seguir.

30. El representante de los Estados Unidos manifestó su reconocimiento por el proyecto de documento que contenía una recopilación de las opiniones del Comité Especial sobre el tema de las lagunas de procedimiento en los seis anteriores períodos de sesiones. En opinión del representante, ello ponía de manifiesto la falta de consenso sobre las lagunas de procedimiento y las preocupaciones manifestadas, incluidas las relativas a los costos y a la duplicación de actividades, así como la necesidad de aplicar plenamente las normas y los procedimientos vigentes. En cuanto a la cuestión de las lagunas de procedimiento, el orador se refirió al reciente proceso de reforma de los órganos de tratados y al hecho de que en algunos de sus documentos finales se habían abordado varios problemas relacionados con la presentación de informes al Comité para la Eliminación de la Discriminación Racial. Debería hacerse hincapié en la mejora de la observancia de las obligaciones y las normas vigentes en lugar de en el establecimiento de nuevas obligaciones de procedimiento. El orador recordó el procedimiento vigente respecto de las comunicaciones individuales en virtud del artículo 14 de la Convención. Dijo que varios titulares de mandatos de los procedimientos especiales que se ocupaban de esas cuestiones ya estaban realizando visitas a países, como el Grupo de Trabajo de Expertos sobre los Afrodescendientes, el Relator Especial sobre las formas contemporáneas de racismo, discriminación racial, xenofobia y formas conexas de intolerancia, el Experto Independiente sobre cuestiones de las minorías y las actividades previstas como parte del Decenio Internacional de los Afrodescendientes. La delegación de los Estados Unidos no estaba convencida de que las visitas a países constituyesen un modo adecuado para que el Comité Especial emplease su tiempo, sus conocimientos especializados y sus recursos. En lo tocante a los mecanismos nacionales, el orador manifestó que los países ya podían establecerlos. En lo concerniente a las lagunas sustantivas, un protocolo facultativo adicional podía entrañar un perjuicio para el tratado básico al dispersar el interés de los Estados Miembros, sobrecargar al Comité para la

Eliminación de la Discriminación Racial con nuevos problemas y menoscabar su actual ámbito de acción, dado que se daría a entender que no se ocupaba de ciertos problemas. El orador recordó los debates sobre las formas de las normas complementarias que no eran vinculantes, tales como los documentos de mejores prácticas y las directrices adicionales en ese ámbito, que podían resultar eficaces y útiles en el marco de la importante lucha contra el racismo. El orador dijo que el Comité Especial podía avanzar en la elaboración de tales documentos no vinculantes.

31. La representante de la Unión Europea hizo algunas observaciones preliminares y recordó que las ponencias del Comité para la Eliminación de la Discriminación Racial confirmaban que las disposiciones sustantivas de la Convención eran suficientes para hacer frente a los problemas existentes a la sazón. La Unión Europea destacó la importancia de optimizar los procedimientos de supervisión existentes del Comité, a saber, mediante el procedimiento de actuación urgente y todas las obligaciones de presentación de informes. Un nuevo procedimiento entrañaba el riesgo de duplicación y superposición entre los mecanismos del Consejo de Derechos Humanos y la labor del ACNUDH.

I. Cuestionario realizado de conformidad con lo dispuesto en el párrafo 4 de la resolución 21/30 del Consejo de Derechos Humanos

32. En la 13ª sesión, celebrada el 22 de julio, el Presidente-Relator se refirió a los documentos distribuidos a las delegaciones en varios períodos de sesiones anteriores del Comité Especial y por correo electrónico a coordinadores regionales antes del séptimo período de sesiones. Los documentos se titulaban “Resumed third session of the Ad Hoc Committee on the Elaboration of Complementary Standards — list of topics discussed in the second session” y “Fifth session of the Ad Hoc Committee on the Elaboration of Complementary Standards — list of topics contained in A/HRC/18/36: report of the Ad Hoc Committee on the Elaboration of Complementary Standards on its third session”.

33. Los documentos se distribuyeron de nuevo en la 13ª sesión, en la que el Presidente-Relator reiteró la lista de temas examinados como temas del programa de trabajo en los períodos de sesiones anteriores e indicó que los temas de la xenofobia y el racismo y el deporte habían sido examinados en tres períodos de sesiones y que la cuestión de los mecanismos nacionales y las lagunas de procedimiento respecto de la Convención había sido examinada en cuatro períodos de sesiones. Además de la lista, el orador recordó que, durante el quinto período de sesiones, el Comité había decidido que era importante examinar la prevención/sensibilización y medidas de acción afirmativa/especiales y que esos temas también habían sido examinados en el sexto período de sesiones como parte de su programa de trabajo. El orador indicó que el Comité debería utilizar las listas para examinar los temas de futuros períodos de sesiones y para determinar el modo de avanzar en su labor. Los debates de la 13ª sesión tuvieron lugar sobre la base de los documentos.

34. El Presidente-Relator se refirió al cuestionario enviado a los Estados Miembros en 2013 en preparación del quinto período de sesiones y distribuido de nuevo en 2014 con miras a la celebración del sexto período de sesiones, e indicó que se habían recibido 43 respuestas. No obstante, varios destinatarios no habían respondido a algunas preguntas. Habida cuenta de que los temas y las cuestiones que figuraban en el cuestionario habían sido acordados por consenso por los coordinadores regionales, resultaba sorprendente que no se hubiesen recibido las contestaciones. El orador preguntó qué debería hacer el Comité con el cuestionario. Destacó la importancia de avanzar y de concluir el examen de algunos de los temas. A este respecto, la cuestión del racismo y el deporte podía requerir un examen en un nuevo período de sesiones.

35. La representante del Brasil dijo que, para su país, el cuestionario era un importante instrumento que se hacía debidamente eco de los debates celebrados durante los últimos períodos de sesiones del Comité Especial. Según las respuestas recibidas, la xenofobia y los mecanismos nacionales eran preocupaciones muy pertinentes para los países. Sin embargo, no existía aún un consenso sobre la cuestión de las lagunas en relación con esos temas. Podía ser necesario celebrar nuevos debates sobre los temas y, a este respecto, resultaban esenciales las opiniones del Comité para la Eliminación de la Discriminación Racial sobre el modo en que la Convención afectaba a tales cuestiones. Había otra opción, a saber, que el Comité Especial pudiese reflexionar sobre la posibilidad de proponer la elaboración de planes de acción, directrices o una resolución del Consejo de Derechos Humanos sobre las cuestiones. La oradora dijo que, en relación con la cuestión de las lagunas de procedimiento, el cuestionario había mostrado que el Comité para la Eliminación de la Discriminación Racial seguía careciendo de un mandato oficial para adoptar medidas, como las visitas a países, hacer un seguimiento de sus recomendaciones y establecer procedimientos de alerta temprana, en consonancia con lo que habían expuesto los miembros del Comité en el séptimo período de sesiones del Comité Especial. Otros órganos de tratados creados con posterioridad al Comité para la Eliminación de la Discriminación Racial ya contaban con disposiciones sobre las cuestiones correspondientes. Por consiguiente, un nuevo informe del Comité sobre esas cuestiones resultaría beneficioso para el Comité Especial.

36. El representante de los Estados Unidos se refirió al cuestionario y suministró información actualizada sobre las respuestas que su Gobierno había dado en el cuestionario inicial de 2013. Destacó que, desde entonces, su país había incrementado considerablemente sus mecanismos internos para hacer frente a la violencia xenófoba y a las formas modernas de discriminación, en consonancia con las obligaciones contraídas por los Estados Unidos con arreglo a la Convención Internacional sobre la Eliminación de Todas las Formas de Discriminación Racial y otras convenciones. El orador mencionó dos ejemplos: en primer lugar, en enero de 2015 el Buró Federal de Investigaciones (FBI) de los Estados Unidos había comenzado a reunir datos más detallados sobre los delitos motivados por prejuicios, particularmente contra árabes, hindúes y sijes; en segundo lugar, en junio de 2015 el Tribunal Supremo de los Estados Unidos había respaldado la utilización de la responsabilidad por efectos desiguales en virtud de la Ley de Equidad en la Vivienda, instrumento que servía para hacer frente a las formas menos ostensibles de discriminación en materia de vivienda. El orador sugirió que se recomendase una serie de conclusiones sobre el cuestionario en el próximo período de sesiones, al tiempo que se siguiese alentando a que remitiesen respuestas complementarias los países que habían facilitado respuestas y a que contestasen los que no lo habían hecho. En cuanto a la lista de temas, el orador estaba de acuerdo en que sería beneficioso celebrar nuevos debates sobre la cuestión del racismo y el deporte. Era conveniente examinar qué tipo de producto podía elaborar el Comité. El orador agregó que el Comité podía resultar útil para establecer directrices o mejores prácticas.

37. La delegada de la Unión Europea dijo que nueve de sus miembros integrantes y la Unión como grupo regional habían respondido al cuestionario. Para que el informe fuese representativo y pertinente, era necesario contar con una visión general de las respuestas. Si se adoptase la decisión de distribuir de nuevo al cuestionario, este debería remitirse a los países que aún no habían respondido. La oradora manifestó que el proceso del cuestionario no debía durar indefinidamente. Agregó que el tema del racismo y el deporte requería nuevos debates.

38. La representante de Sudáfrica dijo que el hecho de distribuir de nuevo el cuestionario no daría lugar necesariamente a que se obtuvieron más respuestas, habida cuenta en particular de que muchas delegaciones estaban sobrecargadas por las solicitudes de responder a los demás mecanismos de presentación de informes del sistema de las

Naciones Unidas. En relación con la propuesta sobre el tema del racismo y el deporte, la oradora sugirió que comenzasen los trabajos sobre las directrices y la práctica y pidió aclaraciones al respecto al representante de los Estados Unidos. La representante dijo que la protección de los migrantes contra las prácticas racistas, discriminatorias y xenófobas podía ser un futuro tema de examen por el Comité Especial.

39. El representante de los Estados Unidos aclaró que, si el tema del racismo y el deporte se incluyese en el programa del siguiente período de sesiones, el Comité Especial debería adoptar un papel más directivo y tal vez había llegado el momento de prever un producto que se situase por encima de los debates. En relación con la lista de temas que se había distribuido, el orador dijo que otros temas planteados por las delegaciones durante los períodos de sesiones no figuraban en la lista y también podían examinarse.

40. El Presidente-Relator aclaró que los documentos distribuidos contenían temas aprobados por el Comité Especial como temas de consenso que se examinarían en los períodos de sesiones actual y posteriores y que eran el resultado de negociaciones y acuerdos en el seno del Comité. Se refirió a las notas de pie de página de los documentos. Además, los informes recogían la lista acordada de temas que había aprobado el Comité en sus períodos de sesiones y que se había presentado al Consejo de Derechos Humanos. Había otras sugerencias que no aparecían en las listas porque no habían sido aprobadas; con todo, era probable que se hubiese hecho referencia a ellas en los diferentes informes del Comité Especial. El orador agregó que podía ser necesario un producto o un documento final sobre el racismo y el deporte. Además, preguntó cómo había que proceder en relación con la cuestión del desempeño del mandato del Comité Especial si no se alcanzara un consenso durante el período de sesiones, y planteó la posibilidad de recurrir al Consejo.

41. La representante del Brasil acogió favorablemente la continuación del examen de la cuestión del racismo y el deporte. Dijo que el Comité podía aprobar conclusiones o un documento y sugirió que comenzase a elaborar un texto durante el siguiente período de sesiones. La oradora recordó que podía utilizarse a tal efecto la resolución 13/27 del Consejo de Derechos Humanos relativa a un entorno deportivo mundial exento de racismo, discriminación racial, xenofobia y formas conexas de intolerancia. En cuanto a la propuesta de examinar la protección de los migrantes contra las prácticas racistas, discriminatorias y xenófobas, la representante recordó la Convención Internacional sobre la Protección de los Derechos de Todos los Trabajadores Migratorios y de sus Familiares y dijo que sería importante examinar el modo en que el Comité para la Eliminación de la Discriminación Racial y el Comité Especial examinaban si la Convención Internacional se ocupaba de la cuestión a fin de evitar duplicaciones y determinar el grado de complementariedad de las cuestiones. La oradora dijo que la cuestión de las múltiples formas de discriminación había sido abordada en todas las ponencias y podía ser un importante tema de debate en el siguiente período de sesiones.

42. La representante de Sudáfrica afirmó que, como primera medida, el Comité había de comenzar a examinar un producto en forma de directrices o de mejores prácticas. En cuanto a la cuestión de las lagunas de procedimiento, convendría pedir al Comité para la Eliminación de la Discriminación Racial que explicara cómo subsanarlas y que presentara un informe actualizado sobre esa cuestión.

43. La representante del Pakistán, hablando en nombre de la OCI, apoyó el debate sobre el tema propuesto por Sudáfrica en relación con la protección de los migrantes contra las prácticas racistas, discriminatorias y xenófobas, así como la presentación del informe actualizado sobre las lagunas de procedimiento del Comité para la Eliminación de la Discriminación Racial, dado que había transcurrido mucho tiempo desde que el informe se había redactado en 2007 y habían tenido lugar varias novedades. El Comité Especial debería ser muy preciso en su solicitud a fin de que el Comité para la Eliminación de la Discriminación Racial presentase propuestas o elementos concretos e información sobre

cómo subsanar esas lagunas de procedimiento. Sudáfrica celebraba la franqueza con que se estaba actuando en relación con la formulación de normas complementarias. No obstante, el hecho de señalar únicamente una cuestión o un tema para desarrollar no era un enfoque correcto y no se ajustaba al mandato del Comité Especial. Aunque se reconocía que el racismo y el deporte era una cuestión importante, todas las cuestiones y los aspectos pertinentes de la discriminación racial deberían examinarse detalladamente y no solo en la esfera del deporte, lo que incluía el discurso de odio, la incitación al odio o la discriminación por causa de la raza, la religión, el origen nacional, etc.

44. El Presidente-Relator destacó que debería dejarse margen a los Estados para que presentasen propuestas a todos, incluso durante el tiempo que transcurría entre períodos de sesiones. En relación con el producto o el resultado, se habían formulado propuestas concretas que deberían ser examinadas por el Comité. El Presidente-Relator suspendió la sesión a fin de que los coordinadores regionales y otras delegaciones interesadas pudiesen reunirse oficiosamente y avanzaran en las diferentes cuestiones.

J. Debate general e intercambio de opiniones, 14ª sesión

45. En su 14ª sesión, celebrada el 22 de julio, el Comité Especial organizó un debate general y un intercambio de opiniones. El Presidente-Relator hizo un resumen de sus ideas y propuestas formuladas en el séptimo período de sesiones con miras a su examen por el Comité. Resumió algunas cuestiones pertinentes que habían sido examinadas en la sala, principalmente sobre la base de las ponencias de los diferentes expertos que habían participado en el séptimo período de sesiones del Comité. Los temas abordados se ajustaban al programa y al programa de trabajo aprobados por el Comité Especial en su primera sesión, celebrada el 13 de julio.

46. La representante de la Unión Europea preguntó acerca de la utilidad que se esperaba que tuviera el hecho de solicitar al Comité para la Eliminación de la Discriminación Racial que presentara al Comité Especial un estudio actualizado. La oradora preguntó si, con ello, cabría anticipar un conjunto diferente de resultados o si, de hecho, se obtendría el mismo resultado. Preguntó acerca de las consecuencias para el presupuesto por programas y de las repercusiones para los recursos que tendría el hecho de solicitar un estudio actualizado al Comité para la Eliminación de la Discriminación Racial.

47. El representante de los Estados Unidos pidió que se presentase por escrito el proyecto de observaciones del Presidente-Relator. Aunque parte de la información incluida en las observaciones del Presidente-Relator sobre el racismo y el deporte era de interés, por el momento no deberían extraerse conclusiones sobre la forma que habría de tener el posible documento final. Por ejemplo, los principios rectores del deporte podrían no tener tanta utilidad como las mejores prácticas. El orador reiteró que las normas complementarias preparadas por el Comité Especial no tenían por qué adoptar la forma de un tratado o protocolo vinculante, que podría atraer únicamente a un pequeño número de Estados partes.

48. El Presidente-Relator dijo que sus observaciones no eran exhaustivas y que no estaba previsto que se distribuyeran las notas de su discurso. Se había limitado a recoger ideas y cuestiones planteadas durante las 13 sesiones anteriores del séptimo período de sesiones con el propósito de facilitar los debates. Agregó que sus observaciones eran personales y destinadas a orientar al Comité Especial, si bien correspondía al Comité negociar y elaborar un producto real o incluso rechazar todas las cuestiones que había planteado en sus observaciones si así lo deseara. En cuanto al hecho de solicitar que el Comité para la Eliminación de la Discriminación Racial presentase un estudio actualizado, el Presidente-Relator respondió diciendo que se trataba realmente de una iniciativa para determinar qué había hecho el Comité en relación con los elementos incluidos en su estudio

de 2007 (A/HRC/4/WG.3/7), tras de lo cual señaló que el experto del Comité había dicho también que este no había realizado ningún avance en relación con el estudio. El Comité Especial estaba obligado a indagar al respecto y a obtener la información más actualizada posible sobre el estudio. El orador agregó que correspondía al Comité para la Eliminación de la Discriminación Racial determinar cómo respondería una vez que hubiese recibido una solicitud del Comité Especial. En cuanto a la cuestión de las consecuencias para el presupuesto por programas y las repercusiones para los recursos, también correspondía responder al Comité para la Eliminación de la Discriminación Racial.

49. La delegación del Brasil agradeció al Presidente-Relator sus observaciones y señaló que constituían una sólida base para avanzar. La representante pidió una copia de las observaciones del Presidente-Relator para pronunciarse en concreto y proponer adiciones. La oradora agregó que el racismo y el deporte podían ser un ámbito al que el Comité Especial podía hacer una contribución de gran importancia.

50. La representante de Sudáfrica manifestó que su delegación y el Grupo Africano tenían claro el hecho de que la norma complementaria final había de ser un protocolo que había de ser vinculante.

51. La representante del Pakistán, hablando en nombre de la OCI, agradeció al Presidente-Relator su visión general del debate que estaba tenido lugar, incluidas las interesantes propuestas formuladas por los expertos. El Pakistán, en nombre de la OCI, apoyaba la idea de establecer directrices, pero no comprendía el fundamento de las objeciones presentadas a un protocolo facultativo, habida cuenta de que los Estados miembros no estaban obligados a firmarlo. Resultaba difícil de entender cómo, al cabo de 50 años, la Convención Internacional sobre la Eliminación de Todas las Formas de Discriminación Racial podía abarcar todas las nuevas circunstancias. Sería bien acogido un protocolo facultativo que explicase en términos generales a los Estados partes la elaboración de planes concretos sobre el racismo y el deporte. Los órganos de tratados deberían alentar la realización de cambios tangibles sobre el terreno en favor de las víctimas de la discriminación racial. La oradora sugirió que, a partir de la lista de temas, se propusiera que el del fomento y la incitación al odio racial, étnico, nacional y religioso y el de los delitos de odio fuesen examinados por el Comité Especial en su octavo período de sesiones.

52. La representante de Cuba recordó que su país siempre había respaldado la elaboración de normas complementarias sobre cuestiones relacionadas con la Convención. Era de lamentar que se hubiesen expuesto diversas posiciones para impedir que el Comité Especial elaborase una norma vinculante, habida cuenta de su claro y urgente mandato. Un documento con todas las recomendaciones que habían formulado los expertos podía servir de base para preparar planes de acción y principios rectores. Cuba se sumaba a la declaración formulada por Sudáfrica y el Pakistán en nombre de la OCI. Apoyaba la inclusión del tema del racismo y el deporte y de otros temas y consideraba que la extensa lista de temas debería seguir siendo examinada.

53. El representante de México dijo que había barreras y lagunas que había que superar y que la cuestión que se planteaba de hecho era determinar qué se podía mejorar de lo que existía. México no se opondría a las directrices sobre el racismo y el deporte, pero considerada que era necesario seguir debatiendo muchas otras cuestiones.

54. El representante de la República Bolivariana de Venezuela destacó que, teniendo en cuenta las observaciones que habían hecho los expertos sobre el terreno durante el período de sesiones, a juicio de su delegación estaba claro que existían lagunas de procedimiento en relación con la lucha contra el racismo, la discriminación racial, la xenofobia y la intolerancia conexas, y que había asimismo lagunas sustantivas que, si se subsanaran, ayudarían al Comité para la Eliminación de la Discriminación Racial a alcanzar sus

objetivos. Algunos de los mecanismos existentes requerían una modificación y otros simplemente necesitaban ser reforzados para que se aplicasen de manera efectiva, y todos los que habían de ser creados venían determinados por realidades económicas, sociales, culturales, civiles y políticas y por el sufrimiento de innumerables grupos vulnerables.

55. Por esas razones, según su delegación, era necesario insistir en el cumplimiento del mandato del Comité Especial mediante el fortalecimiento del Comité para la Eliminación de la Discriminación Racial merced a la elaboración de normas complementarias, tarea que era cada vez más urgente. La comunidad internacional debería avanzar ininterrumpidamente hacia la erradicación de todas las prácticas discriminatorias, y debería elaborarse a tal efecto el nuevo instrumento internacional, lo que apoyaba su delegación.

56. Por último, el representante señaló que la República Bolivariana de Venezuela, en cumplimiento de las disposiciones de su Constitución, que consagraba la base fundamental para el establecimiento de una sociedad multiétnica y multicultural y la igualdad de oportunidades sin discriminación o subordinación, aplicaba la Ley contra la Discriminación Racial, promulgada en 2011, que establecía mecanismos para prevenir, abordar y sancionar la discriminación racial como delito en todas sus manifestaciones. La Ley, elaborada con la ayuda de expertos en investigación, profesionales y especialistas en ciencias sociales y en derecho, y en estrecha consulta con el pueblo venezolano, incluía en su artículo 10 definiciones de discriminación racial, origen étnico, origen nacional, fenotipo, grupos vulnerables, diversidad cultural, racismo, xenofobia y “endorracismo”. El representante se ofrecía a proporcionar el texto de la Ley a los interesados.

57. La representante del Pakistán, hablando en nombre de la OCI, hizo una propuesta concreta a los efectos de que se debatieran posibles elementos de un protocolo adicional de la Convención de conformidad con las resoluciones 6/21 y 10/30 y la decisión 3/103 del Consejo de Derechos Humanos.

58. La representante del Japón solicitó una copia de las observaciones del Presidente-Relator y respaldó la labor relativa a las directrices sobre el racismo y el deporte. La oradora destacó la importancia de evitar la duplicación de actividades con el Comité para la Eliminación de la Discriminación Racial y de concluir su labor.

59. El representante de los Estados Unidos dijo que su Gobierno no estaba en disposición de examinar un instrumento jurídicamente vinculante y que la referencia a un protocolo facultativo como norma complementaria que había de elaborar el Comité Especial se basaba en una de las primeras resoluciones del Consejo, pero no figuraba en resoluciones más recientes. El orador agregó que la actualización de las orientaciones del Comité para la Eliminación de la Discriminación Racial no sería el mejor modo de utilizar los recursos del Comité Especial. En lo tocante a la propuesta de examinar el tema del “odio racial, étnico, nacional y religioso”, su delegación no podía respaldar esa propuesta, dado que el tema generaba controversia. El orador señaló que el tema se había abordado en otros ámbitos, como el del Proceso de Estambul para la Lucha contra la Intolerancia, la Discriminación y la Incitación al Odio o a la Violencia por Motivos de Religión o de Creencias y el del Plan de Acción de Rabat sobre la prohibición de la apología del odio nacional, racial o religioso que constituye incitación a la discriminación, la hostilidad o la violencia, y que era sumamente difícil llegar a un consenso sobre la cuestión. Su delegación también se opondría a la inclusión en el programa del siguiente período de sesiones del tema de los actos raciales y xenófobos cometidos mediante tecnologías de la información y las comunicaciones. Los Estados Unidos podían respaldar un debate sobre el racismo y el deporte y sobre las múltiples formas de discriminación.

60. La representante de Sudáfrica dijo que respaldaría la labor del Comité Especial sobre el tema de los actos raciales y xenófobos cometidos mediante tecnologías de la información y las comunicaciones y que tenía interés en hacer avanzar el tema. Tras la

ponencia presentada por los expertos de la Comisión Europea, en la que habían destacado que la Unión Europea había realizado una amplia labor en este ámbito, sería interesante que el Comité procediera a su examen. La delegada también propuso los temas de la protección de los migrantes contra las prácticas racistas, discriminatorias y xenófobas y el control policial selectivo de carácter racial, étnico y religioso, y señaló que Sudáfrica apoyaría al Pakistán, que había hablado en nombre de la OCI, en relación con los temas de la apología e incitación al odio racial, étnico, nacional y religioso y los delitos de odio.

61. El representante de Argelia, hablando en nombre del Grupo Africano, insistió en el respeto del mandato del Comité Especial, fijado en la decisión 3/103 del Consejo de Derechos Humanos y recordado en sus resoluciones 6/21 y 10/30. El representante instó al Comité a llegar a un resultado concreto antes de que concluyera el séptimo período de sesiones.

62. La representante de la Unión Europea reiteró que esta no era partidaria de nuevas normas, sino de una utilización más efectiva y de una optimización del procedimiento existente en el marco de la Convención.

63. La representante del Pakistán, hablando en nombre de la OCI, propuso los siguientes temas extraídos de la lista anterior de temas del Comité Especial: el control policial selectivo de carácter racial, étnico religioso y las medidas para combatir el terrorismo; y el racismo en las modernas tecnologías de la información y las comunicaciones (ciberdelincuencia racial). El orador respaldó la propuesta del Grupo Africano respecto de los temas siguientes: la protección de los migrantes contra las prácticas racistas, discriminatorias y xenófobas; y la protección de las personas sometidas a ocupación extranjera contra las prácticas racistas y discriminatorias. Manifestó que el Comité Especial era el marco más idóneo para examinar esas difíciles cuestiones y llegar a una conclusión. Con miras al octavo período de sesiones, el representante pidió a la Secretaría una recopilación de las propuestas formuladas por las delegaciones.

64. La representante del Brasil esperaba con interés que prosiguieran los debates y señaló que no se trataba de que cada una de las cuestiones tuviese que ser recogida en un protocolo facultativo, como, por ejemplo, la del racismo y el deporte. La oradora agregó que, en relación con los migrantes, ya se contaba con la Convención Internacional sobre la Protección de los Derechos de Todos los Trabajadores Migratorios y de sus Familiares y que era difícil considerar la utilidad de disponer de otro instrumento al respecto.

65. El Presidente-Relator reiteró y citó la resolución 6/21 del Consejo de Derechos Humanos, en la que el Consejo había recordado que el mandato del Comité Especial consistía en “la elaboración de normas complementarias con el mandato de elaborar, como cuestión prioritaria y necesaria, normas complementarias en forma de convención o uno o varios protocolos adicionales de la Convención Internacional sobre la Eliminación de todas las Formas de Discriminación Racial, que subsanaran las lagunas de esta y que también establecieran una nueva normativa para combatir todas las formas del racismo contemporáneo, incluida la incitación al odio racial o religioso”. El Presidente-Relator recordó asimismo cuáles habían sido los Estados miembros que habían votado a favor, cuáles habían votado en contra y cuáles se habían abstenido de votar la resolución.

66. El Presidente-Relator dijo que las decisiones de consenso constituían una característica distintiva de los procesos democráticos y que los Estados que habían votado en contra, aunque su posición no hubiese triunfado, no habían vetado permanentemente la labor que se realizaba ni los progresos alcanzados por los Estados que habían respaldado el mandato del Comité Especial. El Presidente-Relator informó al Comité de que estaba dispuesto a dirigirse de nuevo al Consejo e informar de que había países que obstaculizaban los avances del Comité y de que, en su calidad de Presidente-Relator, tropezaba con dificultades para aplicar las decisiones del Consejo. Dijo que había una responsabilidad

moral de no actuar en contra del mandato otorgado por el Consejo. El orador manifestó que existía la posibilidad de solicitar otro mandato al Consejo, que probablemente daría lugar a otra votación favorable. Preguntó cuántos años o decenios tendrían que transcurrir antes de que se adoptase alguna medida sobre el mandato del Comité e invitó a las delegaciones a que expusieran una fórmula sobre el modo de proceder.

67. El representante de Túnez se sumó a las declaraciones del Pakistán en nombre de la OCI y de Argelia en nombre del Grupo Africano, y dijo que su delegación estaba de acuerdo con todos los argumentos expuestos por el Presidente-Relator. Dijo que el mandato del Comité Especial era suficientemente claro y que no era necesario recurrir de nuevo al Consejo. Agregó que la necesidad de consensuar cada cuestión frecuentemente daba lugar a un punto muerto. El Comité había recibido el debido mandato del Consejo y únicamente tenía que cumplirlo.

68. La representante del Pakistán, hablando en nombre de la OCI, expresó su pleno respaldo a la declaración formulada por el Presidente-Relator en el sentido de que el retraso en la labor del Comité no podía seguir siendo ignorado y que se habían gastado valiosos recursos en relación con el séptimo período de sesiones. En lo tocante al camino a seguir, podía ser necesario un nuevo mandato una vez que el Comité llegase a la etapa de redacción, pero, por el momento, no se necesitaba ningún nuevo mandato del Consejo. La oradora pidió que todas las opiniones y posiciones expresadas por las delegaciones se incluyeran en el informe del séptimo período de sesiones.

69. La representante de Sudáfrica recordó que ninguna Convención internacional había llegado nunca a ser ratificada de manera universal, incluida la Convención sobre los Derechos del Niño. Ni siquiera había consenso respecto de los derechos del niño. La oradora dijo que la necesidad de un consenso no podía utilizarse para detener los avances. Por último, la representante recordó que en la decisión 3/103 del Consejo no se hacía ninguna referencia a directrices ni a planes de acción.

K. Debate general e intercambio de opiniones, 15ª sesión

70. En su 15ª sesión, el Comité Especial organizó otro debate general e intercambio de opiniones. El Presidente-Relator recordó la necesidad de examinar lo que se había hecho con la lista de nuevos temas y distribuyó, tal como se le había solicitado, un documento con propuestas sobre los temas que habían de examinarse en el debate general de las sesiones 13ª y 14ª del 7º período de sesiones del Comité Especial. El documento era una recopilación de los temas que habían sido propuestos por las delegaciones el día anterior. El orador señaló la necesidad de delimitar los temas de interés prioritario a fin de concluir el debate y avanzar. En interés de la gestión del tiempo, sugirió que se seleccionasen dos temas que se debatirían en el 8º período de sesiones. También sugirió que, en ese período de sesiones, el Comité Especial considerase la posibilidad de limitar la duración de sus futuros períodos de sesiones a siete días laborables, sin perjuicio de esos futuros períodos de sesiones, y que el Comité formulase al Consejo una recomendación en ese sentido.

71. La representante de Sudáfrica dijo que el Grupo Africano no estaba en condiciones de acceder a la propuesta de que se redujera a siete días la duración de los futuros períodos de sesiones del Comité Especial, ya que sería necesario consultar con el Grupo. Además, no entraba dentro del mandato del Comité decidir la duración de los períodos de sesiones, ya que ello era competencia del Consejo de Derechos Humanos.

72. La representante de la Unión Europea dijo que esta había consultado con sus miembros y que pedía que se agregasen los tres temas siguientes: “educación en materia de derechos humanos”; “aplicación de las normas y los principios”; y “procedimientos de supervisión del Comité para la Eliminación de la Discriminación Racial y otros

mecanismos”. La Unión Europea respaldaba el tema del racismo y el deporte y podía apoyar la propuesta de examinar el tema de las formas múltiples de discriminación.

73. El representante de los Estados Unidos apoyó e hizo suya la propuesta del Presidente-Relator de reducir el número de días de trabajo de los futuros períodos de sesiones del Comité Especial. Dijo que los Estados Unidos tenían previsto seguir participando en los próximos períodos de sesiones. En relación con los nuevos temas propuestos por la Unión Europea, el orador dijo que era probable que su delegación respaldase el de la “educación en materia de derechos humanos” y que no tenía un interés inmediato en los demás temas. El representante reiteró la posición anterior de su Gobierno respecto del mandato del Comité: que en el mandato basado en el párrafo 199 de la Declaración y el Programa de Acción de Durban no se indicaba que las normas complementarias habían de revestir la forma de un instrumento jurídicamente vinculante, como un protocolo facultativo de la Convención. Recordó que las resoluciones y decisiones del Consejo relativas al Comité Especial entre 2006 y 2009 eran textos votados y que, en opinión de su delegación, divergían de la redacción utilizada en la Declaración y el Programa de Acción de Durban, si bien las resoluciones del Consejo sobre el Comité Especial entre 2010 y 2012 (a saber, las resoluciones 13/18 y 21/30) utilizaban por el contrario la terminología del mandato de la Declaración y el Programa de Acción y habían sido aprobadas por consenso. La delegación de los Estados Unidos, aunque manifestaba su reconocimiento en relación con diferentes declaraciones formuladas por otras delegaciones sobre el mandato del Comité, consideraba que las declaraciones más importantes al respecto eran las que habían sido formuladas recientemente por el Consejo, ya que habían sido aprobadas por consenso y se basaban en el mandato de la Declaración y el Programa de Acción de Durban sin modificarlo. Los Estados Unidos consideraban que las normas complementarias podían revestir una forma no vinculante como las de las directrices, los principios o los planes de acción.

74. La representante del Brasil podía apoyar las propuestas de la Unión Europea, habida cuenta en particular de que el tema de la “educación en materia de derechos humanos” había sido propuesto en 2013 por cierto número de Estados de diferentes regiones, incluido el Brasil. La oradora señaló que únicamente deberían elegirse dos o tres temas para ser debatidos en el octavo período de sesiones. En lo tocante a la duración de las sesiones del Comité Especial, la reducción a siete días de las sesiones podía verse complementada con sesiones oficiosas los otros tres días.

75. El representante de Bélgica reiteró que, para su delegación, los órganos de tratados se situaban en el centro del marco de protección de los derechos humanos. Recordó el párrafo 9 del estudio realizado en 2007 por el Comité para la Eliminación de la Discriminación Racial (A/HRC/4/WG.3/7), en el que este destacaba que el hecho de que los Estados partes no informaran constituía un obstáculo para la aplicación universal de la Convención y para la labor del Comité. El orador señaló que esos eran elementos importantes que deberían examinarse con carácter prioritario y propuso los temas de la “aplicación de normas y principios” y de los “procedimientos de supervisión del Comité y otros mecanismos”. El representante de Bélgica dijo que su delegación hacía suya la anterior declaración de la Unión Europea. Destacó que el tema del “racismo y el deporte”, que había sido examinado por el Comité durante el séptimo período de sesiones, era un buen punto de partida, pero requería una ampliación y un examen más a fondo en futuros períodos de sesiones.

76. El Presidente-Relator sugirió que las delegaciones emprendieran consultas oficiosas sobre los posibles resultados y conclusiones del séptimo período de sesiones. Se levantó la sesión hasta el día siguiente.

IV. Aprobación del informe

77. El Presidente-Relator declaró abierta la 16ª sesión en la mañana del 24 de julio. Se suspendió la sesión para que el Comité dispusiera de más tiempo para proseguir sus debates oficiosos con miras a alcanzar un acuerdo.

78. Se reanudó la sesión por la tarde y el Presidente-Relator invitó a los participantes a que formularan declaraciones generales.

79. El representante de los Estados Unidos expresó su reconocimiento al Presidente-Relator y a todos los miembros del Comité Especial y señaló que el tema del Comité tenía mucha importancia. Para su delegación, era importante que el Comité prosiguiera actuando de manera útil, pertinente y productiva en lo sucesivo y manifestó que colaboraría con todas las delegaciones para asegurarse de que eso fuera así.

80. La representante de la Unión Europea también manifestó su reconocimiento a todos, especialmente a la representante del Brasil por presidir las reuniones oficiosas, y dijo que su delegación esperaba con interés participar activamente en lo sucesivo en el Comité Especial.

81. La representante de Sudáfrica, hablando en nombre del Grupo Africano, también expresó su agradecimiento a todos y señaló que el período de sesiones había entrañado dificultades, aunque se había mantenido la cordialidad, y que el Comité había logrado encontrar algunos puntos de convergencia. Sin embargo, la oradora lamentó que el Comité no hubiese aprovechado la oportunidad del período de sesiones para examinar cuestiones de actualidad, como la de la protección de los migrantes contra las prácticas racistas, discriminatorias y xenófobas, que había sido planteada por algunos miembros del Grupo Africano durante el período de sesiones.

82. La representante del Pakistán, hablando en nombre de la OCI, manifestó su sincero agradecimiento y dijo que, aunque el Comité había logrado llegar a algunas conclusiones y a un acuerdo por lo menos sobre un tema, la OCI lamentaba que el Comité no hubiera podido centrarse en su mandato durante el período de sesiones. La representante dijo que el Comité distaba mucho de poder debatir sobre normas complementarias tangibles en forma de un protocolo adicional y que aún había quienes se oponían al mandato del Comité y bloqueaban un consenso, tras de lo cual señaló que la OCI acogería favorablemente un enfoque más constructivo en futuros períodos de sesiones.

83. La representante del Brasil dio las gracias al Presidente-Relator por sus iniciativas y orientaciones y a sus colegas por su actividad constructiva y flexible. La oradora dijo que se habían realizado importantes avances sobre la cuestión del racismo y el deporte y que el Comité consideraba necesario seguir avanzando en el próximo período de sesiones sobre la cuestión de las lagunas de procedimiento. El futuro tema adicional sobre la reparación brindaría al Comité la oportunidad de debatir y examinar la cuestión de las normas complementarias.

84. La representante de Cuba expresó su apoyo al Comité Especial y su mandato y dijo que confiaba en que, en el próximo futuro, se avanzaría hacia un documento verdaderamente vinculante para abordar la cuestión de las lagunas existentes.

85. El representante de la República Bolivariana de Venezuela reiteró su pleno apoyo al mandato del Comité Especial, lamentó los obstáculos con que seguía tropezando la labor del Comité Especial y manifestó que su delegación confiaba en que la comunidad internacional lucharía contra todas las nuevas formas de racismo, discriminación racial, xenofobia e intolerancia conexas.

86. El representante de los Estados Unidos hizo uso de la palabra para aclarar que, si bien las primeras resoluciones sobre el Comité Especial se habían aprobado por votación, las dos últimas resoluciones del Consejo de Derechos Humanos (en sus períodos de sesiones 13º y 21º) no habían encontrado oposición y se habían aprobado por consenso.

87. El Presidente-Relator hizo una declaración a título personal en la que agradeció a los representantes del Comité Especial su participación y su enfoque constructivo durante el período de sesiones. No cabía ignorar el mandato primordial e inicial del Comité Especial, establecido democráticamente por el Consejo de Derechos Humanos en su decisión 3/103 y recordado en sus resoluciones 6/21 y 10/30. El Presidente-Relator reconoció que había habido diferencias; no obstante, se preguntó qué había que hacer entonces en un foro multilateral en el que algunos se oponían al mandato e impedían su desempeño. Señaló que se trataba de una compleja cuestión y que entrañaba dificultades para avanzar. Destacó que se había llegado a una situación en que el sistema multilateral no se estaba utilizando con la finalidad que se había previsto: que los Estados negociasen entre sí y que los que no estuviesen de acuerdo por lo menos no pusiesen obstáculos a las propuestas de otros y permitiesen que se explicasen. El Presidente-Relator dijo que ese era el caso en el Comité Especial y que ese tipo de debates aún no había tenido lugar.

88. El Presidente-Relator dijo que el Comité Especial había debatido sobre las lagunas de procedimiento y sustantivas y que había que abordarlas. Manifestó que todas las ponencias habían confirmado que, en general, los mecanismos nacionales no funcionaban eficazmente. Reiteró la cuestión de la necesidad de agotar los recursos nacionales disponibles, pero que ello había puesto de manifiesto lagunas y limitaciones, ya que las víctimas requerían recursos financieros para pedir reparaciones, lo que limitaba su capacidad. Esa circunstancia destacaba particularmente en el caso de las minorías y los migrantes.

89. El Presidente-Relator invitó a todos los participantes a que le proporcionasen directamente información oficiosa sobre los elementos de un posible instrumento y todo texto apropiado para examinar el modo de subsanar las lagunas. Dijo que estaba abierto a recibir tal información oficiosa e información sobre cualesquiera otros temas conexos a fin de preparar adecuadamente el octavo período de sesiones del Comité Especial.

90. El Presidente-Relator prosiguió diciendo que la adopción de la primera decisión en relación con el Comité Especial había generado confianza entre las víctimas de las vulneraciones de los derechos humanos, quienes no deseaban más que la protección de su dignidad como seres humanos. Manifestó que, después de examinar la labor desarrollada por el Comité en los ocho últimos años, no cabía afirmar con decisión u orgullo que se habían realizado importantes logros para mejorar la situación de las víctimas, aun cuando existiesen posibles facultades y oportunidades para hacerlo por conducto de este foro. El Presidente-Relator dijo también que el panorama general mostraba que las cuestiones se habían resaltado repetidamente y que las posiciones sostenidas por los gobiernos y los grupos desde el establecimiento del Comité Especial se habían reiterado y mantenido. No había habido ningún movimiento en ninguna dirección, lo que disminuía las posibilidades del Comité de adoptar medidas significativas y coherentes con su mandato de mejorar las vidas de las víctimas. El Presidente-Relator dijo además que consideraba que ello era una dejación de la responsabilidad colectiva y un fracaso de todos en cuanto a trabajar juntos y realizar una contribución. Instó a los miembros del Comité Especial a que trabajasen de consuno y tuviesen presente el panorama global en los próximos períodos de sesiones.

91. En la reanudación de la 16ª sesión y tras los debates oficiosos, el Comité Especial acordó que durante el octavo período de sesiones del Comité se examinasen las recomendaciones, los resultados y la lista de temas que figuran a continuación:

- a) Recomendaciones y resultados:
 - i) El Comité recomienda que el cuestionario se distribuya de nuevo a todos los Estados, que se aliente a los que no hayan respondido a que lo hagan y que los que hayan respondido proporcionen información actualizada;
 - ii) El Comité decide proseguir su examen de la cuestión del racismo y el deporte y reafirma las conclusiones conexas aprobadas en su sexto período de sesiones;
 - iii) El Comité recomienda que el Comité para la Eliminación de la Discriminación Racial actualice, en forma de adición o de un nuevo informe, su informe de 2007 sobre normas internacionales complementarias (A/HRC/4/WG.3/7);
- b) Lista de temas:
 - i) El Comité Especial recomienda que el Comité para la Eliminación de la Discriminación Racial siga precisando sus opiniones sobre elementos clave respecto de las lagunas de procedimiento y el mejor modo de abordarlas como complemento del estudio de 2007 y las diferentes ponencias presentadas y las propuestas formuladas al Comité Especial de conformidad con su mandato;
- c) Racismo y deporte:
 - i) El Comité Especial examinará recursos efectivos y adecuados y el derecho a pedir a los tribunales nacionales competentes y otras instituciones nacionales una reparación o satisfacción justa y adecuada para las víctimas, de conformidad con el artículo 6 de la Convención y el párrafo 165 de la Declaración y el Programa de Acción de Durban.

92. También en esa sesión se aprobó el informe del séptimo período de sesiones *ad referendum*, en el entendimiento de que las delegaciones enviarían correcciones técnicas a sus intervenciones por escrito a la Secretaría, a más tardar el 7 de agosto de 2015.

Anexo I

[Inglés únicamente]

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

A. Assessment of the use of the complaint mechanism under article 14

1. On 13 July, at the 2nd meeting of the Ad Hoc Committee, Marc Bossuyt, Member of the CERD, gave a presentation on the assessment of the use of the complaint mechanism under Article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD). He noted that the ICERD adopted on 21 December 1965, was the first human rights treaty adopted in the framework of the United Nations providing for a mechanism of international supervision. At present, 177 States are parties to that Convention.

2. The ICERD set up the Committee on the Elimination of Racial Discrimination (CERD), composed of 18 independent experts, which is competent to receive periodic reports, to be submitted biannually by the States parties (Article 9), and inter-State communications (Article 11).² The CERD is also the first UN human rights committee which has been empowered, by Article 14 of the ICERD, to receive individual communications against States parties having made a specific declaration to that effect.

3. Mr. Bossuyt discussed individual communications before the ICERD. He explained that article 14 of the ICERD provides for an optional declaration by which the States parties may recognize the competence of the Committee to receive and consider communications from individuals or groups of individuals within their jurisdiction claiming to be victims of a violation by that State party of any of the rights set forth in that Convention. At present, 57 States have made that declaration. 22 belonging to the Group of Western European and Other States, 16 to the Group of Eastern European States, 11 to the Group of Latin-American and Caribbean States, 5 to the Group of African States and 3 to the Group of Asian States. To date, only 48 communications submitted under Article 14 of the ICERD led to a decision by the CERD. According to Article 14, section 7(b), of the ICERD, the CERD will forward “suggestions and recommendations, if any, to the State Party concerned and to the petitioner.” The communications which have led to such “suggestions and recommendations” by the CERD were directed against (only) 12 of the 57 States parties to the ICERD having recognized the competence of the Committee to consider individual communications.

4. He noted that article of the ICERD which has most frequently been found to be violated is Article 6 (“effective protection and remedies [...] against any acts of racial discrimination which violate his human rights and fundamental freedoms contrary to this Convention”) in 11 decisions, followed by Article 2 (“to pursue [...] a policy of eliminating racial discrimination”) in 8 decisions, Article 5 (“to guarantee the right of everyone [...] to equality before the law, notably in the enjoyment of [...] the right to freedom of movement and residence [(d), (i), ...], the right to work [(e), (i), ...], the right to housing [(e), (iii), ...], the right to education and training [(e), (v), ... or] the right of access to any place or service [(f)]”) in 6 decisions and Article 4 (condemnation of “all propaganda and all organizations

² Up to now, no inter-State communication has ever been submitted to the CERD, nor to any other UN human rights committee.

which are based on ideas or theories of superiority of one race or group of persons of one colour or ethnic origin”) in 6 decisions.

5. Mr. Bossuyt stated that article 14 has been characterized by one prominent professor Theo Van Boven, as “one of the most under-utilized provisions of ICERD.” Professor Van Boven provided two explanations for Article 14’s under-utilization: (1) “many states have always considered ICERD more a (foreign) policy instrument than a domestic rights document,” and, (2) “the sheer lack of knowledge and information about the existence of article 14 as a possible recourse is a major impediment.” Mr. Bossuyt explained that the most striking feature of the individual communications submitted to the CERD is the foreign origin of the authors of those communications. However, only in a minority of cases (18), the author of the communication had a foreign nationality. In the majority of the cases, the authors were nationals of the State party.

6. Mr. Bossuyt described the follow up procedure on individual communications. Following the example of the Human Rights Committee, a procedure on follow-up to communications was formally established on 15 August 2005, when the Committee created the ability for Special Rapporteurs to follow-up on the Committee’s suggestions and recommendations to States parties following a communication to CERD (rule 95 of the CERD Rules of Procedure). Since 2006, the Committee included a chapter on follow-up to individual communications, including sometimes in an annex, a table showing a complete picture of follow-up replies from States parties in relation to cases in which the Committee found violations of the Convention or provided suggestions or recommendations in cases of non-violation. With respect to the 10 individual communications in which the committee did not find a violation of the Convention, the Committee nevertheless made recommendations.

7. Mr. Bossuyt stated that Governments concerned are generally forthcoming in disseminating the opinion of the Committee. In some cases, they also took measures to amend the applicable legal provisions. In a few cases, they accepted to award compensation to the authors for the expenses they had made for legal assistance in submitting the communications. Up to now, no State party accepted to award any compensation for pecuniary or non-pecuniary damage.

8. He concluded by stating that in 2012, the CERD, acting upon a recommendation from its Working group on communications, proposed the creation of a joint treaty body working group on communications, composed of experts of different treaty bodies to ensure consistency of jurisprudence among treaty bodies and reinforce the justiciability and interdependence of all human rights. It would lead to more coherent outputs and to better aligned working approaches of all treaty bodies dealing with communications. Mr. Bossuyt stated that in its resolution 68/268 entitled “Strengthening and enhancing the effective functioning of the human rights treaty body system” adopted on 9 April 2014, the UN General Assembly did not act upon that recommendation.

9. The representative of Pakistan on behalf of the OIC noted that since only 48 decisions had been issued by the CERD the effectiveness of the procedure should be questioned and asked how the procedure could be strengthened to ensure complaints could be received. The representative also invited Mr. Bossuyt’s views on the inquiry procedure as compared to the complaints procedure.

10. The representative of Cuba expressed appreciation for Mr. Bossuyt’s comparative analysis and asked about recommendations to enhance its effectiveness.

11. Mr. Bossuyt noted that indeed, the number of decisions under the individual complaints procedure was small. The effectiveness of the procedure however was not related to the structure of the Convention. There were in general three distinct ways to legislate individual complaint mechanisms: integration of the article into the Convention at

its inception; an optional protocol adopted at the same time as the Convention itself; and an optional protocol adopted at a later stage. He recalled that the timing of these three decisions had no bearing on the effectiveness of the procedure, and that it was ultimately an optional and not mandatory procedure. The expert also pointed to the fact that to date, no inter-State communication has ever been submitted to the CERD, or to any other UN human rights committee. Inter-State communications were a mandatory procedure in CERD, and yet no complaints had been received from States. He explained that this pointed to the fact that structural and timing aspects of article 14 individual complaints procedure did not have an effect on its effectiveness. He advised that greater awareness be created about the existence of the procedure.

12. In response to the question about his views on the inquiry procedure, he noted that the introduction of such procedure was a standard request of the CERD. He added that in his view, it was more important that States parties submit their reports to the CERD, as so many were very late or had never submitted a report to the Committee.

13. The representative of Belgium said that implementation was key to the effectiveness of ICERD and that States parties should report better and in due time. Belgium also noted that Mr. Bossuyt's presentation indicated that the acceptance of Article 14 was geographically unequally distributed amongst regions and the representative inquired whether this could be improved. The expert agreed that the acceptance of article 14 by Member States was unequal, noting the high number of WEOG Member States parties, as compared to other regions. There were no acceptances in the Caribbean region at all and a very limited number in the African and Asian region. However, he was unable to provide a reason as to why that was the case, stating the States parties were better placed to do so.

14. Asked about regional mechanisms by the Belgian representative, the expert said that in his view those mechanisms were well developed in Europe, and also in Latin America. There was also an African human rights mechanism; however, there was no functioning regional mechanism in Asia.

15. The representative of the United States inquired about Mr. Bossuyt's reference that the ICERD was considered more than a foreign policy instrument than a human rights document as well as the role of civil society and non-governmental organizations when it came to the effectiveness of CERD. Mr. Bossuyt noted that the role of civil society could not be overstated, as strong non-governmental organizations had a significant role to play in the individual complaints procedure and the implementation of the ICERD as illustrated by his case law analysis. He added that Governments often initially expressed firm commitment at the international level as a political expression, but did not always have a strong influence in the domestic legal system. The provisions of ICERD should however be integrated into domestic law. CERD regularly asked States if they have done so. One of the standard questions was therefore if a State had a comprehensive discrimination law against racial discrimination.

16. When asked about his opinion on the multitude of possible avenues for individual redress for violations of racial discrimination including the Human Rights Committee and the European Court of Human Rights, by the Chair-Rapporteur, the expert said that different institutions could indeed arrive at different decisions, which was the inherent danger of the current system. CERD consequently believed that the establishment of a single unified body that dealt with complaints to all treaty bodies would be an improvement.

17. The Chair-Rapporteur inquired about an analysis of type of cases that succeeded under the article 14 procedure. He stated that confidence in the process was not bolstered by the figures and statistics provided in Mr. Bossuyt's presentation, and underlined that a great deal was dependant on the national law and domestic systems in place. Mr. Bossuyt

expressed support for further research on these cases. He also questioned whether the results were really so “dismal”, perhaps more so in relation to the approximately 60,000 cases considered by the European Court of Human Rights. He explained that of only a small percentage of cases were deemed admissible, and even a smaller percentage constituted a finding of a violation, that some of those cases, might in fact be very instructive to States to rectify potential problems in advance. The table in the Annex of his presentation was valuable as it at least provided an overview of individual communications under Article 14 of ICERD dealt with by CERD.

18. Regarding gaps in ICERD, Mr. Bossuyt noted the existence of gaps in institutional coverage and protections, as different bodies and institutions could arrive at different conclusions. Procedures, such as the reporting procedure could use further improvement.

19. The representative of Ghana inquired about the attempt of CERD to redefine “race”, the views of the expert with regard to the definition and content of “ethnic cleansing”; and the fact that national institutions were often taking on individual complaints. He asked if the Committee had adopted general comments to address such issues, which were also of importance in relation to the right to protect, suggesting the need for a supplementary protocol. The expert noted that CERD had done so, and had adopted a number of general comments; CERD however, had not as yet issued a comment on ethnic cleansing. But CERD had issued general comments on discrimination against noncitizens, in particular migrants; on indigenous populations, on Roma people; on people of African descent, etc. This approach showed that CERD had no narrow view on race. He added that “race” as a biological concept did not exist, but that racists did exist. He continued that he was not convinced that there was a need for an additional protocol. It would, however, be welcomed if the “machinery” could be strengthened. Such approach would be more useful than enlarging the field of application.

20. The representative of South Africa asked whether there was a gap concerning issues of religion and about the process leading to the drafting of general recommendations, as these soft laws, including the United Nations Declaration on religion were not enforceable documents. Mr. Bossuyt stated that CERD considered at times the issue of religion in its work. Some States parties noted that CERD’s mandate was racial discrimination and not discrimination based on religion or belief. That objection could ostensibly be overcome by a separate instrument, but the practical challenge of drafting it would be enormous.

B. Issues, challenges and best practices pertaining to reporting under the ICERD Convention

21. At the 3rd meeting, on 14 July, the Chair-Rapporteur recalled that the outcome of the 6th session of the Ad Hoc Committee in paragraph 97 (a)(iii) provided for a discussion on “issues, challenges and best practices pertaining to reporting under the Convention”, and as had been agreed by the Coordinators of the Regional Groups, all States were invited to volunteer to brief the Ad Hoc Committee on their individual experiences in this regard under this agenda item during the 7th session.

22. At this meeting, Norway recognizing the continued need to fight all forms of ethnic, racial and religious discrimination, hate crimes and xenophobia, gave an overview of Norwegian issues, challenges and best practices pertaining to reporting under the ICERD Convention, touching upon some of the issues and challenges facing the country, as well as some practices it considered successful. In order to combat discrimination effectively, Norwegian authorities believed it is important to have reliable and updated information about the extent of discrimination against different groups. In February 2015, The Norwegian Institute for Social Research published a report, which reviews existing research

on discrimination among the indigenous Sami population, national minorities and immigrants and their descendants in contemporary Norway. The fight against hate crime and hate speech remains a top priority for Norway, and free and open participation in the public debate is important in a democratic society. The combat against hate speech and hate crime has among other measures led to an interministerial Action Plan against Radicalization and Violent Extremism (June 2014). The Plan underlined that prevention in a broad perspective involves ensuring good formative conditions for children and youth, fighting poverty and working to ensure that everyone, regardless of their background, shall have a sense of belonging and be protected against discrimination. The representative stated that the general preventative efforts in many different fields can also help prevent people from choosing violence as a means of achieving their ideological or religious goals. Measures to prevent discrimination, harassment and hate expressions on the Internet and to prevent hate rhetoric are also important.

23. The Norwegian Government supports the Norwegian campaign against hate speech, which is linked to the campaign of the Council of Europe with goals to: create contact between young volunteers working to promote human rights and respond to hate speech; train and provide tools for NGOs working in the field; work to increase knowledge in the general public and civil society on how to respond to online hate speech; and, implement European campaigns/action days in Norway; An example of a very concrete initiative to fight hate rhetoric, especially that aimed at vulnerable groups and individuals, is a project for schools under the European Wergeland Centre. It has been closely linked with the national campaign 'Stop hate speech on the Internet', which is a part of the Council of Europe's 'No Hate Speech' campaign.

24. Another example is DEMBRA (Democratic Readiness against anti-Semitism and Racism), a Norwegian three-year program (2013-2015) aimed at teachers in lower secondary schools funded by the Norwegian Ministry of Education and Science, and designed to prepare and enable young people to live as democratic citizens in diverse societies to prevent racism, anti-Semitism and other forms of discrimination. DEMBRA combines the expertise of all parties involved in a program where theory meets practice, reflection meets action and history meets the future.

25. The representative discussed hate crime, which are offences motivated by racism, xenophobia or homophobia committed against individuals or groups because of their personal or social identity. A special hate crime unit has been set up by the Oslo police. At the end of 2006 the Norwegian Police started registering all reported hate crimes and since 2007 (the first full year of statistics of reported hate crimes available), the National Police Directorate has made a manual analysis of all reported cases. The latest analysis (March 2015) shows small changes in the number of hate crimes reported for the last four years. Hate crimes due to racism are the most dominant followed by hate crimes regarding religion, at then sexual orientation.

26. The representative noted that threats, damage to property, violence or discrimination motivated by hate and prejudice is serious for the individual victim, but also creates fear in larger groups of the population. It is an important goal to increase awareness about hate crime within the police force, as well as to increase awareness and police confidence among targeted groups in the population. Under Norwegian law, hate crimes are considered an aggravating factor in sentencing if the criminal offence is motivated by any of the following criteria: religion or life stance, skin colour, national or ethnic origin, sexual orientation, reduced physical or psychological ability or other circumstances related to groups of people requiring a special level of protection. This is derived from Norwegian case law, and is also explicitly stated in the new Norwegian Criminal Code, which will enter into force in 2015.

27. The Chair-Rapporteur expressed appreciation to Norway for the interesting presentation and posed some follow-up questions concerning the recognition of Finnish

population of Norway as a minority group; further information about the experiences of Norway with regard to hate speech on the internet and hate crimes; and the text of laws and procedures to assist prosecutions; and lessons learned regarding the attacks in Utoya in 2011.

28. The Norwegian representative explained that the term “Finnish” did not refer to their nationality but rather to culture and language, and that while Finns had been settling in Norway for a long period of time and are Norwegian citizens, they did face discrimination.

29. The Norwegian representative noted that the focus was on prevention concerning hate speech on the Internet and that approach would be strengthened. Currently, hate speech on the internet, criminal monitoring by the police, digital monitoring by the police, education for children regarding online activities, and increased training for police trainees was taking place. It was also important to educate people, about hate crimes with the goal of easier reporting of hate crimes. The representative explained that following the terrorist attack at Utoya in 2011, Norwegian response was towards more openness as it decided not to become a “closed society” due to this attack. There was a year of national reflection and discussion and the legal process, triggered a national open discussion about the how this could have occurred.

30. The European Union inquired about the engagement of Norway with civil society during the CERD reporting process. While not completely aware of what had been done to reach to civil society during the CERD process, the representative stated that the UPR process played a prominent role in that regard and presented a good platform for discussion, and ultimately enriching the various treaty body discussions.

31. The United States also presented on its CERD reporting experience, sharing three best practises and three challenges during the 3rd meeting. One best practice was a broad interagency approach to reporting and presentation, under the leadership of the White House (Office of the President). Second, in addition to the federal government, state and local officials were included in the United States delegation. This approach was effective and appreciated by the Committee. Third, consultations with civil society are important part of treaty body presentations. These included a civil society consultation in Geneva the day before the presentation, with about 80 civil society representatives. This consultation enabled civil society to pose questions to the Government officials, and involved detailed and at times emotional exchanges which had improved the delegation’s preparation.

32. The representative presented three challenges faced by the United States regarding CERD reporting. The first challenge is how to increase public awareness of the treaty body system and reporting process. He welcomed hearing about experiences from other delegations. Second, keeping reports within the strict page limits presented a challenge, while responding to numerous issues raised by the CERD. Third, during the actual CERD presentation the time management was not ideal, leaving the delegation limited time to respond and brief the CERD.

33. The representative also raised a point for discussion about how to strike a balance between the value of a large delegation and the limited speaking time. He explained that the United States delegation was fairly large, and was fairly representative of the country, as African-Americans, women, indigenous persons, persons with disabilities, LGBT persons and others have participated in treaty body presentations, and that broad spectrum of delegates’ experiences improved the quality and the richness of the presentation. He particularly noted that its most recent delegation included the Mayor of Birmingham, Alabama William A. Bell, who experienced racial discrimination during the civil rights era, and Loretta Lynch, who shortly afterward became the Attorney General of the United States. He added as another best practice the willingness of the United States to acknowledge and discuss its past and its shortcomings.

34. Belgium inquired about the challenge of follow-up, and the implementation of CERD recommendations, to which the representative of the United States said that the same interagency process led by the White House that served the preparation of the session was also used for the implementation of the recommendations. He also noted the overlaps in the United Nations human rights reporting cycle, and agreed that the focus of the process must be on implementation and changing the situation on the ground. The Norwegian representative added that its various reports were on time and outlined a decentralized reporting process lead by the Ministry of Foreign Affairs. For Norway, the Universal Periodic Review process was beneficial to its CERD and other treaty body reporting preparation through awareness-raising and the collection of information. Belgium also inquired about the role of parliaments and parliamentarians in CERD reporting process. Given the separation of powers between Congress and the Executive Branch of government in the United States, there was no explicit role for parliamentarians. Nevertheless, the State Department has reported to Congress on the outcomes of the treaty body presentations and its related consultations with civil society. Norway replied as well that there was no participation by the Norwegian parliament in the treaty body preparations or the review.

35. The representative of South Africa asked the representatives of Norway and the United States of America if those national approaches had also resulted in more regular reporting and about how state and local members of the delegations were chosen.

36. The United States noted that its approach was generally successful, though not perfect, in improving and that White House involvement and leadership was very important to this success. He added that timelines were clearer and that preparations commenced well in advance of reviews. Addressing the question on the selection of delegates, the representative noted that the United States considered inter alia current issues as well as areas of interest raised by the Committee.

37. At its 6th meeting, on 15 July, the Ad Hoc Committee continued its consideration of item 5 of the programme of work on “Issues, challenges and best practices pertaining to reporting under the Convention”. At this meeting, the Deputy Permanent Representative of South Africa presented a briefing to the Committee in view of South Africa’s experience. As South Africa was a microcosm of the world, racism still existed in South Africa and it would take strong mobilisation and a programme of “de-racialisation” of society to eradicate racism. She also noted that South Africa had made great strides in dismantling the structures that had legalised racial discrimination. The Government continued to allocate substantial resources towards the creation of a non-racist State. All legislation that provided for racial discrimination had been repealed and new statutes had been adopted to provide a framework for racial equality, and elaborated on the legal framework that ensured equal treatment in South Africa.

38. The Deputy Permanent Representative noted that several avenues existed in South Africa through which one could claim redress for acts of racial discrimination. Equality Courts were designed to deal with any complaint alleging unfair discrimination, publication of information that unfairly discriminates, harassment and hate speech. Aside from the Equality Courts, one could also bring a claim to the South African Human Rights Commission. Non-state actors had also shown their willingness to assist in the enforcement of rights. An example was Lawyers for Human Rights, a non-governmental organization, which offered legal assistance in South Africa.

39. Article 4 of ICERD required that States Parties criminalize racism and social discrimination. In South Africa the prohibition of racial hatred was based on the Constitution, although the Constitution also guaranteed freedom of expression, the formulation made it clear that incitement that could because harm was excluded from the ambit of this right.

40. The Deputy Permanent Representative noted that, subsequent to the 2001 World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance held in Durban, the South African Government approved the establishment of the National Forum against Racism (NFAR) in 2003, which was comprised of various stakeholders, including national and provincial government and civil society organisations.

41. Describing challenges the Deputy Permanent Representative turned to migration and noted that South Africa remained the preferred destination for migrants and faced a host of migration-related challenges. South Africa had long and porous borders which exacerbated those challenges. Recent attacks against foreigners were referred by some as xenophobic. The attacks had been condemned by government. The government was determined to restore and maintain order within communities. Operation Fiela — Reclaim was an operation to rid the country of illegal weapons, drug trafficking, prostitution rings and other illegal activities.

42. The Deputy Permanent Representative stated that the mandate of the Ad Hoc Committee was clear, and that it was expected that progress be made during the current session. The Human Rights Council had given a clear mandate to elaborate complementary standards, and if the Ad Hoc Committee failed, it would be failing the plight of all the victims of racism.

43. The representative of Cuba reaffirmed its commitment to fight all forms of racism and xenophobia. The representative expressed extreme concern about racial discrimination and xenophobia in countries of the North in particular, in view of anti-migrant sentiment, xenophobic reactions and sophisticated contemporary forms of racial discrimination. Political will was required to eliminate these problems. The Ad Hoc Committee had a clear mandate to elaborate complementary standards to the existing legal framework, which Cuba supported. It was fundamental, the delegate stated, that the Committee ensured that there was no loss of dignity for victims and that it take up the relevant topics related to these various problems. Cuba supported South Africa's briefing and reiterated that the mandate of the Ad Hoc Committee had to be respected and that the Committee move ahead in order to work properly.

44. During the 7th meeting, on 16 July, the Ambassador of Ecuador made a presentation on Ecuador's national issues, challenges and best practices related to ICERD. She stated that indigenous peoples, Afro-Ecuadorian and Montubio constitute 21% of the Ecuadorian population. Historically, they have been the most exploited, discriminated and excluded, due to historical colonial practices based on social classification in accordance with skin colour, language, worldview, religious beliefs, culture and forms of organization.

45. In this context, the government of Ecuador has taken up the challenge to consolidate and construct a society that is participatory, intercultural, plurinational, equal and inclusive for everyone living on its national territory.

46. Currently, there are adequate normative and programme measures, in accordance with the Constitution, enshrining the principles of full equality, inclusion, and non-discrimination. An example of the political will to make changes and revaluation is the Plurinational Plan for the Elimination of Racial Discrimination and Ethnic and Cultural Exclusion 2009-2012.

47. Ecuador has various planning instruments to fight multidimensional poverty and inequalities, such as the Atlas of Inequalities. The idea is to use detailed information to improve and update public policies and implementation mechanisms, monitoring the situation of vulnerable groups. There are also five national agendas, focusing on inequalities and one of them is called National Agenda for Equality of Nationalities and Peoples, which like other national agendas, was developed through a bottom-up approach,

with the participation of National Councils for Equality. These councils were established through a law, which was adopted in May 2014.

48. On 16 July during the 8th meeting, the representative of Guatemala presented the national experiences of the country with regard to issues, challenges and best practices pertaining to reporting under the ICERD Convention. In 1982, Guatemala adopted ICERD and consequently approved a number of measures to implement the Convention. The representative said that one event stood out since the adoption. After 36 years of conflict, a peace agreement was signed in 1996, opening new possibilities such as the promotion of indigenous peoples' rights. Those rights have never been an impediment to progress, however were an integral part of the country's culture.

49. Guatemala created a presidential commission that furthered indigenous rights and an "Academy for Mayan languages" as well as other institutions that strengthen indigenous culture and rights. At the executive level a department for indigenous affairs was set up as well as a state policy to ensure the creation of a pluralistic state. Despite the progress, further actions needed to be undertaken including addressing the challenge of harmonizing national and international legislation. 112. Guatemala had now presented its 14th and 15th report to CERD and had been complying with the reporting commitment and had organised a national mechanism to follow up on recommendations. The mechanism involved a number of stakeholders such as business and civil society. Guatemala also found other mechanisms useful, such as the UPR review. Guatemala had much relied on OHCHR support in the past, as the Office was very active in the country. This contribution from the Office was much appreciated.

50. The Ambassador of Pakistan also briefed the Ad Hoc Committee on its national experiences with regard to issues, challenges and best practices pertaining to reporting under the ICERD Convention during the 8th meeting. Pakistan had presented its consolidated 15 to 20 periodic reports in 2009. The 21st report would be submitted shortly and would also be disseminated online. The report had been prepared with the involvement of a variety of stakeholders. He added that distinctions and groupings in Pakistan existed mainly on religious and linguistic grounds and that racial discrimination was nearly non-existent. However, due to terrorism ethnic and religious minorities might face discrimination. The country's legal framework guaranteed equality and there were several provisions prohibiting discrimination in the constitution. Pakistan briefed on the legal framework and also referred to the regulations for media and broadcasting companies which prohibited discrimination on a number of grounds.

51. Pakistan had also taken positive measures to support minorities and promote intercultural exchange, such as educational measures, awareness raising and special commemorative and religious festive days. The Ambassador stated that the judiciary was also concerned with upholding equality, and that the courts had handed down a number of judgements on hate speech. Decency, morality and Islam were cited as reasons to forbid speech. The Ambassador stated that media was also active in fighting discrimination and extremism, and the social media played an important role in promoting national harmony.

52. Pakistan was currently finalising an action plan for national minorities, which included a number of measures such as human rights education, and social safety nets as well as prohibitions on hate speech. Pakistan made endeavours to implement ICERD but faced a number of challenges so the biannual reporting timeframe could not be fulfilled. The periodicity of reporting should be reviewed. Pakistan also faced a challenge as it only reported to the CERD on the grounds of religious hatred, which was not fully appreciated by Committee. However, race, the Ambassador stated, did not exist in Pakistan. He continued that the scope of ICERD was too limited and therefore there should be an additional protocol to ICERD covering additional and contemporary forms of racism. The

Ambassador also mentioned that CERD took statements from non-governmental organizations at face value and that sometimes the Committee transcended its mandate.

53. The representative of Mexico also gave a briefing on the national experiences of the country with respect to issues, challenges and best practices pertaining to reporting under the ICERD Convention during this meeting. Mexico ratified ICERD in 1975 and in 2002 made the declaration concerning article 14 on individual communications. In 2011, Mexico presented to CERD, the Committee submitted its recommendations consequently. CERD emphasised interpretation services, rights of indigenous people and legal assistance in the case of Mexico. In 2012, a working group was established to follow-up on the CERD recommendations, comprised of fifteen government entities.

54. In September 2014, Mexico submitted a progress report, and the working group established a matrix on racism and the concomitant challenges in order to assist in addressing those challenges. The group also presented a work plan and a time table for its further work. In August 2014, another meeting would be held in cooperation with civil society on the implementation of the recommendations.

55. Issues, challenges and best practices pertaining to reporting under the ICERD Convention were also presented by the representative of Belgium during the 8th meeting. He stated that ICERD was important for Belgium, that enhancing equality remained a priority for the country, and that all victims should be afforded the same attention.

56. CERD recommendations had assisted Belgium in building the necessary institutions and policies to fight racism at the national level. Belgium had recently presented its 16th to 19th report to the Committee. The simplified reporting procedure would further focus the dialogue and it should be available to all State parties as soon as possible. One challenge for Belgium was the coherent follow up to over 400 CERD recommendations. Every six months, Belgium undertook a coordination exercise consolidating all recommendations, including those from regional mechanisms. The catalogue of recommendations was shared with civil society in order to increase transparency.

57. The representative stated that Belgium was not late with any of its treaty body reports and its the national mechanism ensured adequate follow up. The advantage of presenting a periodic report was that the country had an opportunity to evaluate its own situation. The national dialogue also allowed for the involvement of civil society. Belgium appreciated the dialogue with CERD as a valuable expert advice and a tool to improve national policies.

58. A number of challenges were highlighted including the complexity of the federal state structure, the sheer number of recommendations and reports that needed to be submitted; and the complexity of materials and legislation that addressed racism in a modern state. All those challenges were exacerbated by the administrative challenge of following up on all the recommendations. Belgium recommended an holistic approach as many recommendations, stemming from different Conventions, would often overlap. Clustering of recommendations, as had been earlier suggested by Mr. David, was a useful approach. The enhancing of capacities was also important, and a standing mechanism, with a clearly defined mandate, was useful in this regard. The standing mechanism should also assist in guiding the implementation of recommendations. The representative added that another good practice was to uphold transparency and always cooperate and consult with civil society. Finally, the representative of Belgium noted that awareness-raising was important.

59. Belgium presented the following conclusions: the timing of reports needed to be considered; implementation remained essential; there was a reporting deficit; and only a small number of countries had accepted the individual communications procedure under

article 14 — leading to a very partial view of the situation; and, regional mechanisms were often more advanced than the universal mechanism.

60. During its 12th meeting, on 21 July, the Ambassador of Ecuador gave a presentation on the agenda item “issues, challenges and best practices pertaining to reporting under the ICERD Convention” on behalf of CELAC. The Ambassador stated that sustainable development cannot be attained without the inclusion of groups in situations of vulnerability, such as, indigenous peoples and people of African descent, women, and older persons, persons with disabilities, migrants, children and adolescents. Equity, social and financial inclusion and access to fair credit are central to ensure overall access to justice, citizen participation, well-being and a dignified life for all. For CELAC the fight against poverty should be in full conformity with ICERD and other international instruments, particularly the Durban Declaration and Programme of Action and adopted laws and policies should not discriminate, the incitement of racial hatred should be criminalized, judicial remedies for acts of racial discrimination and public education to promote understanding and tolerance should be provided. Therefore, any future complementary international standards to strengthen and update international instruments against racism, racial discrimination, xenophobia and related intolerance in all their aspects, should guarantee full respect to democracy, the rule of law and human rights including the right to development and right to peace, in a model of sustainable development that places the person at the centre of public policies, and recognize the importance to promote plural, widespread and diverse full citizen participation.

61. CELAC Member States also consider that proper consideration should be given to measures against racial discrimination, in relation to the creation of opportunities of dignified and productive employment and decent work, the full implementation of the right to education, ensuring that no racial discrimination is applied with regard to access to education, in particular for people with special educational needs, migrants, indigenous peoples and people of African descent. Unfortunately, in several cases, racial discrimination and acts of xenophobia, incitement of racial hatred and intolerance, are associated with migration, reinforcing their situation of vulnerability. In this regard, CELAC recalled the duty of all States -of origin, transit and destination- to guarantee full respect of all human rights of migrants, irrespective of their migration status, including migration of children and adolescents, accompanied and non -accompanied and their higher interest to avoid exacerbating their vulnerabilities.

62. Finally, CELAC saluted the proclamation of the International Decade for People of African Descent, the CELAC Working Group meeting on people of African descent held in Brasilia in September 2014, the initiative of CARICOM to create the Reparations Commission of the Caribbean Community, including on the key areas of chronic diseases, education, cultural deprivation, psychological trauma and scientific and technological backwardness, as well as the World Conference of Indigenous peoples held 22-23 September 2014 in New York.

C. Presentation and discussion on the purpose of general recommendations by the CERD

63. At the 4th meeting, on 14 July, the Ad Hoc Committee heard a presentation and held a discussion on the purpose of general recommendations by the Committee on the Elimination of Racial Discrimination and the process leading to their issuance in the context of the effective implementation of the Convention, and any possible shortcomings.

64. Anastasia Crickley, Vice-Chair of the Committee on the Elimination of Racial Discrimination, presented on the purpose of the general recommendations made by the

CERD and the process leading to their issuance in the context of the effective implementation of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD). Ms. Crickley provided an overview of the development of general recommendations and stated that the primary purpose of such recommendations were for a dynamic and current interpretation of the ICERD. She added that over time, the recommendations have sought to capture a number of issues including the complexity of intersectionality of gender and race and multiple forms of discrimination faced by women belonging to ethnic, indigenous or minority groups.

65. Ms. Crickley emphasized that the general recommendations were made to provide further guidance to and assist States parties in fulfilling their reporting obligations, and while concluding observations are tailored to each State party, general recommendations are made available to all States parties further facilitating the implementation of treaty provisions. She stated that since 1972 CERD had adopted 35 general recommendations. She further added that while the general recommendations are authoritative, they are not legally binding. About 20 of them are mainly focused on the interpretation of the ICERD provisions and their application. Seven general recommendations deal with specific groups at risk of racial discrimination. While others touch upon general but important issues, such as the two general recommendations on the World Conference against Racism and the Durban Review Conference. Other issues not mentioned in the ICERD were however taken up by the Committee through general recommendations, including those on self-identification, demographic composition of the population, and more recently, racist hate speech. Also, while specific and vulnerable groups subject to racial discrimination are not mentioned in the ICERD, the Committee observed that certain forms of racial discrimination were directed towards them, and decided throughout the years to adopt general recommendations to enhance their protection from racial discrimination. Thus far, the groups covered are refugees and displaced persons, indigenous peoples, Roma, non-citizens and People of African descent.

66. She emphasized in particular general recommendation No. 25 on gender-related dimensions of racial discrimination which highlights the intersectionality between gender and race and allows the Committee to draw the attention of States parties on potential or existing double/multiple discrimination faced by women belonging to ethnic, indigenous or minority general recommendations. The recent general recommendation No. 35 on combating racist hate speech is also fairly special as hate speech is not specifically mentioned in the ICERD but at the same time is covered by both articles 4, 5 and 7.

67. In describing the process leading to the issuance of general recommendations, Ms. Crickley stated that following a proposal by members of the CERD or by the bureau, the CERD Committee would appoint rapporteurs to coordinate the preparation and drafting of the general recommendations. A day of thematic discussion would then be held with State parties, NGOs, National Human Rights Institutions and interested individuals on the subject based on which the CERD Committee would then decide whether or not to issue a general recommendation. A general recommendation is also based on the assessment of periodic reports and comments, as well as information provided by stakeholders.

68. The representative of Ghana requested further elaboration on the shortcomings of the process by which general recommendations were issued. The representative of Brazil requested the speaker to provide information on substantive gaps to the ICERD and how that would relate to the general recommendations issued by the Committee.

69. The representative of Pakistan on behalf of OIC also requested further information on how the general recommendations filled the gaps that existed in the ICERD, and in terms of the process leading to the issuance of the general recommendation the representative wanted to know how much States were involved, and whether the inputs of Member States were taken on board. Given that there was no formal procedure, she queried

whether those States inputs were reflected in the final General Recommendations, noting that the General Recommendations were neither binding on States nor a legal commitment as they were not the outcome of an intergovernmental process. She added that States parties' views were sought but normally not reflected. She stated that issues such as xenophobia, hate speech, and the intersectionality of racial and religious discrimination as highlighted by the Special Rapporteur on Minorities and the Special Rapporteur on Contemporary Forms of Racial Discrimination were emerging issues and were resonant in the ICERD. She also asked whether the Convention is able to address these new dynamics, context and contemporary challenges including those highlighted in the Durban Declaration and Programme of Action and the Review Conference which reflected realities considerably changed since its adoption in 1965, and whether another legally binding instrument was required. Similarly, the representative of South Africa asked about the impact of the engagement between Ad Hoc Committee and ICERD in addressing the gaps which need to be filled.

70. The representative of the United Kingdom of Great Britain and Northern Ireland asked about the criteria and considerations used in deciding whether or not to proceed with a general recommendation following a thematic discussion by the CERD.

71. Ms. Crickley in response stated that the CERD Committee adopted flexibility in terms of taking on board the different views and that there have been times when the decision has been made not to proceed with any general recommendation after a thematic discussion, if many Member States would not find it helpful or if the timing did not appear conducive. She informed the participants that CERD would be bringing its comments procedure in line with the other treaty bodies in that Member States will be invited to comment prior to finalization, adding that indeed Committee does take notice of States comments although it was duty bound as a body to make independent expert decisions about the ICERD. In response to the issue of substantive gaps in ICERD, Ms. Crickley stated that the issue of gaps was dependent upon the political will and/or capacity of States Parties being able to fulfil their obligations under ICERD and address other challenges posed by contemporary forms of racism. While admitting that the context in which the ICERD was drafted had changed, she stated that definition of article 1 of the Convention can be interpreted in a way as fully cognizant in the current environment and indicated that CERD had produced three general recommendations on the subjects of non-citizens, hate speech and with regard to People of African descent to elaborate and shift language on issues which could be implied in the ICERD.

72. The Chair-Rapporteur asked Ms. Crickley whether all general recommendations are adopted by consensus and whether this had any bearing on the very long time it took to adopt the general recommendations on hate speech. Ms. Crickley replied that general recommendations are normally adopted by consensus; in the case of the hate speech general recommendation it was adopted related to the timeliness of the subject and was developed in a sensitive and informed manner. The Chair-Rapporteur asked about the issue of political will and what happened to victims in the meantime, and whether the Committee considered the impact on victims. Ms. Crickley stated that the Committee is very cognizant of victims and that general recommendations are always aimed at reflecting the ongoing and timely issues affecting the rights of people. The Chair-Rapporteur also mentioned the voluntary nature of general recommendations and asked how adequate remedies could be ensured given legal costs and access, to which Ms. Crickley stated that while legally-binding States' Parties are influenced by them and they are used as a guide to implementation and for future responses to the Committee.

73. The Chair-Rapporteur inquired as to whether CERD could conduct a quantitative analysis of the status of implementation of its general recommendations identifying satisfaction and weaknesses in order for the Ad Hoc Committee to provide a response as at

present there did not appear to be a way to judge the impact of general recommendations. Ms. Crickley responded that though welcome, such an analysis would be a large undertaking requiring considerable resourcing. However, States Parties could be asked how they were implementing the general recommendations, adding that a source for this information could be the “follow up process” of the Committee with States Parties which was creating increased engagement with the Committee and represented a turnaround time of about a year for follow up between the Committee and the given States party.

D. Comparison of the relevant procedures of other treaties

74. At its 5th meeting, on 15 July, Simon Walker, Chief of the Civil, Political, Economic, Social and Cultural Rights Section of the Human Rights Treaties Division (HRTD) at the Office of the United Nations High Commissioner for Human Rights presented a comparative overview of the relevant procedures of the treaty bodies. He provided an outline of the procedures of all treaty bodies, stating that the main procedure for all ratifying Member States is the reporting procedure, which is essentially an invitation to the State party to hold a constructive dialogue with the Committee. He discussed this traditional procedure as well as the simplified reporting procedure developed in recent years. In this optional procedure which must be accepted by the State party, the reporting procedure is triggered by the Committee which sends a list of questions to the State party. It is simplified because the State Party is informed in advance about the area on which the Committee will focus during the dialogue. This procedure has been adopted initially by the Human Rights Committee and Committee against Torture, followed by other committees. He explained that General Assembly resolution A/RES/68/268 on strengthening and enhancing the effective functioning of the human rights treaty body system recognised this and encouraged State parties to adopt this procedure. CERD has adopted it and it has sent such a request to certain States parties to see if they are interested in adopting that procedure. Connected to the reporting procedure is the follow up procedure, which not all committees have it but an increasing number now have this procedure.

75. He referred to different procedures under specific United Nations treaty bodies, including the follow-up procedure; the early warning and urgent action procedure; the individual complaint procedure; the inquiry procedure; the inter-State procedure; and, the urgent action procedure. In terms of comparing each of these procedures, he emphasized that the reporting procedure is a constructive dialogue and it applies to all States parties of a particular treaty. It is aimed at considering the implementation of the treaty provisions by its States parties with the view to assisting them to improve the implementation of that treaty. This is different from individual communications which consider alleged specific violations, and deal with different situations. There are, however, other specific procedures, such as the urgent action procedure under the Committee on Enforced Disappearances which are specific to a particular treaty.

76. With regard to resources, he mentioned that while the General Assembly had adopted these procedures it has not always provided concomitant resources. Resources are particularly needed when a Committee receives reliable information on serious, grave or systematic violations by a State party of the Conventions it monitors, and the inquiry procedure is initiated. He informed that when a committee decides to visit a State party, it requires six weeks of staff intensive work, and that resources have not been provided for this mechanism. In conclusion, in the context of resolution 68/268 and the reduction of extra-budgetary funds is presenting a significant challenge to the Office of the High Commissioner for Human Rights and is placing the treaty body system under strain.

77. The European Union representative thanked Mr. Walker for his presentation and noted that ICERD provides for the reporting procedure, the follow up procedure, the urgent

action/early warning and individual complaints procedures asked his view on the main obstacles to the effective implementation of the ICERD. Regarding concluding observations and recommendations of ICERD, she asked what could be done in terms of further supporting the implementation of observations and recommendations and whether OHCHR provides capacity building for States in terms of reporting obligations.

78. The representative of Brazil mentioned that some procedures, for example, visits were not foreseen in the ICERD and asked whether in his view an additional protocol would help to cover this procedural gap.

79. Mr. Walker explained that the adoption of resolution 68/268, strengthened the capacity of OHCHR to assist follow up and reporting and resulted in ten staff members at P3 level posted in all OHCHR regional offices, with the exception of Brussels and the regional office in Qatar. The capacity-building staff are supported by a small section in Geneva, through for example, developing training materials, organising regional workshops, assisting in the development of work plans, etc. He noted that it will be interesting to see if these efforts will result in increasing the number of reports as some countries are very late, while some countries have never reported. When lack of reporting is due to technical problems the capacity building programme could help to improve the situation, as this presented the most serious challenge. In response to the question about possible duplication with the mechanisms of the Human Rights Council, he mentioned that the Office does its best so that there is cross-fertilization in order to avoid duplication as much as possible.

80. The representative of Belgium highlighted that reporting and constructive dialogues are essential for the effective implementation of the ICERD. He noted that there is essentially universal ratification to the ICERD, but a very uneven reporting profile. It was almost always the same States parties reporting and some States are very late or have not reported yet, which is a weak point which can be identified as a gap in the machinery. He asked about the main obstacles to State party reporting, and about what relevant assistance could be made available to States to improve reporting.

81. The Chair-Rapporteur inquired about the effectiveness of the committees given the non-binding nature of the general recommendations and the uneven level of implementation of the treaty body recommendations, and the limited resources available. He asked about how far treaty bodies could be streamlined while ensuring that all human rights are protected. He also asked about whether there was information concerning the satisfaction of victims with the treaty bodies and whether other avenues were known to them. He mentioned that it was essential to have information about how far countries responded to the recommendations made by the various committees, in order to see how far existing mechanisms existing are effective, particularly for the victims. In terms of victims and complaints, he inquired if it could be answered intelligently the percentage of satisfaction of the victims with regards to complaints. Additionally, he asked that if the gap was as large as it appeared, what could be done to improve these mechanisms.

82. Mr. Walker mentioned that in terms of the satisfaction of victims, the fact that an alleged victim has recourse to lodge a complaint to an international body could bring satisfaction in itself, and has symbolic value. He noted that the fact that the process brings together States and civil society, facilitating a network of dialogue at the national level. He noted that an overall assessment would require a review of all follow up reports of the Committee. Thus far, OHCHR resources have been focused on supporting State reporting and individual communications leaving little time and resources for undertaking analysis.

83. The representative of Tunisia asked for clarification with regards to the simplified reporting procedure in terms of the conditions for appeal. Tunisia noted that it is working with OHCHR on a professional national mechanism that will focus on the preparation of

treaty body reports and follow up to establishing recommendations from treaty bodies and special procedures.

84. Mr. Walker clarified that although it varies from committee to committee, CERD has set the criteria for opening the simplified reporting procedure to those States Parties which are ten or more years overdue in their reporting. As a progressive introduction of the procedure, the next stage will open this procedure to States parties that are five years overdue in terms of reporting. In comparison, CESCR offers the possibility of the simplified reporting procedure to State Parties which are more or less on time with their reports to allow the Committee to test the use of this reporting procedure. He added that all the committees at this stage apply the procedure to periodic but not to initial reports.

85. The representative of Belgium was interested to learn that there had been some reporting developments in the Office and inquired whether the OHCHR could make a presentation on this specific aspect of capacity development during the current Ad Hoc Committee session.

86. The Chair-Rapporteur agreed and requested the Secretariat to follow up on the possibility of such a briefing during the 7th session.

87. At the 8th meeting on 16 July, and following the earlier request of the Ad Hoc Committee, Paolo David, from the Treaty Bodies Division of the Office of the United Nations High Commissioner for Human Rights gave a briefing on national reporting and follow up mechanisms. Mr. David explained the history of the treaty body strengthening process. He referred to General Assembly resolution 68/268 that contained various measures that should strengthen the treaty body system, including the assistance to States to develop and reinforce their institutional capacity. The Office had commenced a study to follow up on this initiative and was in the process of finalising the study. The presentation of the results of the study would also be linked to a practical guide.

88. One of the conclusions of the study was that in a number of States parties, temporary reporting mechanisms were evolving into permanent mechanisms. The objective was to facilitate the preparations of reports and cooperate with special procedures and follow-up on recommendations from international and regional mechanisms. The study concluded that mechanisms were more effective if they also dealt with regional mechanisms. Those national mechanisms needed to have the capacity and power to coordinate response and follow-up action. They also needed to be able to consult with a variety of stakeholders, such as national human rights institutions and civil society. The capacity to draft reports and responses (or facilitate the drafting of responses) under individual communications procedures of the treaty bodies and special procedures was also a useful capacity. And finally, the national mechanisms should have more efficient knowledge management capacities and political ownership.

89. Pakistan on behalf of OIC inquired whether OHCHR was aware of the number of States with such permanent mechanisms. Mr. David said that while there were no solid figures available, he estimated that approximately thirty States had a permanent mechanism, and added that several countries were lately moving from ad-hoc to standing mechanisms for the purpose of treaty body reporting.

90. The representative of Belgium said that reporting was an essential step towards implementation, and asked what assistance the new treaty body capacity building program of the Office of the High Commissioner for Human Rights was ready to provide to countries. Mr. David said that the Office had recently trained staff of such a mechanism at country level, and that experts and consultants were also ready to visit countries to provide expert advice and guidance to interested States parties. The representative also asked if there was a best practice example for a permanent national mechanism. The study, Mr. David noted, clearly concluded that the ad hoc format was not optimal. There were three

different typologies that had been established and had proven meeting the efficiency criteria. Those models foresee different coordination roles for the government ministries involved.

91. The representative of Tunisia said that it was currently setting up a permanent mechanism which could be linked to the office of the Prime Minister. The delegate sought Mr. David's advice on this undertaking and wanted to know if OHCHR's website featured the various responses from States to the relevant note verbale that had been sent to countries. Mr. David said that a few countries used interministerial platforms which were not placed under a specific ministry, which was slightly different than the Tunisian approach. He added however, that various models were possible. He agreed that OHCHR would follow up by placing the relevant information onto the OHCHR website.

92. The representative of Belgium added that Belgium had received assistance from the Office, in order to improve the performance of its mechanisms. The delegate asked whether the Office suggested particular follow-up methods to recommendations, such as a special software. Mr. David stated that there would be a capacity building webpage created on the website of the Office of the High Commissioner for Human Rights. The new capacity building team consisted of 16 people (10 placed in various regions) and the team in Geneva would indeed, develop a number of tools to assist States in implementing their treaty obligations. One good approach taken by a number of States was to cluster recommendations thematically, in order to manage the follow-up. He added that the use of deadlines was also recommended. A small number of countries had developed information technology IT tools, the Office could provide relevant information.

E. Procedural gaps with regard to the ICERD

93. At its 7th meeting, on 16 July, the Committee considered the agenda item "Further elaboration of the views of the Committee on the Elimination of Racial Discrimination on key elements with regard to procedural gaps and best ways to address them (follow-up to the 2007 study and the different presentations given and proposals made to the Ad Hoc Committee in accordance with its mandate)". The Chair-Rapporteur gave an account of the work of the Ad Hoc Committee thus far, on the topic of procedural gaps. He also presented a draft compilation document of the 2007 CERD report, and various presentations by CERD members as well as Member States interventions on the topic of procedural gaps to ICERD as considered by the Ad Hoc Committee on the Elaboration of Complementary Standards from its 1st to 6th sessions. He pointed out that the excerpts in the document reflected the exact language used during the 1st through 6th sessions of the Ad Hoc Committee. This document was distributed to all participants.

94. He recalled that the 2007 "Study of the Committee on the Elimination of Racial Discrimination on possible measures to strengthen implementation through optional recommendations or update of its monitoring procedures" (A/HRC/4/WG.3/7) focused on five issues. With regard to reporting and review procedures it was noted that non-compliance of States parties with their reporting obligations remained a major obstacle to the Committee's work and the effective implementation of the Convention. Therefore, the Committee suggested the adoption of revised reporting guidelines. On the issue of follow-up procedures, CERD suggested that the practice of follow-up visits be further developed and that the framework for such visits should be explored, including through the adoption of an optional protocol to the Convention. With regard to the individual communication procedure, it was noted that the potential of the procedure had not been fully exploited, and

that it was essential that more States parties make declarations under article 14 of the Convention.

95. The 2007 study also addressed the need to enhance the effectiveness of the CERD through the establishment of an evaluation visit/inquiry procedure. CERD proposed to explore the need to enhance its capacity to prevent serious forms and consequences of racial discrimination through an evaluation visit/inquiry procedure. In relation to the need to enhance the promotion of racial equality and protection against discrimination through national mechanisms, CERD suggested the inclusion in an optional protocol of provisions on the obligation of States to establish, designate or maintain national mechanisms that will operate in cooperation with the Committee so as to strengthen the effectiveness of the monitoring role of CERD.

96. The draft compilation document also included excerpts from the session reports of the Ad Hoc Committee summarizing presentations and interventions made by delegates on the topic of procedural gaps at the first, third, fourth, fifth and sixth sessions.

97. The Chair-Rapporteur stated that the document was a compilation of previously published Ad Hoc Committee reports and the 2007 CERD study and that he welcomed further consideration of the document. He explained that CERD had been approached to present on this agreed agenda item, however the experts indicated that they had no further information or developments to present on the issue of procedural gaps. The Chair-Rapporteur suggested that some of the meetings of the following week be devoted to a discussion on this topic. He stated that the Ad Hoc Committee should address the CERD proposals with regard to procedural gaps and take steps to assist the Committee in this regard.

98. The representative of Pakistan on behalf of the OIC thanked the Chair-Rapporteur for presenting the compilation. Pakistan supported the idea of an additional protocol to ICERD. She stated that the OIC was of the view that additional protocols are required, as evident in the Committee on the Elimination of Racial Discrimination, the Intergovernmental Working Group on the Effective Implementation of the **Durban Declaration and Programme of Action**, and Ad Hoc Committee sessions and discussions. While it was agreed that there are gaps, there is a disagreement about how to address these gaps.

99. Based on all these deliberations thus far, the Ad Hoc Committee should start considering consolidating elements for an optional protocol. She noted that the issues on which there were substantive gaps were known and the subject of General Assembly and Human Rights Council resolutions; and that issues such as racism and sport, or elements from Human Rights Council resolution 16/18 on “Combating intolerance, negative stereotyping, stigmatization, discrimination, incitement to violence and violence against persons, based on religion or belief” could be integrated in such an optional protocol. Rather than separate sets of protocols, a comprehensive additional protocol should be considered to address all the gaps which have been identified, and that discussions could take place on how to move ahead on this. As is the case with any additional optional protocol, States Parties are given the opportunity to ratify or not such an instruments, but it should not delay the Committee from progressing with the drafting of the optional protocol. The representative suggested that a similar compilation on the issue of substantive gaps be prepared. The following week of the 7th session of the Ad Hoc Committee should be dedicated streamlining these elements, so that proposal could be placed on the table. She stated that this OIC proposal should be taken on board and reflected in the Ad Hoc session report.

100. The representative of the European Union also thanked the Chair-Rapporteur for the compilation and reiterated its position that the substantive provisions are sufficient. It was

important to collectively look at how to use the monitoring mechanism of the Convention more effectively before moving ahead. It was also important to bear in mind capacity and resource issues. There is lack of reporting by so many states and lack of response to concluding observations. With regard to victims, it should be noted that progress at national level has been made since the 2007 report of CERD.

101. The representative of Brazil pointed out that based on the compilation, CERD lacked some procedures which other treaty bodies had. The Ad Hoc Committee could not continue discussing matter indefinitely; it should discuss how to address these procedural issues, if in the form of an additional protocol, and move ahead.

102. The representative of South Africa stated that the compilation is a good basis for the exchanges which would be held the following week and for moving forward. There are points of agreement: for example, paragraph 18 referred to “the need for something complementary to what is already in existence”. There is a need to complement the Convention and it is time to think about a possible text. The name of the text could be agreed at a later stage. She pointed out that, for example, the situation that had unfolded in Rwanda and issues concerning ethnicity were not covered by ICERD. Some have said that there are clear challenges and gaps that have to be filled, the question is whether the document will be binding or not. The representative invited members to agree and move forward.

103. The representative of the United States noted in his preliminary remarks, that position of his Government on the issue of procedural gaps had not changed. The best approach was to improve implementation of existing obligations rather than creating new procedural mechanisms. With regard to the issue of country visits, he said that UN special procedures mandate holders already undertake such visits. Action oriented, practical and useful initiatives need to be taken by the Ad Hoc Committee. He pointed out that the lack of reporting from states is a significant problem, and that the work of the Ad Hoc Committee should not be extended to include the Istanbul process and Rabat Plan of Action, but they can be highlighted as illustrative examples of a possible way forward.

104. The representative of Algeria stated that unfortunately there are still a number of gaps, despite the international instruments. The international efforts should not be in vain. She added that the presented draft compilation could be a good basis to move forward. She emphasized the importance of moving forward in order to fulfil the terms of reference for the establishment of the Ad Hoc Committee, adding that the following week the Ad Hoc Committee could start a substantive discussion, which could be reflected in the concluding remarks.

105. The Chair-Rapporteur stated that CERD would hold a session in a few weeks and that the Ad Hoc Committee could ask CERD to prepare an updated report on this issue of procedural gaps, as CERD had not followed up on its own 2007 report and it would be useful to have updated information. He inquired about any objections in the Ad Hoc Committee to this proposal.

106. The delegates of the European Union and the United States said that they would consult further in this regard as they were not in a position to endorse the idea of an updated CERD report.

F. Sport and racism

107. At the 9th meeting, on 20 July, the Committee considered the issue of racism and sport. Todd Crosset, Professor at the University of Massachusetts, and Delia Douglas,

Professor at the University of British Columbia, and Benjamin Cohen, Head of Governance & Legal Affairs, International Basketball Federation presented on this topic.

108. In his presentation, Todd Crosset, Professor at the University of Massachusetts, illustrated how racism is a global system with particular local expressions, drawing examples from the American context. He explained how current events made the topic of structural racism in sport especially important. Just as mind shaped conscience, he explained that body also shaped our conscience and people carried their racial identity deep within their bodies. Consequently, we could not just say no to racism. Sport was inherently conflictual, and so was racism. Every game is an opportunity for peace-making, but also carries the threat of the opposite. Fan engagement with a spectacle of physical conflict provides a context ripe for the expression of racist ideas. He added that ideas rarely espoused in public found their way into sporting events. The expert stressed that sport “recapitulates” rather than “reflects” dynamics of human relationships and societal values.

109. After the Second World War, athletes and sport pioneered an American version of integration and ushered in a tumultuous period of integration in American society. The expert stated that while post World War II integration of sport failed to adequately address racial justice, it did provide a road map for a broader approach to integration in America.

110. One central feature of American history was amalgamation. Another one was white supremacy — which resulted in a sense of being “normal” for white Americans. Today, we have become a society with few admitted racists yet with profoundly racialized outcomes.

111. He quoted scholar Harry Edwards that “Sport inevitably recapitulates the character, structure and dynamics of human and institutional relationships within (and between) societies. And it recapitulates ideological values and sentiments that motivate and rationalize those relationships.” He argued that sport is not a mirror of society. The unique structures and practices of sport re-express and give new form to the character, structure and ideologies of a culture.

112. Mr. Crosset also discussed what he termed “the racial re-segregation of youth sport”; the repeated defence of demeaning symbols of indigenous people in sport; and racial inequities in the American collegiate sport system. Since the United Nations had weighed in on similar issues (such as the Sport for Development and Peace initiative) which declared that sport can contribute to community development and peace under the right conditions, he wondered if the United Nations, through this committee, couldn’t make a similar statement about sport’s anti-racist potential.

113. The expert closed his presentation by making a number of recommendations to the Committee with regards to their work involving racism in sport. In addition to encouraging equal access to sport, free of discrimination, the United Nations could also declare that athletes should be able to participate in sport free from excessive economic exploitation and athletes should receive reasonable compensated. Further, recognizing that sport governing bodies have a responsibility to the development of sport across a broad spectrum and levels of sports, and he posited that the Committee might encourage the promotion and development of sport in a manner that also ensures racial fairness and in a US context, discourage systems that disproportionately benefit white athletes.

114. He stated that the United Nations might also support research; provide encouragement, guidelines and best practices for coaches and communities on how to employ the sport experience to challenge racism much as they have for Sport Development and Peace. It might also, through this Committee, encourage national and international governing bodies of sport to develop generative strategies to support multi-racial youth teams, particularly those with leadership of colour at all levels; team, club, league with the expressed intent to combat racism. He also encouraged the Ad hoc Committee to reaffirm

that it was a right of indigenous peoples to determine their identities and their portrayal by sporting teams.

115. In addition to encouraging equal access to sport, free of discrimination, the UN could also declare that athletes should be able to participate in sport free from excessive economic exploitation and athletes should receive reasonable compensation. Further, recognizing that sport governing bodies have a responsibility to the development of sport across a broad spectrum and levels of sports, and he posited that the Committee might encourage the promotion and development of sport in a manner that also ensures racial fairness.

116. The representative of the United States was interested to hear about how post-World War II integration in sport had been a model for American society at large. This integration of African-American athletes might have hurt black sport associations, but it was important to have universal institutions rather than racially divided ones. He also noted that, in his experience, private Youth Leagues in Washington D.C. were very integrated. The representative queried whether it was the recommendation of the expert that collegiate athletes be compensated for their participation in collegiate athletics. The representative then requested the expert's perspective on the presence of other forms of discrimination in sport, such as gender, disability and sexual orientation.

117. The representative of the United States noted that post-World War II integration in sport brought benefits to universal institutions, as well as the harm noted by the expert to black sport associations, such as the Negro Leagues. He also noted that, in his personal experience, private youth leagues in Washington D.C. were in fact, quite integrated. The representative queried whether it was the recommendation of the expert that collegiate athletes be compensated. The representative then requested the expert's perspective on the presence of other forms of discrimination in sport, on such grounds as gender, disability and sexual orientation.

118. The representative of Ghana requested the expert afford the Committee clarity on his use of the term, "people of colour." The representative then queried if there were any positive aspects to having mascots representing indigenous groups. Finally, he asked about current trends in race relations and whether the expert had seen any positive trends regarding racism in sport.

119. In response to the questions of the United States delegation, Mr. Crosset stated that the goals of post-World War II integration were well meaning, however there were flaws in the methodology of the integration process. The expert provided the example of how, at the time, the black community lost leaders because black athletes were integrated into white teams. The ultimate goal was full integration, but racial justice should have been a more integral part to the integration process.

120. The expert further noted that as the participation of black athletes in collegiate athletics resulted in a disproportionate financial gain to collegiate institutions, the topic of athletic compensation was especially important to the black community. Athletes whose talents create significant revenue for collegiate institutions should be reasonably compensated for their efforts. The expert also agreed with the United States delegation that there was intersectionality between many forms of discrimination and noted that all forms of discrimination needed to be addressed under the umbrella of non-discrimination.

121. In response to the questions from the representative of Ghana, the expert also stated that he would be conscious of using more specificity in the future in substitution of the term "people of colour." Regarding mascots, the expert explained that many team mascots represent offensive racial stereotypes. He used the example of the American Football team, the "Washington Redskins" as an example of a team name that rose to the level of a racial slur. Regarding the behaviour of spectators, the expert noted that in the American sporting

context, racism rarely occurs in the stadium, but that it manifests itself in more subtle ways in American sports.

122. Delia Douglas of the University of British Columbia said that racism in sport is an important topic, because sport was a key part of North American culture. It was a place where different histories, traditions and myths met and intersected, creating cultural meanings and identities that travelled across different mediums, national borders and commercial markets. As a site of interracial competition, cooperation, and antagonism, sport had played a profound role in civil rights, and social justice struggles in North America and across the globe. She addressed several issues of access and inclusion in her presentation.

123. She said that sport is a complex and contradictory space, for it is a place where the presence and success of one or two Indigenous or racial minority female athletes is seen as evidence of equality — or of the absence of racism — rather than exceptions to systemic racial exclusion and racial tension. The expert then explained the relationship between gender and sport focusing on the perception that athleticism and femininity could not be combined. She then offered specific examples of athletes that encountered discrimination because of gender, belonging to an indigenous group, geographical origin, different belief systems etc. The pattern of exclusions seemed to profit a privileged culture that did not accept minority participation in sport. Funding opportunities (scholarships) seemed to further that status. There was also a scarcity of minority women as coaches, she said. Race class and gender informed our opinions. A lack of visibility in sport reflected a larger social injustice. It was clear that the public, media, and sport officials use a vocabulary reminiscent of the dehumanization of black women during slavery equating their physicality and athletic performance to that of men or animals. She referred to the experiences of famous African-American tennis and basketball players such as Venus and Serena Williams and their experiences with racism and gender bias.

124. Ms. Douglas stated that racism in sport was an area that had not been routinely acknowledged in North American dialogues, and stressed the importance of the topic as it magnified racism and helped sustain racism in society. Racism in sport therefore, was an important human rights issue. The expert then recommended three possible areas of United Nations involvement. First, society needed to have some understanding of what racism involved — and to recognize its diversity and complexity. In turn, our responses had to be multidimensional and expansive; society had to acknowledge it was not an individual problem, but a social issue. Second, society needed useful research on the topic for analysing the relationship between racism and sport in order to define ways to diversify society. Finally, the expert said that it was clear that media and sport institutions did not correspond to the multiracial, pluri-cultural and pluri-lingual characteristics of North American populations. As a way of redressing this imbalance, legislation could be developed and applied to sport governing bodies — inter and intra-nationally, including: FIFA, FIBA, IAAF and IOC.

125. The representative of the United States appreciated the elaboration on different forms of discrimination and intersectionality by the expert, including groups such as African Americans, women, Asian, indigenous, and LGBT persons. He asked how to address the difference that she noted in perceptions between black and white sport successes, and queried whether the expert had any optimism or thoughts regarding how to improve the situation.

126. The expert stated that systemic exclusion and disparate racial standards needed to be addressed by societal education. She then contrasted similarities and differences between forms of discrimination and emphasized the need for visibility across all forms of discrimination. The expert added that she did have hope on this topic and stressed the need to acknowledge the current state of racial circumstances in order to move forward.

127. The representative of South Africa referred to social media and queried whether North American legislative policies have addressed discrimination in social media. In response, Ms. Douglas noted that the United States and Canada exhibited political difference regarding free speech. The expert stated that online bullying was an issue that had been addressed in Canada, but she was unaware of any examples of government addressing online racism. She stated that she was aware of the tension between prohibitions and the freedom of speech, and noted that there was inequality at the various levels involved.

128. The representative of Ghana stated that the sisters - Venus and Serena Williams - should not be left alone to fight issues of racism in the sport of tennis. He then questioned if governments are working steadfastly to mitigate the effect of racism on athletes. The expert responded that governments could do more to assist athletes in their fight against racism. She posited that sport was not separate from society and therefore governments had to address this issue. Additionally, an increased number of media voices combating racism in sport could have a positive impact.

129. The representative of Cuba thanked the presenters for the diverse examples of discrimination in sport they had illustrated. She asked if the experts had cooperated with United Nations Office of Sport for Development and Peace (UNOSDP) and the Committee on the Elimination of Discrimination against Women (CEDAW), and also asked if the Committee could work on racial discrimination of women in sport — in order to connect initiatives and questioned whether there was a database on those issues relating to sport. Ms. Douglas responded that her research drew from United Nations reports in a number of cases, but had not as yet had the opportunity to collaborate with UNOSDP or CEDAW on these issues.

130. At this meeting, Benjamin Cohen, Head of Governance of Legal Affairs for the International Basketball Association (FIBA), also presented on the issues of racism in sport. He stated that he considered sport as one of the most powerful tools to fight racism. In his view, athletes regularly did not care about race, but were more concerned about their team and the sport. It was important for sports federations and the United Nations to promote the positive side of sport in order to combat racism by promoting unity. He outlined the work of FIBA and its regulatory structure as relates to issues of anti-discrimination.

131. Mr. Cohen mentioned that players regularly encountered racial problems. The expert used the example of Switzerland, stating that although there were Swiss laws against racism in existence, they are not regularly implemented. The expert posited that this lack of implementation was not as large of a problem in a sport stadium. The expert explained that the foremost problem with racism in sport were sport fans that abused sports for their discriminatory messaging. The expert then referred to the pertinent legal framework, in particular the Olympic Charter, which forbids discrimination on all grounds. He described the Comprehensive Code of Ethics prohibiting discrimination instituted by FIBA, adding that in his view this legal framework was sufficient to deal with any discriminatory behaviour in basketball stadiums.

132. The expert stated there had been very few incidents of racism in FIBA. He added that without cooperation between States and sport federations all sanctions were toothless.

133. Mr. Cohen then explained FIBA's position concerning its rule on the ban on head scarves and other garments during FIBA play. He stated that FIBA rules needed to apply in more than 200 countries, and that reaching uniformity was an on-going challenge. He explained that, absent this rule, there was no limit on what players could wear during a match. He stated that discrimination was also present in some country's which did not invest in the training of girls, or allow men or male coaches at the games. Therefore, there could be claims of discrimination directed against FIBA, while discrimination was being

practised by the complaining country. The expert suggested that the United Nations could provide direction to sporting associations regarding best practices in difficult areas surrounding racism.

134. Mr. Cohen replied that in his view racism was not the top priority of sports organisations, though it was an important issue. He stated that nearly all organisations have zero tolerance policies on racism in sport. On the subject of inter-agency cooperation, he noted that there were common meetings where good governance was being discussed.

135. The representative of Greece welcomed the introduction of the theme on racism and sport to the program of work of the Committee and referred to the country's activities at the Human Rights Council on the issue of promoting human rights through sport. She specifically referred to the participation of Greece as one of the main sponsors of the resolution "Promoting Human Rights through Sport and the Olympic Ideal" and to the "Joint Statement on Sport and Human Rights" that Greece presented, together with China, at the 28th Session of the Human Rights Council. She also stressed that Greece had set the fight against racism as a top priority in its National Action Plan on Human Rights. The delegate stated that the Advisory Committee would present a study on sport and human rights during the 30th session in September. She also stressed that, especially on the occasion of the 50th anniversary of its adoption, the ICERD is an important instrument in the universal efforts to prevent, combat and eradicate racism. She then queried if there was existing cooperation between sport organisations on the issue of discrimination.

136. The representative of South Africa cautioned that it was inadvisable that the suffering of victims be trivialized in the context of presentations to the Ad Hoc Committee. The representative inquired about the high level business model in the United States where white managers managed black players. She also queried in what ways players wearing a head scarf could impede the sports matches.

137. Ms. Douglas agreed with the South African representative and illustrated that the discussion on the issue of the hijab or head scarves became more salient after 9/11. The expert highlighted the importance of questioning sporting rules and regulations, as the agendas behind the rule and regulations are important to keep in mind. The expert also expressed a danger in asserting the notion of universality in regulation, because the issues being considered are not homogenous.

138. The representative of Ghana questioned if it may be a good practice to alert audiences that discrimination was forbidden by printing such a statement on tickets. He then noted that there were clear rules against racism in sport in many countries, but the problem was enforcement and stated that education and related sectors needed to be strengthened in order to address this important issue.

139. The representative of Argentina highlighted the efforts of the country against racism and described the work of the Instituto Nacional contra la Discriminación, la Xenofobia y el Racismo (INADI) in the area of sport and racism. Additionally, the delegate explained Argentina's current efforts to conduct studies in the area of fan behaviour and racism in sport.

140. The discussion on racism and sport continued at the 10th meeting of the Ad Hoc Committee on 20 July. Gerd Dembowski, Diversity and Anti-Discrimination Manager at FIFA Sustainability Department, briefed the Committee on FIFA's strategic approach and actions on non-discrimination. He said that it was of importance that FIFA pursued a strategic approach to combating racism in FIFA rather than acting on a case by case basis. The strategy was based on the FIFA statutes, particularly Article 3 on non-discrimination. All other existing FIFA codes drew from Article 3.

141. The strategic approach of FIFA to anti-discrimination had five main pillars: Communications, Controls and Sanctions (individual bans, fines, and point deductions), Education, Regulations, Networking and Cooperation. Only FIFA games and competitions were covered. Currently, FIFA organised 860 games “on the road” to Russia.

142. The expert explained that while regulations and sanctions were important portions of FIFA’s anti-discrimination strategy, but education was an equally vital aspect. He stated that enhancing education on a global level had proved challenging but could be assisted by advocating best practice examples. Mr. Dembowski highlighted that networking and cooperation were an important part of FIFA’s ability to combat racism as FIFA did not have experts on all relevant issues. The expert stressed the need for FIFA to cooperate with experts on racism to further their strategic approach.

143. The expert explained how FIFA assisted all member federations to improve along those five pillars. Although FIFA’s power was limited as member associations were independent, FIFA could intervene to a certain degree. FIFA has implemented a Task Force on Racism, which was interdisciplinary and had recently hired a specialist on non-discrimination in order to enhance the operative level. The expert further explained how FIFA trained football federations and match commissioners on anti-discrimination issues and highlighted the recent implementation of a FIFA anti-discrimination monitoring system. Mr. Dembowski then explained how high risk matches were identified and match observers (trained by the non-governmental organization FARE) were sent to those matches. Following each match FIFA received a match report that had the same importance as the referee’s match report. From that report FIFA decided if a case needed to be opened and whether an incident necessitated investigation. FIFA has also implemented and continues to celebrate annual anti-discrimination days.

144. The expert finally highlighted the intersectional approach of FIFA to anti-discrimination and explained that FIFA not only dealt with racism but consistently checked on what grounds a person was attacked (e.g. because she was a women, gay, lesbian etc.) The expert stressed the importance of addressing discrimination at large. The expert closed by describing FIFA’s online platform to enable an ongoing exchange on best practices with the hope to encourage federations to take national action.

145. Daniela Wurbs, of the non-governmental organization Football Supporters Europe (FSE) introduced the FSE network which connected fans, organized campaigns, worked for the empowerment of fans and held dialogues with a variety of institutions.

146. Ms. Wurbs stated that fans were often only perceived as the main problem of football. There was a variety of reasons for racism in sport: athletes were mirrors of society but racism could also be used as a means for provocation by a minority of fans during a competition (the “us” against the “other”); and sport infrastructure often supported the exclusion of certain groups of society (such as women).

147. Ms. Wurbs stated that there might be a lack of such counter reactions by fans to racism in sport due to: a lack of education/information (adding that FSE did not support this argument as it presented an easy excuse); non racist fans fear of speaking up (culture of fear in the stands); anti-racism could be seen as breaking an established “no politics” consensus within the fan base; and, clubs and football associations were sometimes part of the problem — by virtue of marginalizing the problem.

148. She explained that the solution might be found in simple crowd dynamics. Indiscriminate use of force was seen by the crowd as illegitimate. Such force led to a counter reaction (solidarity effects of the crowd with the perpetrators). The aim was therefore for fans to regulate themselves. Peer pressure was the most valuable tool to achieve change. FSE acknowledges that this was the most sustainable solution. Consequently, fans needed to be empowered in order for peer pressure to be applied and for

good examples to be shown. In order to implement this solution a multi-agency approach should be applied; indiscriminate treatment of fans (as the majority of the fan base consisted of non-racist fans) should be avoided; and clear messaging and credible long term messaging was needed (not red cards once a month).

149. Ms. Wurbs said that some of the key principles that should determine interventions were: the clear recognition of a problem; that institutions set clear messages (until the message becomes part of the sport's DNA); messages needed to target individual perpetrators; clubs and football associations needed to encourage fans to speak up and report incidents; and positive developments and actions needed to be supported (such actions were however, seldom reported); and cooperation with local civil society.

150. She also introduced some fan projects which existed in a number of European countries and enabled long term cooperation with football fans in order to create a positive fan culture. She added that Supporter Liaison Officers (SLOs) were also a successful tool (and part of UEFA's licensing criteria, for example). Concluding she said that there needed to be clear national action plans against discrimination in sports (and society); sanctions should be directed against individuals; the focus of the strategies should be on prevention; community schemes should be introduced on club level; national funds that could fund grassroots projects against discrimination should be established; and diversity within the stadium should be promoted; and inclusive infrastructure in stadia should be provided.

151. The representative of Argentina made a statement emphasizing the importance of taking action in stadia. The Instituto Nacional contra la Discriminación, la Xenofobia y el Racismo (INADI) worked in Argentina on that subject and furthered mechanisms that promoted diversity. INADI also observed behaviour in stadia and addressed discrimination, including discrimination on the basis of race and sexual orientation, in football.

152. Des Tomlinson, of the Football Association of Ireland (FAI), introduced the intercultural football programme of the FAI. He noted the social potential of sport from enhancing the social good to its potential in addressing social divisions. Football could play a role, however partnership with other actors was needed to address social issues.

153. Mr. Tomlinson briefed the committee on the social environment in Ireland and the fact that its cultural landscape had evolved. The European Union Commission developed a policy paper on sport and its role in integration. In 2006 the intercultural football plan was developed in order to compliment state policy objectives (integration, antiracism etc.) The objectives of the intercultural strategy were: to promote participation; to challenge racism in football and beyond; and to support the process of integration. Based on those objectives the FAI developed a number of core programmes.

154. Mr. Tomlinson then explained the anti-racism rules and protocols of FAI and pointed to the various tools that could be used to support clubs (guidance, assistance for referees etc.). Referees could use Law 5 mechanisms to stop, temporarily suspend or abandon matches. He also briefed the committee on the various forms of incidents, such as player to player incidents and the range of sanctions applied. The national league furthered anti-discrimination by emphasising intercultural football standards. It was important, Mr Tomlinson noted, that the UEFA 10 point plan became part of the licensing scheme. Match observers were also used on match days. Mr. Tomlinson further touched upon grass root movements, education, the FARE football week and the FAI's integration work. Mr. Tomlinson finally made a number of recommendations that were contained in his power point presentation that can be found online.

155. The representative of Ghana requested that experts give their perspective on the impact their respective policies and initiatives have had on the ground. Mr. Tomlinson responded that a good measurement of impact of the FAI initiatives was the decreasing number of incidents recorded following implementation. Ms. Wurbs stated that there

needed to be supporting structures in order for a supporter not to be seen as a problem. Where there were structures (such as in the FSE best practise examples) in place, one could see positive results. Mr. Dembowski stated that the most important impact was that all football federations started to understand that the issue of discrimination needed to be addressed, and he believed that there was significant progress being made in this regard. Mr. Crosset stressed the need for partnerships and supported the fact that FIFA was intentionally taking preventive actions against racism.

156. The representative of the United States underlined that “sport and non-discrimination” was an important topic, worthy of consideration. He requested comments on why Mr. Cohen mentioned that player-to-player incidents were not common in basketball, whereas Mr. Tomlinson mentioned that those incidents were common in football. He also noted that FIFA might seem slow to act in response to the issue of racism.

157. Mr. Dembowski and Mr. Tomlinson stated that in grassroots football there were more player-to-player incidents than in professional football, which likely accounted to a large degree for the difference in statistical evidence.

158. Mr. Dembowski noted that FIFA started working on the anti-discrimination programme in 2001 and that the programme took some time to implement as there were many countries that were slow in adapting, but there was a good policy basis that could be used. He stated that it would be helpful to have partners in the various football confederations, as often there was no counterpart interaction.

159. Ms. Wurbs stated that UEFA and FIFA were indeed late with tackling anti-discrimination because an early strategy was absent and FIFA had until recently relied on a negative approach, which has now been changed to a positive approach.

160. The representative of Tunisia stated that it was good to dedicate a day to this topic as sport reflected society, and inquired why the regime of sanctions that was applied when supporters threw objects (stones etc.) was not applied when it came to discrimination. Ms. Wurbs agreed with the representative of Tunisia in that racism should at least be sanctioned in the same way as throwing of objects.

161. The representative of Uruguay asked Mr. Dembowski how FIFA cooperated with referees, for example, what are referees trained to do when bananas were thrown into the pitch). He also asked how that issue would be dealt with in the context of the upcoming World Cup. Mr. Dembowski noted that the FIFA monitoring system should help referees to address discrimination.

162. The Chair-Rapporteur stated the topic was an issue for the Ad Committee and should remain a key priority for the Committee, and also suggested that it would be useful for each of the expert presentations to be posted on the Ad Hoc Committee webpage.

G. Panel discussion to provide a comparative perspective on national, regional and subregional mechanisms

163. At its 11th meeting, on 21 July, a panel discussion to provide a comparative perspective on national, regional, and subregional mechanisms was held. At short notice, the scheduled speaker on the African Union human rights system which addresses racism, racial discrimination, xenophobia and related intolerance, Michelo Hansungule from the Centre for Human Rights and the University of Pretoria, was unable to attend the session in Geneva due to a travel constraint. Linda Ravo, Directorate Fundamental Rights and Union Citizenship at the European Commission and Lyal S. Sunga, Head of the Rule of Law Programme at the Hague Institute for Global Justice participated in the panel discussion.

164. During her presentation, Linda Ravo, Directorate Fundamental Rights and Union Citizenship at the European Commission, emphasized that preventing and combating racial discrimination and xenophobia is a top priority for the European Union. She said that a solid legal framework has been developed over the years to address racism, xenophobia and hate crimes at the European Union level, including the Race Equality Directive and the Employment Equality Directive of 2000, which provide for the obligation to ensure availability of judicial remedies to victims, provide for grounds for taking positive actions and setting up of equality bodies.

165. The European Union also adopted the Framework Decision to combatting racism and xenophobia by means of criminal law, which sets the frame for a common response to hate speech and hate crimes, ensuring accountability for perpetrators. The Framework Decision provides for liability of legal persons, ex-officio investigations and prosecutions, and jurisdictional rules. There are also the Victims' Rights Directive of 2012, including specific provision for bias motivated crimes and the directive concerning the broadcasting of cross-border audio-visual media services of 2010. These legal instruments envisage the minimum standards for harmonization but Member State can go beyond them. The challenge is not the transposition but their effective implementation. Laws are only as good as they can be implemented and monitored.

166. The speaker said that despite all the legal instruments, ethnic and religious minorities across the European Union continue to face racism, discrimination, verbal and physical violence. Recent reports show that racial and ethnic discrimination in areas such as healthcare or education persist within the European Union, with discrimination against Roma and immigrants, but also discrimination on the ground of religion or belief, being regarded as the most widespread form of discrimination in Europe.

167. She also emphasized the importance of preventive measures, systematic collection of data such as Eurobarometer and efforts to tackle underreporting of bias crimes. It is important to work with civil society organizations and to support them financially, enabling them to carry on their work in an independent manner. Capacity building and a multidisciplinary approach are also essential, and the demonstration of concrete data influences perceptions and limits populist discourse. Finally, a strong commitment was required from political leaders, local authorities and others.

168. The representative of Pakistan on behalf of OIC asked if hate speech has been criminalized in the European Union framework and about the definition of hate speech in terms of which crimes are covered. She also asked whether by the European Union instruments only racially-motivated crimes in the context of hate speech and xenophobia or whether it also covers religiously-motivated crimes which lead to incitement to hatred and imminent violence. She also asked if the Eurobarometer addresses discrimination on religious grounds apart from racism, given the issues of intersectionality of racism and religion, ethnic origin and migrants' status.

169. The representative of the United States asked if definitions of hate speech and hate crimes and discrimination address sexual orientation and gender identity, and whether there were available statistics on this particular ground. He also inquired about the European Union position on affirmative action.

170. Ms. Ravo replied that the European Union framework does not include definition of hate speech, although there was one in the initial draft of 2001. She noted the importance of the element of incitement with regard to hate crimes. She confirmed that religion is addressed by the European Union instruments while sexual orientation and gender identity are not part of the minimum requirements, but some States have extended the scope and addressed these grounds. She added that disability is also not covered by the European Union directive. She said that the 2000 Race Equality Directive includes a provision leaving Member States free to adopt affirmative actions in different areas, but there is no obligation.

171. Lyal S. Sunga, Head of the Rule of Law Programme at the Hague Institute for Global Justice, gave a presentation entitled “Improving coordination among national human rights institutions (NHRIs) on discrimination: considerations and recommendations from a comparative perspective”. He emphasized that the issue of coordination is a very important one. National human rights institutions mandated to address racial discrimination constitute a critical link between international and regional human rights standards and their practical implementation at domestic level. They are less effective where they don’t conform to the Paris Principles and can fall prey to majoritarian tendencies and be insufficiently inclusive. Moreover, in any country, NHRIs often fail to coordinate with other NHRIs on matters of discrimination and sometimes duplicate the work of other NHRIs.

172. The speaker noted that the 2011 study of the Office of the High Commissioner for Human Rights on NHRIs in federal states is worth considering because the coordination challenges that federal states face, illustrate particularly well the same challenge that unitary States with multiple NHRIs face since racial discrimination is a cross cutting issue.

173. He provided an overview of NHRIs in Australia, Canada, India, Mexico, South Africa, the Russian Federation, Switzerland, Belgium, Germany and Brazil. In regard to the study recommendations, he emphasized that the government should not mandate human rights institutions to prepare its State report, but only to contribute to it, otherwise it could act more like an arm of Government and become less independent. He said that NHRIs with narrower anti-discrimination mandates should coordinate with more broadly mandate NHRIs and broader mandate NHRIs should have a special unit devoted to discrimination and vulnerable groups.

174. He also recalled that CERD recommended the establishment of NHRIs specifically mandated to prevent discrimination on the grounds of race, colour, and descent, national or ethnic origin and that an optional protocol should oblige States to establish, designate or maintain national anti-discrimination mechanisms that work in close cooperation with CERD.

175. The representative of the United States emphasized the importance of working with civil society organisations as well as the preventative aspects of anti-discrimination work.

176. Ms. Ravo asked a question with regard to the independence of NHRIs.

177. Mr. Sunga replied that the optional protocol notion was not part of the 2011 study of the Office of the High Commissioner for Human Rights and that he had utilized solely for the current presentation. The added value of establishing a focused body through an optional protocol would be for the complaints handling, not for promotion activities, as they are not a problem. Efficient and competent complaints handling requires expertise. An optional protocol might not attract a large number of ratifications, as there is a certain fatigue amongst Member States, and adding one more instrument might not attract interest. With regard to independence, he said that it is a difficult balance and the Paris principles do not clarify how the NHRIs should interact with the government. NHRIs representatives should not be part of drafting committees as drafting is a qualitatively different thing: it entails policy decisions, prioritization, frankness to articulate challenges and solutions.

178. The Chair-Rapporteur raised the issue of access to remedies for victims and the exhaustion of domestic measures. Mr. Sunga noted that the principle of exhaustion of domestic measures is very well established in international law and would likely not change without good reason. International mechanisms are intended to support and guide, and complement domestic jurisdiction. Ms. Ravo also emphasized the importance of the rule concerning the exhaustion of local remedies. Prosecution and investigation, amongst others are very important to effective national remedies.

Anexo II

[Inglés únicamente]

Programme of work

<i>1st week</i>				
<i>Monday 13.07</i>	<i>Tuesday 14.07</i>	<i>Wednesday 15.07</i>	<i>Thursday 16.07</i>	<i>Friday 17.07</i>
Item 1 Opening of the Session <i>Yury Boychenko</i> , Chief of the Anti-Racial Discrimination Section Item 2 Election of the Chair Item 3 Adoption of the Agenda and Programme of Work General statements	Item 5 Issues, challenges and best practices pertaining to reporting under the ICERD Convention [Presentations by individual States of the regional/other groups: Norway, United States of America]	Item 7 Presentation by OHCHR: comparison of relevant procedures of other treaties [<i>Simon Walker</i> , Chief of the Civil, Political, Economic, Social and Cultural Rights Section, OHCHR]	Item 8 Further elaboration of the views of the CERD on key elements with regard to procedural gaps and best ways to address them (follow-up to the 2007 study and the different presentations given and proposals made to the Ad Hoc Committee in accordance with its mandate)	UN Holiday
Item 4 Assessment of the use of the complaint mechanism under article 14 [<i>Marc Bossuyt</i> , Member, Committee on the Elimination of Racial Discrimination]	Item 6 Purpose of general recommendations by the CERD and the process leading to their issuance in the context of the effective implementation of the Convention, and possible shortcomings [<i>Anastasia Crickley</i> , Member, Committee on the Elimination of Racial Discrimination]	Item 5 continued Issues, challenges and best practices pertaining to reporting under the ICERD Convention [Presentations by individual States of the regional/other groups: South Africa]	Item 5 continued Issues, challenges and best practices pertaining to reporting under the ICERD Convention [Presentations by individual States of the regional/other groups: Pakistan, Guatemala, Ecuador, Belgium, Mexico]	UN Holiday

2nd week				
Monday 20.07	Tuesday 21.07	Wednesday 22.07	Thursday 23.07	Friday 24.07
Item 9 Sport and racism [Todd Crosset, Professor, University of Massachusetts, USA; Delia Douglas, Professor, University of British Columbia, Canada; Benjamin Cohen, Head of Governance & Legal Affairs, International Basketball Federation (FIBA)]	Item 10 Panel discussion to provide a comparative perspective on national, regional and subregional mechanisms [Michelo Hansungule, Professor, Centre for Human Rights, University of Pretoria, South Africa & Commissioner, International Commission of Jurists; Linda Ravo, Directorate Fundamental Rights and Union Citizenship, European Commission; Lyal S. Sunga, Head, Rule of Law Programme, The Hague Institute for Global Justice]	Item 11 Questionnaire [Oral updates; Discussion on the questionnaire and follow up] General discussion and exchange of views	Item 12 Discussion on the introduction of new/list topics...consideration of new/list topics Conclusions and Recommendations	Conclusions and Recommendations General discussion and exchange of views
Item 9 continued Sport and racism [Gerd Dembowski, Diversity & Anti- Discrimination Manager, Fédération Internationale de Football Association (FIFA); Daniela Wurbs, Football Supporters Europe (FSE) Coordinator/CEO; Des Tomlinson, Intercultural National Coordinator, Irish Sports Federation]	General discussion and exchange of views Conclusions and Recommendations	General discussion and exchange of views Conclusions and Recommendations	Compilation of the Report	Item 13 Adoption of the report of the 7th session

Anexo III

[Inglés únicamente]

List of attendance

Member States

Algeria, Argentina, Austria, Belgium, Brazil, China, Colombia, Côte d'Ivoire, Cuba, Ecuador, Egypt, Ethiopia, Ghana, Germany, Greece, Guatemala, Ireland, Japan, Latvia, Mexico, Morocco, Namibia, Norway, Pakistan, Panama, Portugal, the Russian Federation, Rwanda, Saudi Arabia, South Africa, Spain, Sri Lanka, Switzerland, Tunisia, the United Kingdom of Great Britain and Northern Ireland, the United States of America, Uruguay, Venezuela (Bolivarian Republic of)

Non-member States represented by observers

Holy See

International organizations

International Labour Organization, United Nations Development Programme, World Health Organization

Intergovernmental organizations

European Union

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

African Commission of Health and Human Rights Promoters, Association of World Citizens, International Youth and Student Movement for the United Nations (ISMUN), Mouvement International pour les Réparations, Rencontre Africaine pour la Défense des Droits de l'Homme, World Against Racism Network

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

AFROMADRID, Association des Bassas de Suisse, Association des femmes du Kwango-Kwilu "Mukubi", Collectif Afro-Swiss Humaine (CRED), Culture of Afro-indigenous Solidarity, Mouvement contre le racisme et pour l'amitié entre les peuples (MRAP), SOS Rassismus Deutschland