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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 sobre su noveno período de sesiones* **

Presidente-Relator: Taonga **Mushayavanhu** (Zimbabwe)

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 los trabajos del noveno período de sesiones del Comité Especial sobre la Elaboración de Normas Complementarias y de los debates sustantivos que tuvieron lugar en ese período de sesiones.

* Los anexos del presente informe se distribuyen tal como se recibieron, en el idioma en que se presentaron únicamente.

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

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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 noveno período de sesiones del Comité Especial tuvo lugar del 24 de abril al 5 de mayo de 2017. Entre esas fechas, el Comité Especial celebró 18 sesiones.

A. Asistencia

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

B. Apertura del período de sesiones

4. El noveno período de sesiones del Comité Especial sobre la Elaboración de Normas Complementarias fue inaugurado por el Secretario del Comité.

C. Elección del Presidente-Relator

5. En su primera sesión, el Comité Especial eligió Presidente-Relator, por aclamación, a Taonga Mushayavanhu, Representante Permanente de Zimbabwe ante la Oficina de las Naciones Unidas en Ginebra.

6. El Presidente-Relator dio las gracias a los miembros del Comité Especial por su elección y expresó su deseo de trabajar en estrecha colaboración con todos los Estados Miembros, los grupos regionales y las otras partes interesadas durante el período de sesiones.

7. El Presidente-Relator dijo que el Comité Especial tenía la misión de estudiar las maneras de mejorar la protección de todas las personas contra los flagelos del racismo, la discriminación racial, la xenofobia y las formas conexas de intolerancia, tan comunes en todas partes del mundo en sus numerosas manifestaciones contemporáneas. El programa de trabajo del período de sesiones contenía varios temas nuevos y de orientación práctica, que incluían la elaboración de una legislación amplia contra la discriminación, la protección de los migrantes contra las prácticas racistas, discriminatorias y xenófobas, y la protección de los refugiados, los repatriados y los desplazados internos contra el racismo y las prácticas discriminatorias. Habida cuenta del empeoramiento incesante de la situación de esos grupos vulnerables, el Comité Especial debía formular con urgencia recomendaciones concretas sobre lo que podía hacer la comunidad internacional para lograr una mayor dignidad, igualdad y equidad para todos.

8. El Presidente-Relator señaló que durante el período de sesiones el Comité Especial celebraría debates actualizados sobre la xenofobia, las lagunas de procedimiento en relación con la Convención Internacional sobre la Eliminación de Todas las Formas de Discriminación Racial, los mecanismos nacionales y el racismo en el deporte, centrándose especialmente en determinar los elementos que pudieran conducir a la adopción de normas internacionales. Tal como se había pedido en el octavo período de sesiones, en la sexta sesión distribuiría el “texto del Presidente para hacer avanzar la labor del Comité Especial sobre la Elaboración de Normas Complementarias a la Convención Internacional sobre la Eliminación de Todas las Formas de Discriminación Racial” (en adelante, “el texto del Presidente”), que contenía posibles puntos de partida para las negociaciones dimanantes de

los debates sostenidos en los ocho períodos de sesiones anteriores. El Comité Especial celebraría también debates sobre la resolución 71/181 de la Asamblea General, aprobada en diciembre de 2016, en cuyo párrafo 5 la Asamblea había expresado su preocupación por la falta de progresos en la elaboración de normas complementarias a la Convención para subsanar las lagunas existentes mediante la preparación de nuevas normativas destinadas a combatir todas las formas contemporáneas y renacientes del flagelo del racismo y, a ese respecto, había exhortado al Presidente-Relator del Comité Especial del Consejo de Derechos Humanos sobre la Elaboración de Normas Complementarias a la Convención Internacional sobre la Eliminación de Todas las Formas de Discriminación Racial a que hiciera lo necesario para poner en marcha las negociaciones acerca del proyecto de protocolo adicional de la Convención en que se tipificarían como delitos los actos de carácter racista y xenófobo.

9. El Presidente-Relator añadió que, por su parte, el Consejo de Derechos Humanos, en su resolución 34/36, había decidido atender a la solicitud formulada por la Asamblea General en su resolución 71/181 pidiendo al Presidente-Relator del Comité Especial que hiciera lo necesario para que en el décimo período de sesiones de este comenzaran las negociaciones sobre el proyecto de protocolo adicional de la Convención en que se tipificarían como delitos los actos de carácter racista y xenófobo.

10. El Presidente-Relator dijo que el objetivo de los debates del Comité Especial era prepararse con tiempo para el décimo período de sesiones, en particular acordando las modalidades para el inicio de las negociaciones, e instó al Comité Especial a que comenzara a elaborar ideas en relación con las modalidades y los elementos que podrían constituir un punto de partida para las negociaciones en el décimo período de sesiones.

D. Aprobación del programa

11. También en la primera sesión, el Comité Especial aprobó el siguiente programa para su noveno período de sesiones:

1. Apertura del período de sesiones.
2. Elección del Presidente-Relator.
3. Aprobación del programa y del programa de trabajo.
4. Ponencias y debate sobre una legislación amplia contra la discriminación.
5. Ponencias y debate sobre la protección de los migrantes contra las prácticas racistas, discriminatorias y xenófobas.
6. Ponencias y debate sobre la protección de los refugiados, los repatriados y los desplazados internos contra el racismo y las prácticas discriminatorias.
7. Debate general e intercambio de opiniones sobre el tema 4.
8. Debate general e intercambio de opiniones sobre los temas 5 y 6.
9. Debate de actualización sobre la xenofobia.
10. Debate de actualización sobre los mecanismos nacionales y las lagunas de procedimiento en relación con la Convención Internacional sobre la Eliminación de Todas las Formas de Discriminación Racial.
11. Debate de actualización sobre el racismo y el deporte.
12. Debate general e intercambio de opiniones sobre los temas 9 y 10.
13. Debate general e intercambio de opiniones sobre el tema 11.
14. Debate sobre la resolución 71/181 de la Asamblea General.
15. Debate general e intercambio de opiniones sobre las conclusiones y recomendaciones.
16. Aprobación del informe.

E. Organización de los trabajos

12. En la misma sesión, el Presidente-Relator presentó un proyecto de programa de trabajo para el período de sesiones, que fue aprobado. El programa de trabajo, en su versión ulteriormente revisada, figura en el anexo II. El Presidente-Relator invitó a los asistentes a que formularan declaraciones generales.

13. Las delegaciones felicitaron calurosamente al Presidente-Relator por su elección.

14. La representante de Túnez, en nombre del Grupo de los Estados de África, felicitó al Presidente-Relator por su elección y agradeció su declaración de apertura.

15. El Grupo de los Estados de África estaba convencido de que el diálogo mantenido por el Comité Especial desde su creación ofrecía amplias oportunidades de reflexionar sobre las lagunas sustantivas y de procedimiento en relación con la Convención. Las diferentes cuestiones temáticas que el Grupo de los Estados de África y el Comité Especial habían identificado a lo largo de los años como manifestaciones contemporáneas de racismo incluían la xenofobia, la islamofobia, el antisemitismo, la propagación del racismo y los ataques xenófobos en el ciberespacio, el establecimiento de perfiles raciales, y la incitación al odio racial, étnico y religioso. La representante dijo que las víctimas de los perfiles raciales necesitaban una mejor protección contra esas manifestaciones. Debería aplicarse una reparación plena y eliminarse la impunidad de los autores de actos de racismo.

16. El Grupo de los Estados de África apoyaba sin reservas la idea de aprovechar la oportunidad que ofrecían la resolución 71/181 de la Asamblea General y la resolución 34/36 del Consejo de Derechos Humanos para negociar, como primer paso y con carácter de urgencia, un protocolo adicional sobre la lucha contra la incitación al odio a través de las plataformas de los medios de comunicación, como Internet. El Grupo de los Estados de África consideraba que el aplazamiento de la puesta en práctica de esa nueva visión hasta el décimo período de sesiones del Comité Especial daría tiempo suficiente para prepararse debidamente. En opinión del Grupo de los Estados de África, en el noveno período de sesiones debería allanarse el camino para los debates ulteriores examinando las cuestiones relacionadas con el alcance de la Convención.

17. Las víctimas de los delitos mencionados necesitaban que el Comité Especial estudiara el alcance de la Convención, más que la cuestión de si se requerían o no normas complementarias. Por ese motivo, el Grupo de los Estados de África acogía complacido la aprobación del programa de trabajo para el noveno período de sesiones, que daría al Comité Especial nuevas oportunidades de reflexionar sobre los elementos de las futuras normas complementarias.

18. El Grupo de los Estados de África estaba convencido de que el Comité Especial aprovecharía la oportunidad para aplicar plenamente la recomendación de la Conferencia Mundial contra el Racismo, la Discriminación Racial, la Xenofobia y las Formas Conexas de Intolerancia —formulada en el párrafo 199 del Programa de Acción de Durban— de que se prepararan normas internacionales complementarias. El Comité Especial no podía permitirse eludir su responsabilidad de proteger a las víctimas del racismo, la discriminación racial, la xenofobia y las formas conexas de intolerancia, que equivaldría a no tratar el sufrimiento de las víctimas de esos flagelos con la seriedad que merecía. El Grupo de los Estados de África confiaba en que el Comité Especial se esforzaría al máximo por utilizar su noveno período de sesiones para cumplir su mandato, y esperaba participar en un intercambio de opiniones constructivo y en debates provechosos sobre ese tema tan importante.

19. La representante de la Unión Europea señaló que la Unión Europea acogía con beneplácito la inclusión de un debate sobre una legislación amplia contra la discriminación en el programa de trabajo del período de sesiones. La adopción de una legislación de ese tipo era fundamental para la lucha contra todas las formas de discriminación. La Unión Europea apoyaba firmemente la adopción de un enfoque holístico e integrado, capaz de ofrecer una protección efectiva, teniendo en cuenta los casos de formas múltiples e interseccionales de discriminación.

20. La promoción de la igualdad y de la no discriminación había sido un elemento central de los objetivos, la legislación y las instituciones de la Unión Europea desde sus comienzos.

21. La aprobación en 2000, por la Unión Europea, de dos directivas fundamentales en la lucha contra la discriminación había constituido un logro importante y sin precedentes. La Directiva de igualdad racial y la Directiva de igualdad en el empleo prohibían la discriminación por motivos de origen racial o étnico, religión, creencias, discapacidad, edad u orientación sexual, y ofrecían protección en ámbitos fundamentales de la vida, como el empleo, la educación, la seguridad social, la atención de la salud y el acceso a bienes y servicios y su suministro. Ambos instrumentos establecían la obligación de garantizar la disponibilidad de recursos judiciales para las víctimas y daban también motivos para adoptar medidas positivas con el fin de promover la igualdad. En 2008, con la aprobación por el Consejo de la Unión Europea de la Decisión marco relativa a la lucha contra determinadas formas y manifestaciones del racismo y la xenofobia mediante el derecho penal, se habían establecido normas comunes para la Unión Europea que garantizaban el castigo de los delitos racistas y xenófobos en todos los Estados miembros con un nivel mínimo de sanciones penales eficaces, proporcionadas y disuasorias. Estos instrumentos, junto con la Directiva sobre los derechos de las víctimas, la Directiva de servicios de comunicación audiovisual y otras leyes pertinentes, constituían un marco jurídico amplio y avanzado de la Unión Europea contra la discriminación.

22. Las instituciones de la Unión Europea atribuían gran importancia a la lucha contra la discriminación, el racismo y la xenofobia. La Comisión Europea, que era la principal encargada de velar por la correcta transposición jurídica y por la aplicación y el cumplimiento de los instrumentos legislativos existentes, alentaba también el intercambio de buenas prácticas entre los Estados miembros de la Unión Europea. Con ese fin, la Comisión había establecido grupos de expertos sobre la no discriminación y sobre el racismo y la xenofobia en 2008 y 2009, respectivamente. Además, la Agencia de los Derechos Fundamentales de la Unión Europea, creada en 2007, desempeñaba un papel crucial en la reunión, el análisis y la difusión de datos objetivos y comparables sobre el racismo, la xenofobia, el antisemitismo, la islamofobia y otras formas de intolerancia, y en la prestación de una orientación de política independiente y basada en datos comprobados sobre la igualdad y la no discriminación a las instituciones y los Estados miembros de la Unión Europea. Entre otras actividades, la Agencia prestaba asistencia a los Estados Miembros en la formulación y aplicación de medidas pertinentes para combatir los delitos de odio en el marco del Grupo de Trabajo sobre la Lucha contra los Delitos Motivados por el Odio, establecido en 2014.

23. La Unión Europea opinaba que la elaboración de una legislación amplia contra la discriminación era pertinente y declaraba que seguiría trabajando en la promoción de la igualdad y la no discriminación.

24. El representante del Pakistán, hablando en nombre de la Organización de Cooperación Islámica (OCI), dijo que la labor del Comité Especial era más relevante en ese momento que en la época de su creación. El mundo se veía enfrentado a una multitud de desafíos, como el descalabro económico, el aumento de la xenofobia y la intolerancia, los conflictos internacionales y el empeoramiento de las crisis humanitarias y de derechos humanos. Las causas socioeconómicas y políticas profundas de los actos racistas se habían vuelto mucho más complejas, dando lugar a formas nuevas y contemporáneas de discriminación por motivos de raza, sexo, idioma o religión, que no estaban contempladas en los instrumentos existentes. Por consiguiente, se requería una legislación eficaz a nivel nacional e internacional para colmar las lagunas y ofrecer medidas de reparación a las víctimas de la injusticia y la discriminación.

25. La OCI consideraba que la perspectiva histórica de la discriminación racial y sus persistentes efectos negativos en la vida de las personas y las naciones, especialmente en las esferas económica, social y cultural, no debían olvidarse. Las ramificaciones de las injusticias del pasado seguían pesando en la vida de muchas personas y, por lo tanto, era necesaria la cooperación internacional para eliminar los obstáculos que dificultaban el logro de niveles de vida mejores e igualitarios.

26. La OCI estaba seriamente preocupada por el peligroso auge de las posturas políticas de extrema derecha en muchas partes del mundo y por la equiparación del nacionalismo y el patriotismo. La creciente tendencia a la incitación a la violencia, el discurso de odio y la apología del odio, la xenofobia, el establecimiento de perfiles raciales y religiosos, la diferenciación racial —especialmente en la gestión de las fronteras— las prácticas de inmigración discriminatorias, la islamofobia, los estereotipos negativos y la estigmatización era alarmante, socialmente injusta y muy condenable. Los pueblos indígenas, los trabajadores migrantes, los refugiados y otros grupos vulnerables estaban expuestos a una multitud de problemas relacionados con la discriminación y el acoso. Esos desafíos contemporáneos acentuaban aún más la importancia de apoyar la labor del Comité Especial.

27. La OCI reafirmaba su compromiso de participar constructivamente en los debates del Comité Especial e instaba a todos los demás países y grupos regionales a dejar de lado las diferencias políticas y a buscar un terreno común para cumplir el mandato del Comité Especial. Juntos, derrotarían a los sembradores de odio y a los demagogos xenófobos que explotaban las inseguridades de las personas e incitaban a la violencia y el odio. Juntos, podrían allanar el camino para un futuro mejor basado en la adhesión común a los principios de la tolerancia, la inclusión, la no discriminación y la armonía interracial.

28. El representante de la República Bolivariana de Venezuela felicitó al Presidente-Relator por su elección y le aseguró el pleno apoyo de su país. Su país estaba resuelto a combatir el racismo, la discriminación racial, la xenofobia y las formas conexas de intolerancia. Para ello, era necesario aplicar la recomendación contenida en el párrafo 199 del Programa de Acción de Durban y elaborar normas complementarias que fortalecieran y actualizaran el marco jurídico existente, a fin de hacer frente a los nuevos desafíos y las nuevas formas de discriminación y proteger a las víctimas.

29. Lamentando la considerable falta de apoyo de parte de algunos grupos de países al mandato del Comité Especial en los últimos años, el representante exhortó a los países a que velaran por la aplicación efectiva de la Declaración y el Programa de Acción de Durban. Al igual que en períodos de sesiones anteriores, la República Bolivariana de Venezuela estaba dispuesta a seguir estudiando nuevas formas de discriminación y, por consiguiente, valoraba la interacción con expertos al objeto de determinar las lagunas y las cuestiones pertinentes en relación con la elaboración de normas complementarias. Su delegación estaba dispuesta a cooperar y participar activamente en los esfuerzos por cumplir el importante mandato del Comité Especial.

30. La representante de Sudáfrica expresó su apoyo a la declaración formulada por Túnez en nombre del Grupo de los Estados de África. Dijo que el nombramiento por aclamación del Presidente-Relator del Comité Especial era una prueba de la confianza de las delegaciones en su liderazgo y de su aprecio por la forma en que había dirigido el órgano en el pasado. Felicitó al Presidente-Relator por su nombramiento y señaló que Sudáfrica esperaba trabajar de manera constructiva con él y con otras delegaciones y grupos regionales para impulsar la labor del Comité Especial.

31. Sudáfrica también esperaba con interés los debates sobre los nuevos temas y el balance que se haría de las cuestiones examinadas en el pasado, incluida la respuesta al llamamiento de la Conferencia Mundial contra el Racismo, la Discriminación Racial, la Xenofobia y las Formas Conexas de Intolerancia de 2001, de la Asamblea General y del Consejo de Derechos Humanos a que se elaboraran las normas complementarias necesarias.

32. La representante señaló que Sudáfrica esperaba que el Comité Especial aprovechara el período de sesiones en curso para examinar el alcance y las modalidades de las normas complementarias, y expresó la esperanza de que ese período de sesiones del Comité Especial estuviera realmente orientado a las víctimas.

33. La representante del Brasil reiteró la determinación del Brasil de reforzar el marco jurídico internacional contra todas las formas de racismo, la discriminación racial, la xenofobia y las formas conexas de intolerancia, entre otras cosas mediante el establecimiento de normas complementarias a la Convención. El Brasil instaba a todos los países a participar en esos esfuerzos con un espíritu de avenencia y de defensa de un mundo en el que ninguna persona estuviera expuesta a ninguna forma de discriminación o intolerancia. El Brasil acogía con satisfacción los temas que se examinarían durante el

noveno período de sesiones. En un mundo cada vez más afectado por conflictos y por discursos políticos disgregadores que favorecían los prejuicios y el odio, el intercambio de opiniones sobre una legislación amplia contra la discriminación y sobre la protección de los migrantes, los refugiados y los desplazados internos era fundamental. El Brasil exhortaba a todos los países a que redoblaran sus esfuerzos para aplicar políticas, programas y actividades que combatieran todas las formas de racismo, discriminación racial y xenofobia y las formas conexas de intolerancia.

34. El Brasil valoraba su diversidad y rechazaba todas las formas de racismo, xenofobia e intolerancia. En los últimos años, había abierto sus puertas a miles de migrantes y refugiados, y estaba firmemente decidido a dar cobijo a esas personas en la medida de sus posibilidades. El Brasil entendía que la movilidad humana era inherente a la condición humana, pero consideraba que cada Estado tenía el derecho soberano de determinar las normas nacionales que regirían la admisión, con sujeción a las obligaciones internacionales. El desplazamiento internacional no debería ser penalizado. Los migrantes y los refugiados tenían derecho al respeto de los derechos humanos fundamentales y deberían ser protegidos contra los actos de racismo, discriminación racial y xenofobia. Además de facilitar la migración y la movilidad de las personas de manera segura, ordenada, regular y responsable, era de suma importancia abordar las causas que empujaban a migrar, entre otras cosas fortaleciendo los esfuerzos en los ámbitos del desarrollo y de la erradicación de la pobreza, especialmente mediante la cooperación técnica.

35. En cuanto al mandato del Comité Especial, el Brasil exhortaba a todas las delegaciones y grupos regionales a trabajar para fomentar la confianza mutua y la avenencia y para encontrar un terreno común en los aspectos delicados e importantes de la elaboración de normas complementarias a la Convención. El Brasil esperaba con interés el texto del Presidente sobre las posibles esferas de consenso, a fin de que las delegaciones pudieran considerar la posibilidad de elaborar un instrumento no vinculante, como un primer paso hacia un documento más sólido que fuera aceptado por la comunidad internacional. El Brasil también esperaba participar en un intercambio constructivo y abierto durante el período de sesiones.

36. El representante de Nigeria dijo que su delegación asignaba gran importancia a la labor del Comité Especial y reafirmaba su pleno apoyo y adhesión a la Declaración y al Programa de Acción de Durban, que debería seguir siendo la hoja de ruta para la eliminación de todas las formas de racismo, la xenofobia, las doctrinas de superioridad racial y la discriminación conexa. En ese contexto, había numerosos informes que apuntaban a una creciente ola de ataques en todo el mundo, en que las víctimas eran agredidas por sus creencias religiosas y por su origen racial o étnico. Las víctimas habían sido marcadas con perfiles discriminatorios, atacadas, mutiladas y a veces asesinadas, a pesar de haber trabajado y contribuido enormemente al crecimiento económico y el desarrollo de los países que las habían acogido. Su delegación condenaba esos actos de violencia e intimidación y creía que eran en gran parte el resultado de la incapacidad colectiva de aplicar eficazmente la Declaración y el Programa de Acción de Durban.

37. La lucha contra el racismo, la discriminación racial, la xenofobia y las formas conexas de intolerancia era un imperativo colectivo que requería el apoyo y las contribuciones de todos los Estados Miembros, si se quería instaurar una convivencia mundial pacífica. La forma de avanzar consistía en que todos colaborasen en todos los niveles para combatir la creciente tendencia a la xenofobia y al establecimiento de perfiles raciales. Había que redoblar los esfuerzos para frenar las formas contemporáneas de racismo que iban en aumento, en particular las que afectaban, entre otros, a las personas de ascendencia africana, los inmigrantes y los refugiados. Los países en que se manifestaba ese creciente racismo debían tomar en serio la Declaración y el Programa de Acción de Durban e inspirar en ellos sus políticas nacionales.

38. Nigeria seguía resuelta a participar de forma constructiva en las deliberaciones del Comité Especial y pedía una cooperación auténtica para abordar las lagunas sustantivas detectadas en el marco normativo vigente y las reservas a la Convención mantenidas por algunos Estados partes. Los Estados podían también hacer una aportación importante fortaleciendo las leyes vigentes que promovieran la armonía social.

39. El representante de Libia se adhirió a las declaraciones formuladas por Túnez en nombre del Grupo de los Estados de África y por el Pakistán en nombre de la OCI. Dio las gracias al Presidente-Relator por su labor y afirmó que, con su sabiduría y sus orientaciones bien fundamentadas, el Comité Especial podría lograr resultados concretos. Destacó la importancia del mandato del Comité Especial, que era examinar la elaboración de normas complementarias y el marco para la lucha contra el racismo y la discriminación racial, y afirmó que Libia estaba decidida a combatir la discriminación racial y todas las demás prácticas racistas y discriminatorias contra los refugiados y los migrantes. El representante señaló a la atención del Presidente-Relator la importancia de examinar las causas profundas de la migración, en particular la pobreza, en África y en otras partes del mundo.

III. Debates generales y temáticos

A. Ponencias y debate sobre una legislación amplia contra la discriminación

40. En su segunda sesión, el Comité Especial examinó el tema 4 del programa. El Presidente-Relator explicó que no había sido posible encontrar a expertos que presentaran ponencias sobre el tema de la legislación amplia contra la discriminación, a pesar de los considerables esfuerzos desplegados en ese sentido. Por consiguiente, los miembros del Comité Especial examinarían el tema sin las aportaciones de expertos. El Presidente-Relator pidió a las delegaciones que se ofrecieran para hacer exposiciones sobre la legislación amplia contra la discriminación y los marcos legislativos pertinentes de sus respectivos países y dio las gracias a la representante de la Unión Europea por la exposición con que había dado inicio a los debates. En las sesiones segunda y tercera, presentaron ponencias sobre el tema de la legislación amplia contra la discriminación los representantes del Brasil, Cuba, Egipto, España, el Estado Plurinacional de Bolivia, Jamaica, el Japón, México, el Pakistán (en nombre de la OCI y de su propio país), el Reino Unido de Gran Bretaña e Irlanda del Norte, la República Bolivariana de Venezuela, Sudáfrica (en nombre del Grupo de los Estados de África y de su propio país) y la Unión Europea. En el anexo I del presente informe figura un resumen de las ponencias y del debate que siguió.

B. Ponencias y debate sobre la protección de los migrantes contra las prácticas racistas, discriminatorias y xenófobas

41. En sus sesiones cuarta y quinta, el Comité Especial examinó el tema 5 del programa. Presentaron ponencias sobre el tema de la protección de los migrantes contra las prácticas racistas, discriminatorias y xenófobas E. Tendayi Achiume, Profesora Auxiliar de derecho en la Facultad de Derecho de la Universidad de California, Los Ángeles (Estados Unidos de América), e Investigadora Asociada del Centro Africano para la Migración y la Sociedad, de la Universidad de Witwatersrand de Sudáfrica; Ibrahima Kane, de la Open Society Initiative for Eastern Africa; Peggy Hicks, Directora de la División de Actividades Temáticas, Procedimientos Especiales y Derecho al Desarrollo, de la Oficina del Alto Comisionado de las Naciones Unidas para los Derechos Humanos (ACNUDH); y Kristina Touzenis, de la Organización Internacional para las Migraciones. En el anexo I del presente informe figura un resumen de las ponencias y del debate que siguió.

C. Ponencias y debate sobre la protección de los refugiados, los repatriados y los desplazados internos contra el racismo y las prácticas discriminatorias

42. En sus sesiones sexta y séptima, el Comité Especial examinó el tema 6 del programa. Presentaron ponencias sobre el tema de la protección de los refugiados, los repatriados y los desplazados internos contra el racismo y las prácticas discriminatorias Cecilia Bailliet, Profesora y Directora del Programa de Maestría en Derecho Internacional Público en la Universidad de Oslo (Noruega); Madeline Garlick, Jefa de la Sección de

Asesoramiento Letrado y Política de Protección, del Departamento de Protección Internacional de la Oficina del Alto Comisionado de las Naciones Unidas para los Refugiados (ACNUR); Krassimir Kanev, Presidente del Comité Helsinki de Bulgaria; y E. Tendayi Achiume, Profesora Auxiliar de derecho en la Facultad de Derecho de la Universidad de California, Los Ángeles (Estados Unidos de América), e Investigadora Asociada del Centro Africano para la Migración y la Sociedad, de la Universidad de Witwatersrand, Sudáfrica. En el anexo I del presente informe figura un resumen de las ponencias y del debate que siguió.

D. Debate general e intercambio de opiniones, octava sesión

43. En la octava sesión del Comité Especial, el Presidente-Relator propuso comenzar con un debate general y un intercambio de opiniones sobre el tema 4 del programa. El Presidente-Relator invitó a los participantes a formular observaciones generales y a indicar las conclusiones que podían extraerse de las ponencias presentadas por las delegaciones y del debate celebrado al respecto en el marco del tema 4. El Presidente-Relator suspendió brevemente la sesión para permitir la celebración de consultas oficiosas sobre ese tema del programa y sobre el texto del Presidente, que se había distribuido al final de la sexta sesión.

E. Debate general e intercambio de opiniones, novena sesión

44. En la novena sesión del Comité Especial, el Presidente-Relator propuso comenzar con un debate general y un intercambio de opiniones sobre los temas 5 y 6 del programa. El Presidente-Relator recordó la necesidad de avanzar y de llegar a un acuerdo sobre un conjunto de conclusiones y resultados antes del final del período de sesiones. Recordó que esas conclusiones y resultados deberían basarse en las ponencias presentadas por los expertos ante el Comité Especial y en los debates celebrados al respecto durante la última semana, y pidió a los miembros del Comité Especial que ofrecieran sus opiniones y análisis.

45. Observando que había también copias de las ponencias de los expertos disponibles en la sala, el Presidente-Relator suspendió brevemente la sesión para permitir su examen.

46. La representante de la Unión Europea propuso que el Comité Especial fusionara las conclusiones y recomendaciones relativas a los temas 5 y 6 del programa sobre los migrantes y los refugiados, dado que ambos temas se referían a grupos de no nacionales, a fin de acordar un conjunto común de recomendaciones.

47. La Representante Permanente de Jordania ante la Oficina de las Naciones Unidas y otras organizaciones internacionales en Ginebra señaló que su país había insistido siempre en la diferenciación entre los migrantes y los refugiados, ya que los regímenes jurídicos aplicables a esos dos grupos eran diferentes. La representante de Egipto declaró que las recomendaciones sobre esos grupos no debían fusionarse, porque los migrantes y los refugiados recibían un trato diferente en el derecho internacional y era importante no diluir las obligaciones de los Estados.

48. La representante de Sudáfrica recordó las referencias de los expertos al aumento del racismo y la xenofobia, y dijo que en las conclusiones debería abordarse ese aspecto.

49. La representante de Egipto propuso que se incluyera una referencia a la islamofobia en el proyecto de conclusiones y recomendaciones, observando que se necesitaba voluntad política para abordar algunas de las causas fundamentales de la migración. El representante de Libia apoyó la propuesta formulada por la representante de Egipto.

50. La representante de la Unión Europea propuso que se aprovecharan las recomendaciones contenidas en la ponencia de la Sra. Hicks, Directora de la División de Actividades Temáticas, Procedimientos Especiales y Derecho al Desarrollo del ACNUDH, como punto de partida para el debate.

51. El Comité Especial comenzó a preparar el proyecto de conclusiones y recomendaciones del período de sesiones.

F. Debates de actualización e intercambio de opiniones, sesiones 10ª, 11ª y 12ª

52. En la décima sesión del Comité Especial, el Presidente-Relator propuso que se celebrara un debate de actualización acerca de la xenofobia, sobre la base del texto del Presidente. Recordó que, en su octavo período de sesiones, el Comité Especial había pedido al Presidente-Relator que preparara y presentara un documento que recopilase los temas y las cuestiones sustantivas examinadas por el Comité Especial en sus siete períodos de sesiones anteriores y que ofreciera sus opiniones sobre los ámbitos de posible convergencia respecto de la elaboración de normas complementarias. El Presidente-Relator alentó a los miembros del Comité Especial a que examinaran el texto/documento propuesto, que se había distribuido en la sala al término de la sexta sesión y difundido por correo electrónico a los Coordinadores Regionales, con miras a formular recomendaciones sobre el fortalecimiento de la Convención.

53. En su 11ª sesión, el Comité Especial prosiguió su debate general y su intercambio de opiniones sobre los temas 4, 5 y 6 del programa. El Presidente-Relator exhortó a los miembros del Comité Especial a que tratasen de encontrar un terreno común y formulasen sus observaciones y opiniones. El Comité Especial siguió trabajando en el proyecto de conclusiones y recomendaciones del período de sesiones.

54. El Comité Especial examinó también el tema 9 del programa, relativo a la xenofobia, a la luz del texto del Presidente. El Presidente-Relator reiteró que el texto representaba su evaluación personal de los principales temas y asuntos tratados en los ocho períodos de sesiones anteriores. El texto del Presidente contenía materiales que el Comité Especial podría utilizar para determinar los elementos comunes y como base para sus trabajos, teniendo en cuenta la resolución 71/181 aprobada por la Asamblea General. El Presidente-Relator agregó que los miembros del Comité Especial deberían analizar el texto/documento y elaborar sus propias lecturas de las cuestiones temáticas, y los invitó a añadir sus opiniones.

55. En la 12ª sesión del Comité Especial, el Presidente-Relator presentó específicamente la sección del texto del Presidente dedicada a la xenofobia.

56. El Presidente-Relator recordó en primer lugar que en la Declaración y el Programa de Acción de Durban se reconocía explícitamente que la xenofobia, en sus diferentes manifestaciones, era una de las principales fuentes y formas contemporáneas de discriminación y conflicto —que exigía una atención urgente y la pronta adopción de medidas por los Estados, así como por la comunidad internacional— y que en la decisión 3/103 del Consejo de Derechos Humanos se pedía específicamente la adopción de una nueva normativa para combatir todas las formas de racismo contemporáneo, incluida la incitación al odio racial y religioso.

57. A continuación, el Presidente-Relator señaló las ocho cuestiones siguientes, que a su juicio revestían particular importancia y que se habían examinado en los anteriores períodos de sesiones del Comité Especial:

a) La falta de una definición clara del término “xenofobia”. A este respecto, el Presidente-Relator se refirió a distintas definiciones del término, entre ellas la definición de un diccionario y la utilizada por la Sra. Hicks en su ponencia ante el Comité Especial. También mencionó la Decisión marco de 2008 de la Unión Europea, relativa a la lucha contra determinadas formas y manifestaciones de racismo y xenofobia mediante el derecho penal;

b) El hecho de que los términos “xenofobia” y “racismo”, utilizados a veces de manera intercambiable, se referían a dos fenómenos diferentes;

c) La necesidad de reforzar las facultades y los procedimientos de vigilancia del Comité para la Eliminación de la Discriminación Racial;

d) La necesidad de fortalecer los mecanismos nacionales;

e) La necesidad de educación, capacitación y sensibilización sobre los derechos humanos en relación con la xenofobia;

f) La necesidad de promover el diálogo intercultural y la educación sobre la no discriminación;

g) La necesidad de condenar todos los actos y discursos xenófobos;

h) La necesidad de una formación de derechos humanos obligatoria sobre la xenofobia.

58. La representante de Sudáfrica celebró la referencia a la Declaración y el Programa de Acción de Durban en el texto del Presidente. Dijo que no se habían aducido argumentos convincentes sobre la necesidad de una definición clara del término "xenofobia" y que, de adoptarse, esa definición debería basarse en las normas de derechos humanos y en los textos jurídicos y no en un diccionario.

59. La representante de la Unión Europea señaló que aún no había recibido las observaciones de todos los miembros de su grupo regional sobre el texto del Presidente. Sin embargo, debían aclararse algunos puntos respecto de la Decisión marco de 2008 de la Unión Europea relativa a la lucha contra determinadas formas y manifestaciones de racismo y xenofobia mediante el derecho penal. En particular, indicó que en la Decisión marco no se definía el término "xenofobia" *per se*, sino que se tipificaban ciertos actos que respondían a determinados criterios, uno de los cuales era que fueran delitos punibles por la ley. Por lo tanto, la Decisión marco tipificaba como delito la incitación al odio, pero no los temores y las actitudes xenófobas. La Decisión marco se había preparado teniendo en cuenta las normas de derechos humanos vigentes, en particular el artículo 4 de la Convención Internacional sobre la Eliminación de Todas las Formas de Discriminación Racial y el artículo 20 del Pacto Internacional de Derechos Civiles y Políticos, que incluía la discriminación racial. El Comité Especial ya había trabajado en el tema de la xenofobia, y la falta de una definición del término "xenofobia" no parecía haber planteado problemas de falta de claridad en esa labor.

60. El Presidente-Relator suspendió la 12ª sesión para que se celebraran debates oficiosos, después de lo cual se reanudó la sesión. A continuación, el Comité Especial examinó el aspecto de la consideración de la discriminación racial y la xenofobia como dos fenómenos distintos. También examinó el trato de los no nacionales, en el sentido del Pacto Internacional de Derechos Civiles y Políticos y del Pacto Internacional de Derechos Económicos, Sociales y Culturales. El Presidente-Relator preguntó si podría ser útil para la labor del Comité Especial que se elaborara un cuadro de los tratados internacionales con referencias cruzadas entre sus respectivas normas.

61. El Comité Especial examinó también el tema de los mecanismos nacionales tal como figuraba en el texto del Presidente. La representante de Sudáfrica dijo que el punto de partida debería ser el párrafo 199 del Programa de Acción de Durban, en que se hacía referencia a la elaboración de normas complementarias. A ese respecto, el fortalecimiento de las normas nacionales no formaría parte de las normas internacionales.

62. La representante de la Unión Europea dijo que el texto del Presidente parecía hacer referencia a la aplicación de las normas internacionales vigentes, o tomarla en consideración, y observó que ya existían normas internacionales sobre algunas de esas cuestiones.

G. Debate general e intercambio de opiniones, 13ª sesión

63. En la 13ª sesión, el Presidente-Relator propuso continuar el debate sobre los temas 9 y 10 del programa sobre la base del texto del Presidente.

64. La representante de la Unión Europea expresó su satisfacción por el texto del Presidente, que constituía una propuesta profunda que abordaba múltiples cuestiones, incluidos aspectos relativos a las obligaciones que los Estados ya tenían en virtud de la Convención, propuestas de política y cuestiones relacionadas con conceptos jurídicos. Comunicó que había transmitido el texto del Presidente a los Estados miembros de la Unión Europea, pero que no era probable que todas las delegaciones pudieran aportar observaciones y establecer una posición común en el plazo de una semana.

65. La representante de Sudáfrica se mostró complacida por el texto propuesto por el Presidente-Relator y observó que hacía referencia a diferentes temas del programa. Sugirió que el Comité Especial no examinara el tema de los mecanismos nacionales, recordando que en la sesión anterior se había propuesto que el tema se remitiera al Grupo de Trabajo Intergubernamental Encargado de Formular Recomendaciones sobre la Aplicación Efectiva de la Declaración y el Programa de Acción de Durban.

66. El Presidente-Relator propuso que las delegaciones de Sudáfrica y la Unión Europea elaboraran el texto de las conclusiones de los debates del Comité Especial sobre los temas del programa 10, relativo a los mecanismos nacionales, y 9, relativo a la xenofobia, respectivamente.

67. El representante del Consejo Indio de Sud América, hablando en nombre del Consejo Indio de Sud América y de la Coalición de Pueblos y Naciones Indígenas, se refirió a una cuestión que, en opinión de esas dos organizaciones, era un ejemplo de discriminación racial institucional no resuelta que persistía en la legislación nacional debido a la renuencia a abordar las obligaciones de las Potencias administradoras y las deficiencias relativas a la abolición de la discriminación racial en la aplicación del Artículo 73 de la Carta de las Naciones Unidas respecto de los territorios no autónomos a la luz del artículo 15 de la Convención. A ese respecto, las dos organizaciones proponían que el Comité Especial pidiera al Comité para la Eliminación de la Discriminación Racial que o bien abordara la cuestión de la petición conjunta del Consejo, la Coalición y la Fundación Koani; o transmitiera el caso al Comité Especial Encargado de Examinar la Situación con respecto a la Aplicación de la Declaración sobre la Concesión de la Independencia a los Países y Pueblos Coloniales; o transmitiera el caso al Comité para la Eliminación de la Discriminación Racial, a fin de que lo examinara y formulara instrucciones, de ser necesario; o pidiera al Comité para la Eliminación de la Discriminación Racial que adoptara una resolución al efecto de subsanar las deficiencias relativas a la aplicación del artículo 15 de la Convención.

68. La 13ª sesión fue suspendida para celebrar consultas oficiosas sobre la elaboración del texto relativo a los temas 9 y 10 del programa.

69. Cuando se reanudó la sesión, el Presidente-Relator invitó a proseguir el debate sobre el texto del Presidente y solicitó a los Estados Miembros que formularan observaciones sobre la sección del documento que se refería a los mecanismos nacionales.

70. La representante de la Unión Europea dijo que su delegación consideraba que los mecanismos nacionales eran muy importantes y dio las gracias al Presidente-Relator por haber incluido esa cuestión en su texto. Recordó que los Estados miembros de la Unión Europea ya tenían mecanismos de ese tipo, y añadió que el artículo 6 de la Convención preveía el establecimiento de mecanismos nacionales y que, por consiguiente, su delegación no consideraba que hubiera una laguna que debiera abordarse a ese respecto.

71. A continuación, el Comité Especial examinó la cuestión de las lagunas de procedimiento en relación con la Convención, que también figuraba en el texto del Presidente.

72. La representante de Sudáfrica indicó que, en su opinión, no era necesario seguir examinando la cuestión de las lagunas de procedimiento en esa etapa.

73. El Presidente-Relator preguntó a las delegaciones si el Comité Especial debería reiterar, en los resultados del noveno período de sesiones, las recomendaciones formuladas en el período de sesiones anterior con respecto a las lagunas de procedimiento.

74. La representante de la Unión Europea señaló que en la resolución 34/36 del Consejo de Derechos Humanos no se había tenido en cuenta la recomendación del Comité Especial sobre las lagunas de procedimiento. Por consiguiente, propuso que no se reiterara la recomendación. Además, propuso que se formulara una sola recomendación general sobre el texto del Presidente, en que se reconociera que no había surgido ningún elemento nuevo para el debate desde el anterior período de sesiones del Comité Especial.

75. El Presidente-Relator dijo que el texto del Presidente resumía y tenía en cuenta los temas examinados en los períodos de sesiones anteriores, con el fin de que el Comité Especial pudiera avanzar en el debate sobre esas cuestiones.

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

76. En su 14ª sesión, el Comité Especial examinó de nuevo el texto del Presidente, centrándose más específicamente en el tema del racismo y el deporte. El Presidente-Relator hizo la declaración introductoria del debate, señalando que la discriminación en el deporte iba en aumento. Destacó el número de casos de ese fenómeno denunciados recientemente, y explicó que el texto del Presidente presentaba un resumen de los debates celebrados por el Comité Especial en ocasiones anteriores y no contenía información nueva. Recordó que la discriminación en el deporte no era más importante que la discriminación en cualquier otro ámbito de la vida. Explicó que el Comité Especial había decidido abordar la cuestión con más profundidad en gran medida debido al considerable número de denuncias de casos de racismo en el deporte.

77. El representante de la Federación de Rusia declaró que su país estaba seriamente preocupado por el continuo aumento del neonazismo y del racismo en Ucrania. A ese respecto, se refirió al comportamiento racista de los hinchas del club de fútbol Dínamo de Kiev el 27 de abril de 2017, durante un partido contra el Shakhtar Donetsk, un club con varios jugadores de origen africano. La Federación de Rusia no tenía conocimiento de ninguna reacción por parte de los órganos encargados de hacer cumplir la ley en Ucrania ni de ninguna condena oficial del comportamiento en cuestión. El representante señaló que ya se habían recibido informes de comportamientos racistas de los hinchas del club Dínamo de Kiev en 2013 y 2015, y expresó la esperanza de que el Comité Especial prestara particular atención al incidente de 2017, así como al aumento del racismo, y, de conformidad con su mandato, adoptara medidas al respecto. La Federación de Rusia estaba dispuesta a dar a conocer las imágenes de vídeo del incidente y los informes conexos a las delegaciones que estuvieran interesadas.

78. El Presidente-Relator agradeció al representante de la Federación de Rusia su declaración y pidió a las delegaciones que formularan observaciones sobre el tema. La representante de Sudáfrica propuso que el Comité Especial reconociera los avances realizados por el ACNUDH en la cuestión del racismo en el deporte y alentara a la Oficina a proseguir su labor en ese sentido. Teniendo en cuenta la sugerencia anterior de la representante de la Unión Europea de que se formulara una sola conclusión general sobre el texto del Presidente, el Presidente-Relator suspendió la sesión para que se celebraran debates oficiosos, con miras a elaborar la formulación de las conclusiones y recomendaciones sobre el texto del Presidente.

79. Posteriormente se reanudó la sesión. Sin embargo, el Comité Especial convino en que no era posible continuar el debate acerca del proyecto de conclusiones sobre los temas del programa 4, 5 y 6 en ausencia de las delegaciones que habían expresado preocupaciones y opiniones divergentes en sesiones anteriores, en particular con respecto a la relación entre los marcos jurídicos internacionales sobre los refugiados y los migrantes y el derecho internacional de los derechos humanos. El Presidente-Relator pidió a las delegaciones que examinaran detenidamente la resolución 71/181 de la Asamblea General, como preparación para un debate a fondo a ese respecto en la sesión siguiente.

I. Debate sobre la resolución 71/181 de la Asamblea General

80. En su 15ª sesión, celebrada el 3 de mayo, el Comité Especial examinó el tema 14 del programa, relativo a la resolución 71/181 de la Asamblea General, y la resolución conexa 34/36 del Consejo de Derechos Humanos.

81. El Presidente-Relator propuso comenzar con un debate sobre las cuestiones de procedimiento relacionadas con la resolución 71/181 de la Asamblea General y la resolución conexa 34/36 del Consejo de Derechos Humanos, con miras a prepararse para el

décimo período de sesiones del Comité Especial. Propuso que el debate se centrara, entre otras cosas, en tres puntos:

a) La labor preparatoria durante el intervalo hasta el décimo período de sesiones:

i) Las consultas oficiosas de los miembros entre períodos de sesiones;

ii) La reunión de expertos entre períodos de sesiones;

iii) Un calendario.

b) El informe del Presidente-Relator a la Asamblea General:

Las cuestiones que deberían incluirse en el informe del Presidente-Relator a la Asamblea General.

c) El "avance" del Comité Especial y los temas restantes.

82. La representante del Brasil dijo que su delegación deseaba felicitar al Presidente-Relator por su dirección del Comité Especial. En particular, apreciaba el texto/documento propuesto, que contenía algunas ideas valiosas, aunque no desarrolladas, que ayudarían al Comité Especial a cumplir su tarea. El Brasil apoyaba la resolución 71/181 de la Asamblea General y la resolución 34/36 del Consejo de Derechos Humanos, y era partidario de un enfoque incremental, consistente en negociar un instrumento no vinculante como primer paso hacia la elaboración de un documento más sólido que fuera aceptado por la comunidad internacional. El Brasil seguía examinando el documento del Presidente-Relator, y estaba de acuerdo en que se requeriría una importante labor preparatoria entre los períodos de sesiones a ese respecto.

83. El Brasil creía que el Comité Especial podría examinar la tipificación de los actos de carácter racista y xenófobo en el deporte, que parecía ser uno de los ámbitos en que existía un consenso en el Comité Especial y en que podían lograrse resultados significativos. Como se mencionaba en el texto del Presidente, el deporte podía ser un vehículo para la paz, la comprensión humana y el desarrollo. Lamentablemente, en todo el mundo seguían registrándose actos de racismo, xenofobia e intolerancia religiosa en los estadios de fútbol y en otros foros deportivos. El discurso de odio y los actos racistas y xenófobos en el deporte podían tener a veces consecuencias trágicas, incluida la muerte de aficionados a los deportes y de otras personas inocentes. Las celebraciones deportivas transmitían mensajes importantes a la población. En ninguna esfera podía permitirse que prosperara la impunidad, y menos aún en aquellas que pudieran actuar como amplificadores del comportamiento ilegal. La lucha contra el racismo en el deporte enviaría un mensaje importante contra la impunidad y podría servir de ejemplo a la sociedad en general. El Brasil seguía abierto a participar activamente en la labor del Comité Especial.

84. La representante de la Unión Europea señaló que la Unión Europea seguía apoyando plenamente la causa de la eliminación total del racismo, la discriminación racial, la xenofobia y las formas conexas de intolerancia, incluidas sus formas contemporáneas, así como la promoción y protección de los derechos humanos de todas las personas, sin discriminación por motivo alguno. La Unión Europea había adoptado medidas jurídicas y prácticas para combatir el racismo y la xenofobia, entre ellas la aprobación de un marco legislativo sólido y de la Decisión marco de 2008, que obligaba a los Estados miembros de la Unión Europea a penalizar determinadas formas y manifestaciones de racismo y xenofobia.

85. En opinión de la Unión Europea, la Convención Internacional sobre la Eliminación de Todas las Formas de Discriminación Racial —en que todos los Estados miembros de la Unión Europea eran partes— era y debía seguir siendo la base de todas las iniciativas encaminadas a prevenir, combatir y erradicar el racismo. La representante señaló que, como lo demostraba la persistente propagación del racismo y la discriminación racial en todo el mundo, los esfuerzos para aplicar la Convención estaban flaqueando. Por lo tanto, la Unión Europea consideraba que el Comité Especial debía seguir centrándose en la aplicación plena y efectiva de la Convención, a fin de lograr el objetivo de eliminar completamente el flagelo del racismo en todas sus formas.

86. Su delegación no veía ningún acuerdo sobre el hecho de que la Convención tuviera lagunas o no abordara las formas contemporáneas de racismo, ni tampoco pruebas de ello. En ese sentido, la Unión Europea no apoyaba la resolución 71/181 de la Asamblea General, la resolución 34/36 del Consejo de Derechos Humanos ni el inicio de negociaciones sobre un protocolo adicional a la Convención que tipificara como delitos los actos de carácter racista o xenófobo.

87. Los debates del Comité Especial sobre la posible necesidad de normas complementarias a la Convención aún no habían terminado. Otras opciones, como los instrumentos jurídicamente no vinculantes, estaban todavía en examen y podrían estudiarse más a fondo sobre la base del consenso. La lucha mundial contra el racismo, la discriminación racial, la xenofobia y las formas conexas de intolerancia concernía a todas las personas en todas las regiones del mundo y era un asunto en que la comunidad internacional debía estar unida. En ese espíritu, la Unión Europea estaba y seguiría estando dispuesta a entablar un diálogo constructivo sobre el tema con todas las partes interesadas.

88. El representante de la República Bolivariana de Venezuela declaró que muchas delegaciones no habían podido asistir a algunas sesiones del período de sesiones en curso del Comité Especial debido a la celebración simultánea de otras sesiones, en particular las del 27º período de sesiones del Grupo de Trabajo sobre el Examen Periódico Universal. Esto debería tenerse en cuenta cuando se planificaran los períodos de sesiones futuros.

89. Su país seguía apoyando firmemente la labor del Comité Especial, que a su juicio constituía un instrumento importante para la elaboración de normas complementarias. Se habían denunciado nuevos tipos de discriminación y su delegación creía que debían abordarse. El representante dio las gracias al Presidente-Relator por el texto del Presidente y confirmó el apoyo de la República Bolivariana de Venezuela a la resolución 71/181 de la Asamblea General y a la resolución conexa 34/36 del Consejo de Derechos Humanos. Destacó que deberían aprobarse normas complementarias y expresó su respaldo al texto del Presidente. El representante se mostró en desacuerdo con las delegaciones que se oponían a la elaboración de normas complementarias, afirmando que la adopción de esas normas era particularmente oportuna, en vista del aumento del racismo, la discriminación y la migración, y respaldó la propuesta de la representante del Brasil de que se considerara la cuestión del racismo en el deporte.

90. El representante del Japón hizo suya la declaración de la representante de la Unión Europea en el sentido de que no era necesario elaborar normas complementarias. Reconoció la existencia de deficiencias importantes en la aplicación de la Convención y convino en la necesidad de abordarlas. Sin embargo, en opinión de su delegación, la adopción de normas complementarias no era la forma más eficaz de garantizar la aplicación de la Convención: era preferible proseguir los debates en curso.

91. La representante de Sudáfrica propuso que el Comité Especial siguiera trabajando en los temas que tenía en examen en ese momento, además de los nuevos temas a que se hacía referencia en la resolución 71/181 de la Asamblea General y en la resolución conexa 34/36 del Consejo de Derechos Humanos. El informe sobre la marcha de los trabajos que el Presidente-Relator presentaría al septuagésimo segundo período de sesiones de la Asamblea General debería reflejar sus propias opiniones sobre la labor del Comité Especial, destacando los progresos y las dificultades.

92. El representante del Pakistán dio las gracias al Presidente-Relator por su dirección del Comité Especial. Respaldó la declaración formulada por el representante de la República Bolivariana de Venezuela sobre las dificultades que planteaban las sesiones simultáneas y la necesidad de evitar la coincidencia de los períodos de sesiones del Comité Especial con otras reuniones en el futuro. El representante agradeció la propuesta de la representante de la Unión Europea de continuar el debate sobre el racismo y la xenofobia, así como la propuesta de la representante del Brasil de abordar la cuestión del racismo en el deporte. También agradeció las ponencias de los expertos sobre esos temas, que habían enriquecido considerablemente el debate, y afirmó que las opiniones del Presidente-Relator sobre esos temas deberían reflejarse en el informe.

93. Hablando en nombre de la OCI, el representante del Pakistán subrayó la necesidad de celebrar un debate sobre la islamofobia. Su delegación estaba dispuesta a participar en

debates sobre la discriminación relacionada con cualquier religión, no solo con el Islam. Sin embargo, la islamofobia representaba en ese momento la forma más extendida de discriminación por motivos de religión o de creencias.

94. La representante del Brasil apoyó la propuesta de la representante de Sudáfrica de que el Comité Especial examinara otras cuestiones además de las mencionadas en la resolución 71/181 de la Asamblea General y en la resolución conexa 34/36 del Consejo de Derechos Humanos, y su sugerencia de que el informe sobre la marcha de los trabajos solicitado por la Asamblea General reflejara las opiniones del Presidente-Relator sobre la labor del Comité Especial.

95. El Presidente-Relator resumió las opiniones expresadas sobre la forma de seguir adelante, incluida la propuesta de que el Comité Especial prosiguiera los debates sobre los temas del momento en paralelo con su labor encaminada a responder a la solicitud formulada en la resolución 71/181 de la Asamblea General y mencionada en la resolución conexa 34/36 del Consejo de Derechos Humanos. Añadió que el Comité Especial debería mantener su práctica de celebrar reuniones oficiosas entre períodos de sesiones, y que debería invitarse a expertos a presentar ponencias en el décimo período de sesiones del Comité. Asimismo, tomó nota de que, junto con reflejar las actuaciones del Comité Especial en su noveno período de sesiones, el informe a la Asamblea General en su septuagésimo segundo período de sesiones debería contener sus propias opiniones sobre los progresos y las dificultades inherentes a la labor del Comité Especial en general.

96. El Presidente-Relator pidió a los miembros del Comité Especial que hicieran observaciones sobre el contenido de la solicitud formulada por la Asamblea General en su resolución 71/181 y mencionada en la resolución conexa 34/36 del Consejo de Derechos Humanos, en particular con respecto a los temas que se examinarían en el décimo período de sesiones.

97. La representante de la Unión Europea reiteró la necesidad de disponer de más tiempo para reflexionar sobre esas resoluciones, incluidos los aspectos de procedimiento, y propuso que el Comité Especial examinara la lista de temas del siguiente período de sesiones durante el intervalo entre los períodos de sesiones noveno y décimo.

98. La representante de Sudáfrica, hablando en nombre del Grupo de los Estados de África, apoyó la propuesta formulada por el representante del Pakistán, en nombre de la OCI, acerca de la celebración de un debate sobre la islamofobia en el siguiente período de sesiones.

99. La representante de México se refirió a las distintas opiniones expresadas por diversas delegaciones en relación con el mandato del Comité Especial. Destacó la importancia de trabajar sobre la base del consenso y, en ese sentido, apoyó la propuesta de la representante de la Unión Europea relativa al examen de la lista de temas durante el intervalo entre períodos de sesiones, con miras a llegar a un consenso.

J. Debate general e intercambio de opiniones, sesiones 16ª y 17ª

100. En su 16ª sesión, el Comité Especial reanudó la redacción del proyecto de texto del período de sesiones sobre las conclusiones y recomendaciones.

101. Con respecto a la lista de temas que se examinarían en el décimo período de sesiones, el Presidente-Relator recordó el documento de trabajo del Comité Especial titulado “Lista de los temas que se debatieron en el segundo período de sesiones”, que contenía varios temas relacionados con la islamofobia, entre ellos el núm. 1, relativo a la promoción y la incitación al odio racial, étnico, nacional y religioso; el núm. 3, referente a la discriminación basada en la religión o las creencias; el núm. 10, sobre el diálogo intercultural e interreligioso; y el núm. 17, relativo a la elaboración de perfiles raciales, étnicos y religiosos y a las medidas para combatir el terrorismo. El Presidente-Relator propuso que se utilizaran esas mismas formulaciones y esa lista de temas al elaborar la lista de temas para el décimo período de sesiones.

102. La representante de la Unión Europea reiteró que el debate sobre la lista de temas debería aplazarse hasta el intervalo entre períodos de sesiones.

103. El Presidente-Relator recordó la necesidad de que el Comité Especial tuviera un calendario claro para estructurar el programa de trabajo del décimo período de sesiones.

104. En su 17ª sesión, el Comité Especial continuó los debates sobre el proyecto de documento del período de sesiones relativo a las conclusiones y recomendaciones, intercambiando opiniones sobre los distintos asuntos. La sesión fue suspendida para celebrar nuevas consultas, con vistas a llegar a un acuerdo.

IV. Aprobación del informe

105. En la 18ª sesión, el Comité Especial reanudó su debate sobre el proyecto de documento del período de sesiones relativo a las conclusiones y recomendaciones, con miras a aprobar un texto acordado.

106. El Presidente-Relator hizo un balance de la situación de las negociaciones celebradas en las sesiones anteriores y en las reuniones oficiosas del período de sesiones en curso del Comité Especial, e indicó que este no había podido llegar a un acuerdo sobre la inclusión o exclusión de la cuestión de las prácticas islamófobas en las conclusiones y recomendaciones. Dado que el asunto de la inclusión de un texto referente a la islamofobia y las prácticas islamófobas se mencionaba en los párrafos introductorios y en los párrafos sobre los migrantes y los refugiados del proyecto de texto, el Presidente-Relator propuso que esos párrafos se suprimieran de las conclusiones y recomendaciones, dejando únicamente los párrafos que indicaran la dirección que deberían tomar los trabajos en el siguiente período de sesiones y que ofrecieran orientación sobre la forma de realizar esa labor. El Presidente-Relator propuso el siguiente texto a la aprobación del Comité Especial:

“El Comité tomó conocimiento del texto del Presidente para impulsar la labor del Comité Especial sobre la Elaboración de Normas Complementarias a la Convención Internacional sobre la Eliminación de Todas las Formas de Discriminación Racial y decidió seguir examinándolo.

El Comité examinó la resolución 71/181 de la Asamblea General y resolvió proseguir las consultas durante el intervalo entre períodos de sesiones.”

107. La representante de Egipto expresó su reconocimiento por los esfuerzos del Presidente-Relator para ayudar al Comité Especial a lograr un consenso sobre la formulación de las conclusiones y recomendaciones del período de sesiones. La representante se opuso a la propuesta del Presidente-Relator de suprimir las referencias a la islamofobia y los párrafos relativos a los migrantes y los refugiados de las conclusiones y recomendaciones del Comité Especial, explicando que esos puntos eran de la máxima importancia para su delegación. Además de ser una cuestión de actualidad, el término “islamofobia” ya había concitado un consenso en el contexto de la Declaración y el Programa de Acción de Durban y, por lo tanto, el tema formaba parte del mandato del Comité Especial. La representante dijo que lamentaba que el Comité Especial no hubiera podido alcanzar un consenso sobre la cuestión de las prácticas islamófobas, así como el hecho de que las conclusiones y recomendaciones no reflejarían plenamente los debates celebrados durante el noveno período de sesiones del Comité Especial.

108. La Representante Permanente de Jordania ante la Oficina de las Naciones Unidas y otras organizaciones internacionales en Ginebra expresó su acuerdo con la propuesta del Presidente-Relator de suprimir los párrafos relativos a los migrantes y los refugiados. Sin embargo, respaldó la propuesta de la representante de Egipto con respecto a la inclusión de la cuestión de la islamofobia en las conclusiones y recomendaciones del noveno período de sesiones. El representante de Bangladesh se sumó a las declaraciones formuladas por la representante de Egipto y la Representante Permanente de Jordania ante la Oficina de las Naciones Unidas y otras organizaciones internacionales en Ginebra.

109. El Presidente-Relator aclaró su propuesta, declarando que había sugerido suprimir los párrafos sobre los migrantes y los refugiados porque el Comité Especial no había

podido llegar a un acuerdo sobre la inclusión o exclusión de la cuestión de la islamofobia en esos párrafos. Dado ese hecho, parecía muy improbable que el Comité Especial aceptara incluir referencias a la islamofobia y al mismo tiempo suprimir los párrafos sobre los migrantes y los refugiados. Sin embargo, reiteró la necesidad de que el Comité Especial adoptara conclusiones que ofrecieran una orientación para la labor futura del Comité.

110. El representante de Malasia hizo uso de la palabra para apoyar las declaraciones formuladas por los representantes de Egipto, Bangladesh y Jordania sobre la importancia de incluir referencias a la islamofobia en las conclusiones y recomendaciones del noveno período de sesiones. Dado que la islamofobia era un fenómeno mundial, el Comité Especial debería reflexionar sobre la cuestión y, en particular, mencionarla en sus conclusiones y recomendaciones.

111. La representante de la Unión Europea afirmó que en ningún momento de las negociaciones se había llegado a un acuerdo sobre la propuesta de insertar referencias a la islamofobia en las conclusiones del Comité Especial, por lo que esas referencias no podían incluirse en el proyecto de documento del noveno período de sesiones. Recordó que había propuesto una solución de compromiso consistente en utilizar el texto acordado de la Declaración de Nueva York para los Refugiados y los Migrantes, en que se exhortaba a todos a que respetaran los derechos humanos de los migrantes y los refugiados. Era muy lamentable que el Comité Especial no hubiera podido llegar a un consenso sobre ese punto, y que tal vez no lograra aprobar conclusiones y recomendaciones para su noveno período de sesiones.

112. El representante del Pakistán, hablando en nombre de la OCI, observó que el Comité Especial había realizado una excelente labor de redacción de las conclusiones y recomendaciones durante el período de sesiones en curso y que sería una gran pérdida no aprobarlas. Como ya habían señalado los representantes de Egipto, Bangladesh y Malasia y la Representante Permanente de Jordania ante la Oficina de las Naciones Unidas y otras organizaciones internacionales en Ginebra, la islamofobia había sido siempre una cuestión importante para la OCI, pero ahora se estaba convirtiendo en un tema apremiante debido al continuo aumento de las prácticas islamófobas en todo el mundo. La OCI había participado de forma proactiva y positiva en la labor del Comité Especial desde su creación, y había apoyado el mandato del Comité Especial y trabajado de manera constructiva para determinar y analizar las lagunas de la Convención. La islamofobia había sido objeto de debate durante el noveno período de sesiones. Las ponencias de los expertos habían puesto de manifiesto lagunas en relación con la xenofobia, el racismo y el deporte, y la islamofobia. El Comité Especial había llegado a conclusiones sobre las dos primeras de estas cuestiones en períodos de sesiones anteriores, mientras que no había logrado hacerlo respecto de la tercera. Por último, el representante destacó que la islamofobia estaba contemplada en la Declaración de Durban. La OCI estaba dispuesta a considerar cualquier formulación —con inclusión de la referencia a otras religiones y del uso del lenguaje de la Declaración de Nueva York para los Refugiados y los Migrantes— a condición de que el texto incluyera una referencia explícita a la islamofobia o las prácticas islamófobas.

113. El Presidente-Relator pidió a los miembros del Comité Especial que se centraran en los párrafos en que ya había consenso, a fin de que el Comité Especial pudiera proceder a la aprobación de las conclusiones y recomendaciones del período de sesiones.

114. La representante de Egipto reiteró que su delegación no estaba de acuerdo con la supresión de los párrafos relativos a los migrantes y los refugiados. La falta de consenso respecto de esos párrafos atañía solo a la inclusión de referencias a la islamofobia, por lo que sería lamentable que se excluyeran de las conclusiones.

115. El representante de Azerbaiyán hizo uso de la palabra para respaldar las declaraciones formuladas por los representantes de Egipto, Bangladesh, Malasia y el Pakistán y por la Representante Permanente de Jordania ante la Oficina de las Naciones Unidas y otras organizaciones internacionales en Ginebra, en nombre de la OCI, sobre la importancia de incluir la islamofobia en las conclusiones y recomendaciones del Comité Especial.

116. El Presidente-Relator y la representante de Sudáfrica expresaron la preocupación de que el noveno período de sesiones acabara sin un acuerdo, visto que todos los argumentos y

la formulación propuesta ya se había examinado extensamente en las sesiones anteriores y en las reuniones oficiosas y no se había podido llegar a un acuerdo.

117. A petición del representante del Pakistán, se suspendió brevemente la sesión para celebrar nuevas consultas, después de lo cual se reanudó la sesión.

118. El representante del Pakistán, hablando en nombre de la OCI, propuso que los párrafos del texto del Presidente y de la resolución 71/181 de la Asamblea General, que eran los dos párrafos propuestos anteriormente por el Presidente-Relator como conclusiones del Comité Especial, se mantuvieran y se recogieran en el informe como conclusiones y recomendaciones del Presidente-Relator.

119. El Presidente-Relator señaló que habría que modificar ligeramente la formulación si esos dos párrafos se integraban en el informe como parte de las conclusiones y recomendaciones, y pidió a los delegados que propusieran un texto acordado.

120. La representante de Egipto tomó la palabra para aclarar la propuesta de la OCI, indicando que el objetivo era solamente disponer de alguna orientación para el siguiente período de sesiones del Comité Especial; el Comité Especial no necesitaba ponerse de acuerdo sobre la formulación de las conclusiones o recomendaciones del Presidente-Relator. Asimismo, la representante de Sudáfrica opinó que el Comité Especial no debería entablar nuevas negociaciones en esa etapa.

121. El Comité decidió no aprobar ninguna conclusión ni recomendación del noveno período de sesiones.

122. El Presidente-Relator invitó a los participantes a formular declaraciones finales de carácter general.

123. El representante del Consejo Indio de Sud América tomó la palabra para dar lectura a la conclusión y recomendación que había preparado para el Comité Especial, en que proponía que el Comité Especial llegara a la conclusión de que las raíces históricas de las doctrinas de superioridad y discriminación racial en las decisiones de los altos tribunales persistían en la legislación y las políticas como consecuencia de la negativa a abolir las leyes y políticas discriminatorias en la administración y aplicación de la Declaración sobre la Concesión de la Independencia a los Países y Pueblos Coloniales. Lagunas de procedimiento impedían al Comité para la Eliminación de la Discriminación Racial examinar las situaciones discriminatorias y formular recomendaciones a los órganos pertinentes de las Naciones Unidas, de conformidad con el artículo 15 y las normas internacionales anteriores a la aprobación de la resolución 1514 (XV) de la Asamblea General. Además, el representante propuso que el Comité Especial recomendara un examen de los procedimientos del Comité para la Eliminación de la Discriminación Racial, a fin de determinar las lagunas y permitir que dicho Comité aplicara sus propios procedimientos con respecto a la transmisión de peticiones al órgano competente de las Naciones Unidas, para su examen, de conformidad con el artículo 15 de la Convención. El representante añadió que presentaba esa recomendación a fin de destacar la existencia de lagunas de procedimiento en la Convención.

124. La representante de Sudáfrica, hablando en nombre del Grupo de los Estados de África, expresó su agradecimiento al Presidente-Relator y a todos los miembros del Comité Especial y reiteró que el Grupo de los Estados de África consideraba importante que el Comité Especial comenzara a reflexionar sobre las cuestiones del antisemitismo, la xenofobia, la islamofobia y los ataques racistas en el ciberespacio y se ocupara de las lagunas que existían a ese respecto en la Convención.

125. La representante de la Unión Europea expresó su agradecimiento a todos, destacando la importancia de los debates sobre las cuestiones de la migración y los refugiados y del intercambio entre las delegaciones, en particular sobre los mecanismos nacionales.

126. El representante del Pakistán, hablando en nombre de la OCI, expresó su sincero reconocimiento y dio las gracias a las otras delegaciones y a los expertos por la alta calidad de los debates celebrados durante el período de sesiones. La OCI seguiría participando de manera positiva y constructiva en la labor del Comité Especial.

127. La representante de Egipto se sumó a las otras delegaciones para expresar su agradecimiento a todos. Señaló que los debates eran muy importantes y dijo que lamentaba que el Comité Especial no hubiera podido aprobar conclusiones y recomendaciones en ese período de sesiones.

128. El Presidente-Relator, en sus observaciones finales, agradeció a los miembros del Comité Especial su cooperación y sus contribuciones a los debates durante el período de sesiones, y declaró clausurado el período de sesiones.

129. El informe del noveno período de sesiones fue aprobado *ad referendum*, en el entendimiento de que las delegaciones harían llegar por escrito a la Secretaría, a más tardar el 19 de mayo de 2017, las correcciones técnicas a sus intervenciones que fueran necesarias.

Anexo I

[Inglés únicamente]

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

Comprehensive anti-discrimination legislation

At the second meeting on 24 April, the Ad Hoc Committee considered agenda item 4. The Chair-Rapporteur explained that while many experts on this topic had been approached, it had not been possible to secure experts to make presentations on the topic of comprehensive anti-discrimination legislation. As such, the Ad Hoc Committee members would discuss the topic without the input of experts. He asked delegations to volunteer to make presentations on comprehensive anti-discrimination legislation and relevant legislative frameworks in their respective countries, and thanked the European Union for initiating the discussions with its presentation. During the second and third meetings, the representatives of Brazil, the Plurinational State of Bolivia, Cuba, Egypt, the European Union, Jamaica, Japan, Mexico, Pakistan (speaking on behalf of the Organization of Islamic Cooperation and in a national capacity), South Africa (speaking on behalf of the African Group and in a national capacity), Spain, the United Kingdom of Great Britain and Northern Ireland and the Bolivarian Republic of Venezuela made presentations on the topic of comprehensive anti-discrimination legislation. A summary of these presentations and the discussion with the participants that followed is provided in annex I to the present report.

The representative of the European Union welcomed the inclusion of a discussion on comprehensive anti-discrimination legislation in the programme of work. The European Union firmly believed that the adoption of a comprehensive anti-discrimination legislation was crucial to fight discrimination in all forms and strongly supported the adoption of a holistic and integrated approach, capable of providing effective protection, also bearing in mind cases of multiple and intersecting forms of discrimination.

As enshrined in its treaties, the European Union is founded on the values of equality, non-discrimination and tolerance and, in implementing its policies and activities, the European Union aimed to fight discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation. The European Union's commitment to the principle of non-discrimination is further reiterated in Article 21 of the Charter of Fundamental Rights of the European Union, which has acquired the same legal values of the Treaties since the entry into force of the Lisbon Treaty in 2009. Moreover, the prohibition of discrimination is strengthened by Article 14 of the European Convention on Human Rights.

The representative stated that the promotion of equality and non-discrimination had been a core element of the European Union's goals, legislation and institutions from its early days. The Treaties of Rome signed in 1957, provided the competence to develop the first Equality Directives: the Equal Pay Directive of 1975 and the Equal Treatment Directive of 1976, which prohibited discrimination on grounds of gender in access to employment, vocational training and promotion, and working conditions.

The Treaty of Amsterdam of 1997, which introduced a specific European Union competence to combat discrimination on a wide range of grounds, gave new impetus to the development of an EU anti-discrimination legislative framework.

The adoption of two fundamental European Union Directives in the fight against discrimination: the Racial Equality and the Employment Equality Directives, both adopted in 2000, were major achievements. The two ground-breaking Directives prohibit discrimination on grounds of racial or ethnic origin, religion or belief, disability, age and sexual orientation, and provide protection in key areas of life, such as employment, education, social security, healthcare, access to and supply of goods and services. Both

instruments provide for the obligation to ensure the availability of judicial remedies to victims and also provide grounds for taking positive actions to promote equality.

In 2008, the adoption of the Framework Decision on combating racism and xenophobia by means of criminal law set common European Union standards to ensure that racist and xenophobic offences are sanctioned in all Member States by a minimum level of effective, proportionate and dissuasive criminal penalties. These instruments, together with the Victim's Rights Directive, the Audiovisual Media Services Directive and other relevant legislation, establish a comprehensive and advanced European Union anti-discrimination legal framework.

The European Union institutions are strongly focused on the fight against discrimination, racism and xenophobia. The European Commission, which is primarily tasked with the mandate of ensuring the correct legal transposition, implementation and enforcement of the existing legislative instruments, also encourages the exchange of good practices between the European Union Member States. To this end, the Commission established an Expert Group on non-discrimination in 2008 and an Expert Group on racism and xenophobia in 2009. In addition, the European Union Fundamental Rights Agency, established in 2007, plays a crucial role in collecting, analysing and disseminating objective and comparable data on racism, xenophobia, anti-Semitism, Islamophobia and other forms of intolerance and in providing independent and evidence-based policy guidance on equality and non-discrimination to the European Union institutions and the Member States. The Agency assists the Member States in designing and implementing relevant measures to combat hate crime in the framework of the Working Party on Hate Crime, set up in 2014.

The European Union's commitment to the fight against discrimination and inequality is further strengthened by its continuous engagement with the Council of Europe. The representative said that the European Union actively participates in the European Commission against Racism and Intolerance as an observer, and cooperates with the Council of Europe through numerous Joint Programmes addressing different aspects of discrimination. The European Union firmly believed in the relevance of developing comprehensive anti-discrimination legislation and would continue to engage in the promotion of equality and non-discrimination.

The representative of Spain shared the main elements of the legal framework established by Spain to combat all forms of discrimination, including racial discrimination. Spain was committed to combating racism, racial discrimination, xenophobia and all related intolerance and considered that the International Convention on the Elimination of All Forms of Racial Discrimination, has great potential to face these challenges of the international community and must be fully implemented.

The representative described the Spanish framework, explaining that it offered comprehensive protection against any kind of discrimination (and this notwithstanding the legal framework of the European Union which has already been described by the Delegation of the European Union and which is fully applied in Spain).

Spain is a party to the International Convention on the Elimination of All Forms of Racial Discrimination, ratifying it in 1969, when it entered into force in the country. Its provisions have since become part of the Spanish legal system. Several articles of the Spanish Constitution are relevant; in addition to articles 9.2 and 10, which make direct constitutional reference to international human rights standards, article 14 states that "Spaniards are equal before the law without any discrimination whatsoever prevailing. Race, sex, religion, opinion or any other personal or social condition or circumstance '(Article 14). Although this provision refers to the Spaniards, the previous article (13.1) states that "foreigners shall enjoy in Spain the public liberties guaranteed by this title in the terms established by treaties and the law".

The Law on the Rights and Freedoms of Foreigners in Spain and its Social Integration (LO 4/2000, of 11 January), with its successive reforms, developed the constitutional mandate established in Article 13.1 of the Constitution and combined it with the international commitments undertaken by Spain, especially as a member country of the European Union. This law established in its art. 3.2 that the norms concerning the fundamental rights of foreigners will be interpreted in accordance with the Universal

Declaration of Human Rights and with the international treaties and agreements on the same matters in force in Spain, without the possibility of claiming the profession of religious beliefs or ideological convictions or cultural diversity to justify the performance of acts or conduct contrary to them. Article 23 includes in its first paragraph the definition of discrimination: "any act that directly or indirectly leads to a distinction, exclusion, restriction or preference against an alien based on race, colour, descent or national or ethnic origin, religious beliefs and practices, and which has the purpose or effect of destroying or limiting the recognition or exercise, on an equal basis, of human rights and fundamental freedoms in the political, economic, social or cultural field". Section 2 specifies various categories of acts that are considered to be discriminatory. Article 24 guarantees judicial protection against any discriminatory practice and also establishes in this Act sanctioning provisions.

In addition, the Law against Violence, Racism, Xenophobia and Intolerance in Sport, 19/2007, of July 11, contemplates a set of measures aimed at the eradication of these practices, establishing a sanctioning regime as well as a regime discipline against such manifestations.

The Spanish Criminal Code contemplates a wide catalogue of prohibited behaviours intended to eradicate racism and xenophobia. The current Penal Code increased the scope of punishment for actions relating to racial discrimination.

Finally, in Spain there is a particular emphasis on the adoption of operational measures to make legal equality a reality. The National and Integral Strategy to combat racism and xenophobia, is the main instrument of action in this area, as well as the Strategic Plan for Citizenship and Integration or the National Strategy for Inclusion Social Situation of the Roma Population 2012–2020. The Council for the Elimination of Racial or Ethnic Discrimination has been created and the elaboration of a mapping of discrimination in Spain to ascertain perceptions of society and the potential victims of discrimination, as well as discriminatory practices and the main empirical data of discrimination in Spain to improve the development of anti-discrimination policies is taking place. There are also measures for the improvement of systems of analysis, information and criminal legal action on qualitative and quantitative data on racism, racial discrimination, xenophobia and related intolerance, aimed at a better understanding of these phenomena.

Training courses of security forces and bodies in the identification and registration of racist or xenophobic incidents, and the publication of an annual report on hate crimes in Spain, intended to improve monitoring have been undertaken. The creation of the post of Deputy Prosecutor of the Attorney General of the State for Criminal Protection of Equality and against Discrimination, as well as specialized prosecutors in all the autonomous communities is another development. The Penal Code was reformed in 2015 to review and improve the regulation of hate speech and violence against groups or minorities. Penalties had been increased and new cases of hate crimes were being catalogued. The preventive role played by the Network of Offices for the Care of Victims of Discrimination of the Council for the Elimination of Racial or Ethnic Discrimination was also highlighted.

The representative of the United Kingdom of Great Britain and Northern Ireland also made an intervention. He stated that the United Kingdom is a multi-ethnic and multi-faith country, and has long been a country of inward and outward migration. It is now a very diverse society. Notwithstanding this progress by communities of ethnic minorities in business, sport, arts, Government and Parliament, there is further to go. The Government of the United Kingdom wants to create a genuine opportunity country, where ethnic origin and background are not allowed to become a barrier to advancement.

He noted that 2015 marked not only the fiftieth anniversary of the International Convention on the Elimination of All Forms of Racial Discrimination but also the fiftieth anniversary of the first piece of domestic legislation against racial discrimination, the Race Relations Act 1965. This historic legislation opened the way to all subsequent equalities legislation, which protects all individuals from direct and indirect discrimination, victimisation and harassment in employment, in the provision of goods and services, and in public functions. Domestic equalities legislation is now contained within a single equality act, which covers nine protected grounds, including race. The Equality Act also places a

positive duty on public bodies to give due regard to the need to eliminate discrimination and promote equality of opportunity and good relations in their public functions.

He stated that while the Government of the United Kingdom of Great Britain and Northern Ireland is proud of its equalities legislation, legislation alone is not enough. The Government has set out a series of goals to improve opportunities for black and minority ethnic people.

A review of the criminal justice system in England and Wales is taking place to investigate bias against black defendants and other ethnic minorities, reporting later 2017. With significant overrepresentation of black, Asian and minority ethnic individuals in the criminal justice system, the review will consider their treatment and outcomes to identify and help tackle potential bias and prejudice. Universities are being required to publish admissions and retention data by gender, ethnic background and socioeconomic class. The intention is to enshrine the duty in legislation. Under the proposal, universities will have a new 'transparency duty', part of a drive to highlight those institutions failing to improve access.

The representative stated that the Government is clear that hate crime of any kind, directed against community, race or religion, has no place in British society. In 2016, the Government published a new hate Crime Action Plan, which set out how the Government will tackle this divisive crime. Together, three government ministries, the Home office, the Ministry of Justice, and the Department for Communities and Local Government, are working together to prevent hate crime, support victims and prosecute the perpetrators.

He noted that it has been an important objective of Government policy for several years to raise awareness of hate crime and to encourage reporting. It is possible that the increase in reporting is a result of greater knowledge about hate crime overall, increased reporting of the topic in the media, and greater confidence in the value of reporting it. Recent reports of hate crime have been taken very seriously, by Government and all parts of civil society.

The Chair-Rapporteur thanked the three delegations for their presentations under item 4, and invited the Committee for additional interventions and comments on the topic.

The representative of Pakistan, speaking on behalf of the Organization of Islamic Cooperation (OIC) noted steps had been taken by OIC countries to address the contemporary manifestations of racism, racial discrimination, xenophobia and religious intolerance. He stated that OIC countries were multicultural and multi-ethnic. It was leading on the 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" and its implementation through the Istanbul process as a ways and means to address issues of religious intolerance around the world. Pakistan made additional remarks in its national capacity stating that the Constitution of Pakistan and various specific legislation provided protection in respect of discrimination and religious belief, and that Pakistan had a National Action Plan as well. The representative inquired about how to proceed with the topic of comprehensive anti-discrimination legislation, and how it was related to the Ad Hoc Committee's work and mandate.

The representative of South Africa inquired about the agenda item on comprehensive anti-discrimination legislation, noting that while its delegation would be pleased to hear about national legislation; however, inquiring how it assisted the work of the Ad Hoc Committee. The representative asked whether elements from the European Union Framework decision of 2008 would be helpful to the work of the Ad Hoc Committee.

The Chair-Rapporteur raised the question of the legal status of the European Union Framework decision 2008, to which the representative of the European Union explained that the Framework must be transformed into the domestic framework to ensure uniformity in all twenty-eight Member States. She added that there was no explicit definition of racism or xenophobia in those decisions, and that rather the link should be made between the mandate of the Ad Hoc Committee and the ICERD and the general recommendations of the

CERD Committee. With regard to hate speech, motivation based on hatred could be an aggravating element in jurisdictions.

The representative of South Africa stated that it was not advisable for the Committee to delay progress in its work by legal definitions, noting that racism was not defined in the ICERD either, and yet its meaning was understood. Committee discussions on the possible threshold for standards of conduct (for example, "grave" or "aggravated") would be of greater benefit.

The representative of Spain stated that the present tools and instruments were sufficient and that national level laws and actions should be directed to provide protection to victims. He noted that the current criminal law regime already provides a proportional and appropriate response to these phenomena.

The representative of Pakistan, speaking on behalf of OIC noted current legislation being enacted around the world relating to hate speech and border management, with implications for racial and religious profiling. He questioned whether there was legislation in place in various jurisdictions against racial and religious profiling, and stated that it would be interesting to hear and share comparative legislative experiences in this area, particularly relating to Islamophobia, negative stereotyping, and border management issues.

At its 3rd meeting on 25 April, the Ad Hoc Committee continued its consideration of anti-discrimination legislation under item 4.

The representative of South Africa delivered a statement on behalf of the African Group. She stated that the struggle for the decolonisation of Africa and the right to self-determination and independence, starting from the founding of the Organisation of African Unity (OAU) in 1963 of the African Union, has been preoccupied with human rights. The fight for the liberation and independence from colonialism and apartheid was an anti-racial discrimination struggle. When the continent of Africa waged the struggle against colonialism and apartheid, it waged war against racism, which is deeply embedded within the universal human experience and the contemporary global village in which all people lived. The anti-discrimination discourse could not be divorced from the continent's historical context, particularly when it is understood that the struggle for human rights and the establishment of a human rights system are products of a concrete social struggle.

It was for this reason that the Constitutive Act of the AU — including, amongst others, (a) the Charter on Human and People's Rights; (b) the Protocol on the Peace and Security Council; (c) Protocol on the Rights of Women; and (d) African Youth Charter — has further made non-discrimination an explicit part of its mandate, and mainstreamed human rights in all its activities and programmes.

The representative stated that when the United Nations member states gathered in Durban in 2001, it was because the international community came to a realization that despite the end of colonialism and apartheid, racism and sexism have not been quietened and it did indeed exist. There was also further realization that contemporary manifestation/s of racism, including xenophobia, anti-Semitism, Islamophobia and expressions of racism through cyber space. Race and gender continued to define the actual living spaces that billions of human beings occupy. They dictated the boundaries that frustrate the translation into reality of the noble concepts that people are born equal. Paragraph 199 of the Durban Programme of Action was indication that Member States of the United Nations agree and uphold the view that racism must be defeated. In this context, the African Group recommended that the draft protocol on xenophobia should recognise that racism and xenophobia constitute a threat against persons, and groups of persons, which are a target of such behaviour. The protocol should therefore be aimed at criminalising grave violations and abuses. The Committee needed to recognise that combating racism and xenophobia required various kinds of measures in a comprehensive framework.

The representative of India stated that his delegation firmly believed that the racism and racial discrimination are the most pervasive acts often leading to serious violation of human rights.

He shared some of the existing anti-discriminatory laws and policy in India. The representative cited the legal provisions and mechanism enshrined in our Constitution that

provide an overall framework to achieve equality of opportunity to all its citizens and persons alike. Articles 14, 15, 16 and 18 of the Constitution of India are some of the key provisions that assure non-discrimination. Article 14 of Constitution of India states: "The State shall not deny to any person equality before the law and equal protection of laws within the territory of India." Article 15 (1) says, "The State shall not discriminate against any citizen on grounds of religion, race, sex, place of birth or any of them". Again Article 16 (1) says, "There shall be equality of opportunity of all citizens in matters relating to employment of appointment to any office under the State".

India had in the context of private sector employment, a comprehensive action plan that would address discrimination and harassment at the work place. The Indian judiciary over the years, had taken a pro-active approach to protect employees in the instances of discrimination and harassment by any employer. At workplaces, most employers comprehensively cover all general discrimination and harassment issues as part of their internal policies. To name specific legislation in this regard is: Sexual Harassment of Women at Workplace Act, 2013 (SHWW Act) which is a notable statute that would ensure non-discrimination and protect women from being harassed at workplace. Many private workplaces had already ensured as a matter of their internal policy, a free and fair access to their employees having disabilities. In a recent decision of the Indian judiciary, it has been noted that a company has duty to treat all persons with disabilities with dignity and respect, and any discrimination against or harassment of such persons with disabilities shall result in a fine imposed on or other action being taken against the company.

India was one of the earliest countries to sign and ratify the International Convention on the Elimination of All Forms of Racial Discrimination. The representative stated that India practices dualism, and with extensive constitutional provisions and other legislation in place, India can fully ensure and guarantee the effective implementation of our international obligations under ICERD.

Like many other countries, India also recognized the significance of the Durban Declaration and Programme of Action (DDPA). A notable achievement by the international community aimed at developing international standards to strengthen and update international instruments against racism, racial discrimination and xenophobia in all its aspects. In fact, the Durban Declaration explicitly calls upon States to design, implement and enforce effective measures to eliminate this phenomenon. As mentioned earlier by other representatives, paragraph 199 of the Durban Programme of Action mandates us to elaborate some complementary standards that would address the concerns of racism, racial discrimination and xenophobia.

He commented that neither the Indian constitution nor any specific legislation defines the meaning and scope of xenophobia, and that India was keen to listen to others where some of these complex terms have been defined in their respective national legislation.

The representative of Egypt shared the country's experience in the field of combatting discrimination. In 2014, a new constitution had been enacted that prohibited all forms of discrimination. Discrimination was consequently a crime that was punished by law. Egypt had established an independent commission that dealt with discrimination and several laws new laws had been enacted in order to address these phenomena. The representative also stated that Egypt had also launched several programmes against discrimination, often in cooperation with national human rights institution and civil society. These programmes covered for example, the housing sector. The national human rights institution was also in charge of studying complaints received from victims of discrimination. In addition, all ministries had installed focal points for women and people with disabilities. At the international level, Egypt noted that it was concerned about the rise of racism and discrimination, and expressed its hope that a draft protocol would address those matters.

The representative of Cuba gave a presentation on existing anti-discrimination legislation in the country, noting that current legislation that prohibited discrimination. The representative cited articles of the Constitution prohibiting discrimination, in particular Chapter VI, Article 14 which provides that all citizens had the same rights and

responsibilities and Article 42 that specifically prohibited racial and other forms of discrimination. Based on Article 42 of the Constitution, the criminal code had (among others) the objective to protect society, the social, political, economic and state order. The labour code (Law 116) in its article 2 the fundamental labour rights principles, which expressly prohibit discrimination in the work place based on skin colour, gender, religious beliefs, sexual orientation, territorial origin, disability, etc. Cuba was now engaged in drafting a multi-sectorial policy, in order to eliminate the vestiges of racial discrimination. He also noted national reform efforts aimed at reviewing policies and existing laws. Changes would, in particular, be introduced in the educational system and a programme on African origins might be introduced. Further efforts would focus on special education programmes directed at education and law enforcement on discriminatory practices, and diversifying the public debate. The delegate then referred to additional legislation prohibiting and preventing racial discrimination in Cuba, including national legislation that prohibits the promotion of ideas or theories of superiority of one race or group of persons of one colour or ethnic origin, which attempt to justify or promote racial hatred and discrimination.

The representative of Mexico gave a summary of its national-level experiences, noting that Mexico rejected any form of discrimination and legislation prohibited all forms of discrimination, and that xenophobia was criminalized under that legislation. Mexico's federal act contained measures prohibiting discrimination and listed the grounds of discrimination. Mexico had also established a national council tasked with the prevention of discrimination. That body was also responsible for measures of affirmative action and for monitoring the implementation of such measures. In addition, it was called upon to mediate in racial discrimination cases. The representative recalled that those amendments to the criminal code being planned in her country, had been shared with the Committee during its seventh session.

The representative of the Bolivarian Republic of Venezuela noted that the Venezuelan constitution incorporated the principle of non-discrimination. In addition, the country had enacted a number of laws, including the law against racism that was implemented in 2011, dealing with discrimination on a wide range of grounds. Article 10 of the law contained a definition of xenophobia, as well as definitions of racial discrimination, ethnic origin, national origin, vulnerable groups, cultural diversity, racism and "endo-racism." In compliance with the law, the Bolivarian Republic of Venezuela created the National Institute against Racial Discrimination, following the guidance provided in the Durban Declaration and Programme of Action. The focus of Venezuelan legislation was to provide protection to social groups that were considered vulnerable, including people of African descent. Specific measures were contained in the 2013–2019 "Plan de la Patria" and the "Plan de Derechos Humanos" that were being implemented in the period 2015–2019. A number of laws were sector specific, focusing for example on the work force and corporate social responsibility law that providing penalties for television and radio broadcasters for any emission that incites hatred and intolerance for religious, political, gender, racist or xenophobic reasons, as well as any other form of discrimination. The law contemplates administrative sanctions for television broadcasters, radio stations and electronic media that commit these offences. The representative reaffirmed his country's support for the need to draft complementary standards to ICERD.

The representative of Japan stated that the constitution of the country stipulated that all people were equal under the law and there should be no discrimination based on political, economic or social status or family origin. Based on the constitution and relevant laws, Japan had been fighting various forms of discrimination and had been striving to realize a society without any form of racial or ethnic discrimination. Japan had hoped that the Committee would have future oriented discussions in order to come up with practical and effective measures against racism. According to Japan, official statistics reflected that the 2,282,822 foreigners from 190 countries living in Japan at the end of 2016, were being protected by anti-racism legislation.

Speaking in her national capacity, the representative of South Africa stated that the ICERD and the DDPA affirmed the necessity of eliminating racial discrimination throughout the world in all its forms and manifestations. The ultimate intention of all these

efforts was to ensure the respect and dignity of the human person and to promote the observance of human rights for all persons regardless of race, sex, language or religion. Efforts towards the total elimination of racism, racial discrimination, xenophobia and related intolerance had a special significance for South Africa, given the country's tragic history of injustice, dispossession and inequality. The representative further explained that apartheid affected each and every part of a person's life — where they were allowed to live, whom they could marry, who they could associate with, which government services, if any, they could access. Dismantling the edifice of apartheid involved much more than the repeal of apartheid legislation and its replacement with legislation based on equality and the rule of law. The achievement of substantive equality required a much more determined effort. It required not only political will, but also dedicated resources. It required building new institutions to support constitutional democracy. It required the progressive realization of socioeconomic rights for all our people. Policy formulation in this environment required the careful balancing of interests — with the goal of enhancing the dignity of all of our people whose everyday lived experiences still, in many ways, reflect the legacy of apartheid.

The work of the Government of South Africa was directed towards redressing the inequalities of the past, the representative said. The Constitution of South Africa formed the basis of the country's social compact. Through the constitution, the country sought to heal the divisions of the past and establish a society based on democratic values, social justice and fundamental human rights.

The majority of South African women, who were black, were the most oppressed section of the country's people, suffering under a triple yoke of race, gender and class oppression. The liberation of women was, and still remained, central to the struggle for freedom. South African women had come a long way in the struggle for recognition, promotion, protection and realisation of their rights. This struggle was part of the larger struggle against apartheid, the consequences of which are still felt today. Thus, the empowerment of women and the achievement of gender equality in South Africa also involved dealing with the legacy of apartheid and the transformation of society, particularly the transformation of power relations between women, men institutions and laws. It was about addressing gender oppression, patriarchy, sexism, ageism and structural oppression and the creation of an environment that is conducive to women taking control of their lives.

South Africa, the representative noted, had passed a number of laws to give effect to its constitutional goals of achieving equality, human dignity and the advancement of human rights and freedoms. During the last 23 years of democracy more than 1200 laws and amendments aimed at dismantling apartheid and eradicating all forms of discrimination were passed. South Africa was currently in the process of finalising the National Action Plan, in accordance with the Durban Declaration and Programme of Action. The NAP provided the basis for the development of a comprehensive policy framework against the scourges of racism, racial discrimination, xenophobia and related intolerance. Importantly, the development and actual implementation of programmes, measures and activities in respect of the NAP lied with all government departments, institutions supporting constitutional democracy, civil society as well as business, labour, the media and other sectors. The NAP would also provide South Africa with a comprehensive policy framework to address racism, racial discrimination, xenophobia and related intolerance at both a private and public level. It was not intended to replace existing laws and policies — rather it was complementary to existing Government legislation, policies and programmes which address equality, equity and discrimination. The overall goal of the NAP was to build a non-racial, non-sexist society based on the values of human dignity, equality and the advancement of human rights and freedom. The government had recently published the Prevention and Combating of Hate Crimes and Hate Speech Bill. Once it became law, it would criminalise several forms of discrimination including on the basis of race, gender, sexual orientation, religion and nationality. This Bill was an illustration of the seriousness with which South Africa viewed hate crimes.

The representative of the Plurinational State of Bolivia stated that the knowledge of history helped to prevent future intolerance. Racism, discrimination, xenophobia and Afrophobia are interconnected forms of intolerance and have its origin in the accumulated combination of process that have not yet subsided. The Plurinational State of Bolivia

rejected any form of discrimination and the Bolivian Constitution, in particular in Article 14, prohibited all forms of discrimination based on sex, colour, origin, gender, sexual orientation, language, religion, ideology, political reasons, civil status, economic or social status, educational level, occupation etc. Bolivian anti-racism law defines xenophobia as "hate or rejection of a foreigner, reaching from manifestations of rejection to different manifestations of aggression or even violence." The law was implemented by a Directorate for Anti-Racism, a public institution that had taken up its functions this year. The representative confirmed his country's commitment to the work of the Committee.

The representative of Brazil noted that racism was a crime according to the Brazilian Constitution. As in most countries, Brazil also had specific laws and provisions on crimes of racism and xenophobia, which punished those crimes. Brazil understood that combating racism and racial discrimination also required the direct action of the Brazilian State, in order to ensure equality. In 2010, Brazil adopted a Racial Equality Statute to ensure equal opportunities to the Afro-Brazilian population. The Statute provides that: "Besides the constitutional norms, related to the fundamental principles, to the fundamental rights and guarantees and social, economic and cultural rights, the Racial Equality Statute adopts as a political and legal guideline the inclusion of victims from ethnic-racial inequality, the appreciation of ethnic equality and strengthening of the Brazilian national identity. The participation of the afro Brazilian population in equal conditions of opportunity in the economic, social, political and cultural life of the country shall be promoted primarily through: I — inclusion in public policies of economic and social development; II — adoption of measures, programs and policies of affirmative action; III — changing of the institutional structures of the State for the adequate coping and overcoming of ethnic inequalities stemming from ethnic prejudice and discrimination; IV — promoting normative adjustments to improve the struggle against ethnic discrimination and ethnic inequality in all its individual, institutional and structural manifestations; V — removing historical, sociocultural and institutional barriers that obstruct the representation of ethnic diversity in public and private spheres; VI — encouraging, supporting and strengthening initiatives from civil society aiming to promote equal opportunities and fighting ethnic inequalities, including through the implementation of incentives and criteria for conditioning and priority in the access to public resources; VII — implementation of affirmative action programs aiming to cope with ethnic inequalities in terms of education, culture, sport and leisure, health, safety, work, housing, means of mass communication, public funding, access to land, justice, and others."

The representative of Jamaica stated that the country was a post-slavery society, and noted that a majority of the population was of mixed origin. As such, the Jamaican Constitution was naturally defined by a strong focus on anti-discrimination. Chapter 13 of the Constitution, spoke to the rights of all persons. She outlined from a national perspective what was required to address racial discrimination and underlined that investment in education was key to combatting discrimination. She also noted that there were many avenues for victims to redress discrimination, but very often, victims were not aware of their options. Education was therefore needed to supplement the laws; and that it was essential to focus on the implementation of the existing legal framework. The representative expressed that Jamaica had to further focus on the implementation of anti-discrimination legislation rather than embarking on creating new and costly laws.

A representative of the non-governmental organization Indian Council of South America noted his organization's struggle to support a "decolonization" of Alaska. The representative mentioned de-colonialization, and asked about a United Nations body that would consider this cause. He mentioned this as proof of a gap in the current international legal framework that was linked to racism, as he believed that the colonialization of Alaska was based on racist beliefs.

Before the end of the meeting the Chair-Rapporteur reiterated the reasons for the existence of the Committee, referred to the genesis of the body and spoke about its mandate. He noted that the General Assembly had now issued new instructions to the Committee in resolution A/RES/71/181 that requested the Committee to commence negotiations on the draft additional protocol "criminalizing acts of a racist and xenophobic nature."

Protection of migrants against racist, discriminatory and xenophobic practices

At the 4th meeting on 25 April, the Ad Hoc Committee considered agenda item 5. E. Tendayi Achiume from the School of Law of the University of California, Los Angeles, United States of America, and Research Associate at the African Centre for Migration and Society, University of Witwatersrand, South Africa, and Ibrahima Kane from the Open Society Initiative for Eastern Africa, presented on this topic.

Ms. Achiume gave a presentation entitled "Protection of Migrants against Racist, Discriminatory and Xenophobia Practices — An International Human Rights Approach: Limitations and Possibilities". She distinguished between the concerns and vulnerabilities of voluntary migrants and involuntary migrants, as well as migrants and refugees, and protection regimes for these groups. She cautioned against too siloed an approach in the protection of these groups, as perpetrators of xenophobic discrimination and violence did not distinguish between refugees and other migrants. Ms. Achiume described the phenomenon of xenophobia as "illegitimate anti-foreigner acts or attitudes", and further elaborated that xenophobia was compounded by foreignness (on account of their nationality or national origin) and other intersectional social categories including race, ethnicity, religion, class and gender. She added that racism and xenophobia were overlapping when race is often an explicit or implicit basis for xenophobic discrimination and anxiety. At the same time, she stated that there existed a distinction between the two when race is not always salient in the construction of foreignness where migrants are concerned, including when non-citizenship can amplify the negative impact of racism, and addressing racism alone may not appropriately address the circumstances of non-citizens experiencing racial discrimination.

Ms. Achiume stated that there was an absence of a clear answer in international human rights law as to when anti-foreigner attitudes and actions become xenophobic. She pointed out that while ICERD provided an important framework for addressing xenophobic discrimination, it has a number of significant shortcomings that limit its capacity fully to protect migrants (especially involuntary migrants) from xenophobic harm. She pointed out the ambiguity in Article 1 of ICERD about the extent and scope of its prohibition of xenophobic discrimination, the contested legal status of CERD General Recommendations, and the gap in terms of the status of religious discrimination against migrants. She provided a number of examples aimed at criminalizing acts of a racist and xenophobic nature such as the Additional Protocol to the Convention on Cybercrime Concerning the Criminalization of Acts of a Racist and Xenophobic Nature Committed Through Computer Systems. Ms. Achiume recommended for the elaboration of global anti-xenophobia norms by clarifying the bounds of prohibited manifestations of xenophobia, and to account for non-criminal intervention; pursue a human rights-based approach that views social cohesion and integration as vital for combatting xenophobia, and to pursue a coordinated approach that situates ICERD elaboration within broader reform efforts tied to the international regulation of migration, such as the Global Compacts on Migrants and Refugees.

Mr. Kane from the Open Society Initiative for Eastern Africa, presented an analysis of the migration and refugee situation in Africa, with a focus on Southern Africa. He pointed out that intraregional emigration in Sub-Saharan Africa is the largest south-south movement of people in the world. Southern Africa has a long history of intra-regional migration even before the drawing of colonial boundaries, with male labour migration to the mines and commercial farms and plantations. Mr. Kane highlighted a number of factors attributing to migration in the Southern region, including governance deficit, growing inequality and poverty; the historical legacy and consequences in the nature of state-formation and social pluralism, including Apartheid, and conflicts in the region; gender inequality exacerbated by gender based violence, and the inadequacy and poorly funded institutional mechanisms and capacity for conflict resolution and management at the regional level. He emphasized that there was a pressing need to implement the migration policy at the AU level, including through the adoption of the proposed AU Protocol on the free movement of persons in Africa and Protocol to the African Charter on Human and Peoples' Rights on the right to a nationality in Africa along with regional dialogue on the issue of migration, and the need to harmonize labour migration policy and data collection.

During the interactive discussion, the representative of the European Union shared its measures to combat racism and xenophobia, including its action plan on building inclusive societies, and legislation to criminalize hate speech. The representative of Mexico shared its concerns about the vulnerability faced by migrants and stated that education initiatives were important to combat xenophobia, as undertaken by its National Council to Combat Discrimination, through specific campaigns to promote and protect rights of migrants. The representative of the Plurinational State of Bolivia asked about the extent of conceptual and legal understanding in terms of setting up systems to eradicate xenophobic acts in international transit. The representative of South Africa highlighted its own history of South Africans having been refugees in their own region and the historical movement of its people, and asked a question whether the tendency to invoke sovereignty when it comes to managing migrants was specific to Southern Africa as a region or if there were differences in policies among the different countries in the region.

The representative of Pakistan asked the panellists on its opinion regarding preferred processes to deal with xenophobia and the rights of migrants and whether the ICERD through its General Recommendations and the ongoing work of the Committee (through the development of an Optional Protocol) or the Global Compact process provided better ways to address the problem. The representative of Jamaica asked the panellists for their view on the issue of consular assistance and the Vienna Convention on consular relations pertaining to addressing situation when people come into conflict with the law in foreign countries, and the possibility to address the real or perceived xenophobia faced by migrants in such situations. The Chair-Rapporteur asked the panellists if there was any justification for the non-ratification of the Migrant Workers Convention in Southern Africa, and asked Ms. Achiume, whether the non-reference of racism in ICERD could be seen as a gap.

Mr. Kane in response said that Southern Africa had a significant experience on migration due to the historical legacy of apartheid. In his opinion, South Africa should play a leading role in promoting the implementation of the SADC protocol on the movement of persons. Ms. Achiume responded that on the issue of transit countries and borders, extra-territorialization of borders resulted on gross human rights violations. She added that borders allow for the exercise of heightened discretion on the admission of non-nationals. As such, she suggested that it was essential in such situations additional clarity in the extent exercise of discretion was required in treating incoming migrants. With regards to racial discrimination, while ICERD was a touchstone to address racial discrimination worldwide, the Convention is focused on biological determinants of race and as such there are gaps in it to address racism as an evolving social construct and cultural markers, including gaps in addressing xenophobic discrimination. She added that it was essential that there was more clarity required within ICERD framework to address xenophobia and cannot therefore be outsourced to the Global Compacts on migrants and refugees. Moves to criminalize a xenophobic act should necessitate a comprehensive understanding on ICERD, she added. Ms. Achiume further emphasized the importance of national action plans to combat racism and criminalization of xenophobia for a comprehensive and harmonized human rights response.

On 26 April, at its 5th meeting, the Ad Hoc Committee continued its consideration of agenda item 5. Peggy Hicks, Director of the Thematic Engagement, Special Procedures and Right to Development Division, OHCHR, and Kristina Touzenis from the International Organization for Migration, gave presentations on this topic.

Ms. Hicks noted that migration is a universal phenomenon — migrants can be found in practically all countries. Migration can be a positive and empowering experience for many migrants. Yet, too often migrant women, men, boys and girls find themselves in a precarious situation. She noted that, increasingly, restrictive measures are being taken across the world that prevent migrants from accessing their rights. Migration is further the subject of intense debate in the media, in political circles and in public discussions. The public narrative on migration is deeply polarised as a result of the many myths, misunderstandings and even falsehoods that have taken the place of facts and evidence in the debate.

Ms. Hicks noted that three issues are of particular significance:

The language that is used and how the narrative on migration and migrants is framed: Terminology plays an important role in shaping the migration narrative and inciting hatred against migrants. Terminology has long been used to distance migrants and their communities from the mainstream, to marginalize and stigmatize them as the unknown 'Other', or even to dehumanise migrants. She notably mentioned terms such as 'illegal', 'economic migrant', or 'bogus asylum seekers' to be particularly harmful. She noted that OHCHR's challenge is how to frame narratives on migrants and migration that are based on evidence and principles, but resonate with a broader public.

Lack of data and evidence: In the migration context, data gaps are more glaring than in other areas as migrants and, in particular irregular migrants, often are not reached by data collection methods. Yet, that glaring absence of data characterises much of the debate and indeed policy-making on migration. A critical lack of data collection on the rights of migrants often conceals exclusion and makes it difficult to dismantle patterns of discrimination.

Criminalization of migrants and discriminatory practices: Public policies that criminalize irregular migration and those who provide services to migrants stigmatize, marginalize and exclude migrants and their communities and put them at further risk of abuse and exploitation by leaving them without protection, support and assistance.

Ms. Hicks addressed the issue of international law and the protection of migrants. She noted that migrants are protected by all United Nations human rights treaties, including the ICERD, and that States are required to respect, protect and fulfil the human rights of all migrants, regardless of their status and without discrimination. In September 2016, Member States reaffirmed and committed to fully protect the human rights of all migrants, regardless of their migratory status (New York Declaration, Annex II, 8i). They further condemned acts and manifestations of racism, racial discrimination, xenophobia and related intolerance against migrants, and the stereotypes often applied to them (New York Declaration, para. 14).

Migrants are protected by human rights norms and standards from discrimination or racism. However, the international community continues to struggle with inadequate implementation of these legal norms. States are therefore called upon to implement measures that range from strengthening law enforcement and criminal justice responses, putting in place accessible complaints mechanisms in order to ensure access to justice for victims, collecting better data on racist crimes, and developing awareness raising initiatives which focus on inclusiveness, diversity and human rights. Concretely, States are called upon to promulgate robust anti-discrimination and equality legislation that protect migrants from all forms of discrimination including on grounds of nationality or migrant status, establish national specialized bodies in this respect, and develop benchmarks for the elimination of xenophobia against migrants. They should provide accessible legal, medical, psychological and social assistance to migrants affected by racism, xenophobia and discrimination. Integration and anti-discrimination policies should be developed through the participation of migrants and other relevant stakeholders.

States should develop and implement clear and binding procedures and standards on the establishment of "firewalls" between immigration enforcement and public services at all levels, in the fields of access to justice, housing, health care, education, social protection and social and labour services for migrants. In the context of racism and xenophobia, this means that migrants, independently of their status need to have access to mechanisms to challenge racist and discriminatory acts and bring perpetrators to justice.

Partnerships should be established with political leaders and parties, media, private sector, local communities, trade unions and other public actors, to promote tolerance, and respect for all migrants, regardless of their status. Other responses could include public education measures, child rights education programs and education curricula, and conduct targeted awareness campaigns in order to combat prejudice against and the social stigmatization of migrants. OHCHR has developed a number of tools, which contain the aforementioned practical guidance to States and other stakeholders.

Under the Global Compact on Safe, Orderly and Regular Migration, States have acknowledged a shared responsibility to govern large-scale movements in a humane,

sensitive, compassionate and people-centred manner, recalling their obligations to fully protect the human rights of all refugees and migrants as rights-holders, regardless of their status. The main challenge was to translate the aspirational words of the Summit and the New York Declaration into a concrete plan of action. The proposed global compact on safe migration could provide that concrete plan.

In conclusion, Ms. Hicks state that OHCHR has taken note of the recent General Assembly resolution 71/181 and Human Rights Council resolution 34/36 that called upon the Committee to "ensure the commencement of the negotiations on the draft additional protocol to the Convention criminalizing acts of a racist and xenophobic nature during [its] tenth session". She added that OHCHR looks forward to more pragmatic progress during the current session, so as to provide guidance on ways to address racism, racial discrimination, xenophobia and related intolerance more effectively.

Ms. Touzenis, International Organization for Migration, presented on migrants' rights and on policy efforts to address migration. She started by emphasizing that migrants have the same rights as nationals. Rights are in no way reserved exclusively for nationals. Though this important fact may be obvious for people dealing with human rights, there are countries were part of the population would distinguish between nationals who have rights and migrants who do not deserve any rights. It is essential to communicate with those populations, governments as well as politicians (as they often use migrants as scapegoats), in order to inform them that the targeting of groups is unlawful.

She emphasized that communication is indeed a key factor in framing policies on migration. She noted that the discourse that focuses on discrimination of the 'Other' needs to be turned into a more positive discourse. One could achieve that goal by combining a number of approaches, one of them being the adoption of new law. Such new law is, however, hard to obtain. The international legal human rights framework already covers the subject of racism and xenophobia, but guiding principles to facilitate the implementation of these international laws in the context of migration could be useful. Guidelines could notably spell out how migrants' human rights should be implemented.

She noted that the issue of hate speech has often been topical, but that focusing on hate speech could be slightly misleading as discrimination is often more subtle. As an example, she referred to the term "illegal migrant" and noted that a person could never be illegal. Such commonly used terminology would not fall under hate speech but is still based on the assumption that migrants might not enjoy the same amount of rights as a national of a country. That wrong assumption, which seems to prevail in the area of migration, is never used when describing other groups, such as women.

In order to rectify the situation, the expert recommended implementation of the existing legal framework as a key priority. Implementation should not only concern the national level, but also encompass the local level. Municipalities are a key player as they are often responsible for integrating migrants. They should therefore be consulted when framing a policy response to migration. Municipalities often have experiences that constitute good practices and that could serve as models for counteracting hateful acts. Other important stakeholders that could participate in the framing of a policy response and in implementing existing laws include the judiciary, which needs to be empowered to this purpose, and civil society, which is an important partner when it comes to raising awareness through campaigns.

The expert also pointed out that good migration policies would support the rights of the individual and would establish long term migration goals. The current international legal framework is a good basis for improving or redrafting such policies. The existing legal framework also provides for addressing hate speech and xenophobia. The issue of implementation, however, would need further concerted efforts. The expert mentioned that IOM is already putting considerable efforts behind this goal and aims at facilitating implementation of sound migration policies by including a human rights based approach in all of its policies.

The Chair-Rapporteur underlined some of the points made by the presenters including the importance of seriously addressing hate speech; the fact that denying human rights to some human beings — be they migrants — actually impacts on the human rights

of all; the importance of terminologies and of referring to migrants in non-pejorative terms; as well as the importance of legal channels for migration. He also noted that an international legal framework on migration and the need for guidance on how to implement international human rights law are important. He opened the floor to discussions and comments.

The representative of South Africa noted that the two presenters had focused their presentations on the receiving states, rather than on the sending states. She asked if the economic, political and social state of the sending state should also be considered in order to frame policy recommendations.

Ms. Touzenis responded that it is indeed very important to also analyse the drivers of migration in the countries of origin. The reasons for migration are diverse, combining a variety of economic, social and political factors. She stressed that, in her view, the terminology 'economic migrant' is harmful because it suggests that migrants come to 'steal our jobs' and undermines the fact that migration also has a positive impact for receiving economies. Addressing those factors in sending countries is a complex issue because it concerns different policy fields and social problems, such as development, corruption, the political situation, as well as other issues, in the country. Countries of origin are of importance because of the necessity to inform migrants about their rights prior to embarking on their journey. She notably referred to the work done by IOM in providing pre-departure information and training to potential migrants. She also added that, in terms of numbers, the flows of migrants and refugees are not so big.

Ms. Hicks agreed that it is important to analyse the various factors that encourage migration; as racism could be such a factor, as well as the economic situation. She stressed that it is important to base policy efforts on a holistic picture that is also informed by the right to development.

The representative of the European Union underlined the importance of taking into account the risk of 'history repeating itself' raised by one of the presenters. She noted that, despite its strong anti-discrimination legal and policy framework, the European Union was yet to find a response to the issues raised by the construction of this idea of the 'other'. She noted that there is a strong international framework that covers migration. ILO conventions on migrant workers cover, for example, the issue of migration and workers' rights. She further voiced her agreement that implementation of human rights law is essential. She asked if the Global Compact would be the venue to develop policy guidelines for migrants.

Ms. Touzenis responded and noted that the negotiation of the Global Compact on Migration could be the venue to discuss migrants' rights. Even though it is momentarily unclear what shape the document would eventually take, the goal of integrating a human rights approach into the document is already a clear goal that one could follow up on. Ms. Hicks agreed that the legal framework on migration has gaps, for instance concerning the detention of children, while the human rights framework is already providing sufficient clarity but lacks — in many cases — implementation. Ms. Hicks mentioned that the Global Compact on Migration is one of the avenues where some of these gaps could be addressed.

The representative of Pakistan, speaking on behalf of OIC, highlighted the importance of narrative building with regards to racial discrimination against migrants and refugees in receiving societies and, thus, the importance for the Ad Hoc Committee to address the issue of hate speech, which could also take the form of xenophobic and Islamophobic speech. In this respect, he noted that States need to find a balance between preserving the freedom of speech and limitations on hate speech.

Ms. Touzenis noted that the tension between freedom of expression and hate speech is an important issue and courts have already expressed their opinions on that issue. Those judicial statements provide guidance on how to approach the subject. The expert notably referred to the European Court of Human Rights, which had heard interesting cases on the limitations of freedom of expression. She noted that freedom of expression is indeed a fundamental human right but could be limited when it impinges on other fundamental human rights. Ms. Hicks stressed the need to prevent hate speech and, at the same time, to not infringe on freedom of expression, and outlined some recent progress made on this issue.

The expert, Ibrahima Kane, Open Society Institute for Eastern Africa, noted that legal proceedings might not be an ideal way to implement migrants' rights. An alternative approach that he supports would be to use statistical data to point to the positive effects of migration. He noted that, for example, a South African initiative is using data that show that migration has a positive economic effect. Such data has the potential to change the perception of migrants. Ms. Hicks and Ms. Touzenis agreed that the use of data to provide a different narrative about the positive effects of migration is a very useful approach. However, it should be complementary, and not replace, legal proceedings, including the criminalization of certain acts, in order to prevent impunity for such acts.

The representative of the Plurinational State of Bolivia referred to seasonal migratory patterns of indigenous people in his country and raised concerns on the compatibility of complementary standards with national legal frameworks.

The representative of Brazil asked Ms. Touzenis to develop her point on the fact that not criminalizing certain acts, especially of racism and xenophobia, grants impunity for these acts, and to link it to the mandate of the Ad Hoc Committee, notably in light of the latest Human Rights Council resolution 34/36.

Ms. Touzenis responded that, though she may not be in the position to reflect on the mandate of the Committee, she considers that not taking acts that are motivated by racism or xenophobia sufficiently seriously from a legal perspective would send the signal that such criminal acts are not so serious. In many national legal systems, the certain motivations to commit criminal acts, notably xenophobic and racism motivations are considered aggravated circumstances.

The representative of Tunisia outlined her country's approach to the implementation of the right to development and the positive impacts it can have on both countries of origin and receiving countries. She stressed that migrants are people who have something to bring to the host country and can contribute positively to their economic prosperity. She noted that, though the right to development is implemented in developed countries, this is not the case in under-developed and developing countries. In this light, she asked whether preventing migrants from the opportunity to move would not exclude them from the right to development.

Ms. Hicks welcomed the comment by the representative of Tunisia, stressing that the advancement of the right to development, as well as social and economic rights are part of OHCHR's work and would certainly help addressing migration in a more successful way, which includes developing legal channels for migration and dealing with illegal migration in a more humane manner.

Protection of refugees, returnees and internally displaced persons against racism and anti-discriminatory practices

On 26 April, at its 6th meeting, the Ad Hoc Committee considered agenda item 6 on "Protection of refugees, returnees and internally displaced persons against racism and discriminatory practices". Ms. Cecilia Bailliet, Professor and Director of the Masters Programme in public international Law at the University of Oslo and Ms. Madeline Garlick, Chief of the Protection Policy and Legal Advice Section, Division of the International Protection at the Office of the United Nations High Commissioner for Refugees (UNHCR), gave presentations on this topic.

Cecilia Bailliet, Professor and Director of the Masters Programme in public international Law at the University of Oslo stated that the issue of protection of refugees, returnees, and internally displaced persons against racism and discriminatory practices is one of the most compelling challenges of contemporary times. Many persons are fleeing state failure, armed conflict, terrorism, insecurity, natural disasters, famine, and other situations which do not fit neatly into the 1951 Convention on the Status of Refugees, and hence complicate recognition of the legitimacy of their protection claims and related rights, although they may be covered by regional refugee and IDP instruments, such as the OAU Convention on Refugees and the Kampala Convention on IDPs.

In spite of the fact that the majority of displaced persons remain in the South, there has been a significant increase in discriminatory attitudes across the world against those forced to flee. There is a correlation between fear of terrorism and crime and discriminatory attitudes including religious stereotyping, racial discrimination, fear of non-assimilation (different values), concern about competition for scarce jobs and social benefits, etc. This context may be juxtaposed against the statistic that only 1% of refugees are resettled from the South to the North.

In addition, States are currently strengthening mechanisms to prevent the physical entry of asylum seekers, ranging from construction of fences and walls, to legal requirements based on nationality, such as visas, and other tactics to deny legal presence or stay. Asylum seekers are regularly treated as irregular migrants and denied protection when undergoing processing. The trend is to support containment or speedy deportation, at times in the form of disguised collective expulsion.

In comparison, she quoted that "in most of Africa these days, refugees are not welcomed with the exuberant sense of solidarity that surrounded the promulgation of the OAU Convention. Instead, African states are increasingly following the lead of other regions by closing their borders and threatening to forcibly return those who have made it into their territories. Even in those countries where refugees are readily admitted and positive policies towards them are in force, their treatment is not always in keeping with the Convention. Previously such treatment was by states alone but today it is also the treatment by the general public that is the concern as hosting communities have become increasingly hostile to the refugees."[1]

Ms. Bailliet presented a brief overview of the three scenarios faced by refugees and IDPs (namely protracted camps, urbanization, and detention) outlining the range of human rights violations and accountability gaps, arguing that these are examples of structural racism. She discussed normative gaps within international law, the role of compliance mechanisms, and the risk of inaction in the face of discrimination against refugees, using the case study of Norway, and discussed the way forward in the form of a new Protocol to the CERD.

First, she explained that the warehousing of refugees and IDPs in camps which commenced in the 1980's had now resulted in protracted containment in camps located in Kenya, Jordan, South Sudan, the United Republic of Tanzania, Ethiopia, Pakistan or off-shore locations such as Nauru. Refugees and IDPs are isolated from host communities and sentenced to a "forever temporary" existence, describing themselves as "children of UNHCR" and thus effectively stateless.

Refugees and IDPs were subject to many violations, including lack of access to food or clean water, denial of the right to work or study, exposure to diseases, sexual violence, etc. Collaboration between UN system agencies and NGOs as implementing partners or operational partners to run hospitals schools, provide water, sanitation, etc. can result in accountability gaps which prompt impunity in cases of corruption, negligence, denial of food, sexual exploitation, and physical violence. The camps are parallel states within states, where neither national law nor international law prevails. There are accusations of a lack of investigation, prosecution, or punishment for state and non-state actors responsible for violations. Refugees and IDPs lack mechanisms for redress and accountability, and there is no transparency in the processing of their cases or of their enjoyment of rights, thereby indicating grounds for structural racism. There is a need to articulate the legal obligations of the host state, International Organizations, and NGOs, as well as create a compliance mechanism to conduct visits and write reports.

Second, many refugees and IDPs were not in camps, but instead rendered invisible within large cities, where they work in the informal market and have little follow up by the State or UNHCR, although there are some programs available, they are limited. Urbanized refugees lack documentation and therefore may be excluded from education or suffer exploitation at work or in access to housing. They are often discriminated against and suffer fear of deportation.

[1] J O Moses Okello.

Third, Refugees in Western countries are often placed in detention or reception centres which may be very isolated from host societies. There is often little transparency regarding the conditions in the centres or the processing of cases. Asylum seekers may be denied legal aid (often legal information is given instead), they may be subject to accelerated procedures, non-suspension of deportation, age testing — including bone tests, dental examination, language testing, restrictions on family reunification, isolation, and excessive delays, this results in depression, humiliation, self-harm, suicide, etc. There is use of corporate actors to run detention centre creating clear accountability concerns. One of the problems regarding enjoyment of rights, she argued, is the lack of clarity regarding the normative regime which applies.

She addressed the issue of normative gaps within international law, stating that the 1951 Convention on the Status of Refugees provides a hierarchical framework for the enjoyment of rights which divides along the categories of jurisdictional control, physical presence, lawful presence, lawful stay, and habitual residence. Rights are granted in reference to three different groups — aliens in the same circumstances, most-favoured foreigners, and citizens. She explained that this framework is itself discriminatory and may further inequality in contradiction of Article 26 of the ICCPR.[2] Further, many asylum seekers are denied recognition as refugees, and instead given humanitarian protection which results in reduced enjoyment of rights.

Discrimination against refugees prevails in part because of the structures within national immigration systems, normative and institutional, as well as regional initiatives (such as the European Union Turkey Agreement, or even the Dublin Regime). She added that regarding IDPs, the UN Guiding Principles is soft law and lacks centralized compliance mechanism.

She addressed the role of the Treaty Bodies, ECTHR, UNHCR, IACTHR IACommHR, African Commission, and Constitutional Courts regarding Follow up of Refugees and IDPs. The Treaty Bodies have issued General Comments confirming the rights of refugees to enjoy protection of the treaties. The Treaty bodies set forth that distinctions must be based on a "reasonable and objective" standard — consistent application, not arbitrary, in pursuit of legitimate aim. This is similar to the European Union Test for Distinction which assesses whether distinction pursues an objective and reasonable justification, furthers a legitimate objective, regard for principles of a democratic society, and use of reasonable and proportionate means to the end sought.

However, the European Court of Human Rights accepts protection of country's economic system as a legitimate aim for treating aliens differently from nationals and the need to reverse illegal immigration as a legitimate aim for distinguishing between nationals and aliens in public benefits.

Treaty Bodies identify many of the most pressing human rights violations affecting refugees and IDPs, however, quite often the State is advised to consult with UNHCR, which can be problematic for a number of reasons including financial, legal and operational. There is a need for an independent actor to review compliance of States with human rights obligations pertaining to refugees and IDPs.

She emphasized the importance of taking concrete action to address discrimination against refugees, citing the concluding observations of CERD to Norway in 2011 which identified the risk of hostile acts linked to racism prevalent in the media and among political actors. On 22 July 2011, the mass killings occurred in Oslo and on the island of Utøya. In response, Norwegians gathered for a rose ceremony in the capitol where they claimed allegiance to the values of democracy, openness, and humanity. However, by 2015, CERD had once again to express continued concern about hate speech. Norway had also undertaken a series of legislative reforms which had negatively impacted refugees including the removal of independence of the Immigration Appeals Board, now subject to instruction by the Ministry of Justice; a significant increase of hiring of immigration police to facilitate deportation, a marked decrease in asylum appeals, in part based on substantial increase in deportations — 3,400 less appeals, the hiring of extra case workers to process an expected

[2] Marina Sharpe.

influx of asylum seekers which never arrived resulted in reassignment of caseworkers to screen persons granted citizenship for grounds for cancellation going back 20 years in order to withdraw citizenship, restrictions on family reunification, ongoing discrimination regarding access to housing, education, workplace, etc., weakening of the ombudsman addressing discrimination cases, and continued use of detention, including children, solitary confinement. These developments, in the expert view, underscored the urgency to take action to ensure that equality and non-discrimination are lifted so that States can correct policies and legislation which run contrary to these principles.

Ms. Bailliet stated that there is arguably a need for a new protocol to CERD addressing discrimination against refugees and IDPs. She suggested that this instrument would receive political attention and should be promoted at the highest level by the UN Secretary General. It should include a compliance mechanism, either following the Optional Protocol to the CAT which set forth a Sub-Committee and national mechanism or the Disabilities Convention, which relies on national monitoring, or the European Union Rapporteur on Racism, which conducts visits and writes reports. She added that although creating a CERD General Recommendation or a UNHCR Guidance Note might be considered; it may prove a helpful source for legal cases, but would be unlikely to prompt a political response.

She added that there is a need to review the recent reforms in legislation, regulations, and directives addressing terrorism, immigration, deportation, and citizenship, as the changes may have discriminatory impact on refugees, returnees, and IDPs.

Further, it would be beneficial to publish best practices reports to review positive jurisprudence from national courts, including constitutional courts, to map case law addressing discrimination against refugees, returnees, and IDPs. This would also help to identify and articulate adequate and effective remedies to address structural discrimination affecting refugees. She added that lawyers needed to be engaged to address procedural and substantive violations in refugee cases, and that outreach to national ombudsperson offices, law associations, pro bono firms, law schools, etc. to bring cases addressing discrimination against refugees, returnees, and IDPs should be pursued. There was also a need to strengthen the demand upon to States to make legal aid to made available (not just legal information) to refugees.

Ms. Bailliet emphasized the importance of outlining the procedural rights of asylum seekers and refugees, as this is the primary vehicle for excluding them from enjoyment of equality and non-discrimination. These rights must be made secure in a normative instrument. The core aim should be centred upon CERD's statement on the Occasion of the UN Summit on Refugees and Migrants in August 2016.

In response to Ms. Bailliet's presentation, the representative of the European Union requested clarification on whether the mechanism suggested would be similar to the Optional Protocol to the Convention against Torture, and inquired about the role of special procedures. Ms. Bailliet explained that the mechanism she suggested would be similar to the OPCAT model, combining international level and national level ombudspersons, and contemplated the national roles and national-level involvement. She suggested the creation of a best practice map to determine the coverage in terms of case law and standards. A compliance review of national laws that are being adopted in the current environment, including good examples, should take place.

Ms. Madeline Garlick, Chief of the Protection Policy and Legal Advice Section, Division of the International Protection at the Office of the United Nations High Commissioner for Refugees (UNHCR), recalled that, as of mid-2016, an estimated 61.5 million persons were forcibly displaced around the world, including approximately 21 million refugees and 37 million internally displaced people, as well as asylum seekers, returnees and others falling under UNHCR's mandate. These numbers are among the highest in recent years in some regions and countries. Asylum and migratory pressures that some States were facing were having a significant impact upon the public discourse as well as political debate and actions. This is noteworthy in several European countries, although the numbers of forcibly displaced people in Europe, in absolute and relative terms, are a

fraction of those hosted by other less well-resourced regions of the world. Close to 90% of the global refugee population is hosted in middle and low-income countries.

Increasing concerns in some countries about security and integration capacity can exacerbate racism and xenophobia, thus worsening the already precarious situations of those forced to flee. The proliferation of xenophobic narratives, hate speech and inflammatory statements directed against refugees and migrants has been reported lately. Not only has this threatened to undermine the institution of asylum, but also at times has even led to violence against refugees and migrants.

She stressed that UNHCR has a special interest in and commitment to reducing racism and xenophobia, stemming from the fact that racism, related intolerance and xenophobia are common causes of forced displacement, but can also compromise the protection afforded to asylum seekers and refugees at different stages of the displacement cycle. For instance, they can be manifested through official restrictions on access to asylum or inadequate standards of treatment afforded to those seeking asylum or recognised as refugees. Asylum seekers and refugees may be denied the full enjoyment of human rights in the host country, such as equal access to public services. This can hamper the achievement of durable solutions, by hindering integration in the receiving societies. Furthermore, voluntary return by refugees to their countries of origin is a less viable and sustainable option if it takes place in conditions where peace is fragile and ethnic, religious or other forms of discrimination persist.

She recalled that discrimination on the basis of race, colour, descent, or national or ethnic, origin, among others grounds, is also a reason for the denial or deprivation of nationality, and is therefore a cause of statelessness in many cases. The majority of the world's estimated 10 million stateless people belong to minority groups. At least 20 countries maintain laws which deny or permit the withdrawal of nationality on the grounds of ethnicity, race, or origin. As the organization mandated by the UN General Assembly, together with States, to identify and protect the rights of stateless people, and prevent and reduce statelessness around the world, UNHCR saw a pressing need for greater acknowledgement and action to address discrimination where it leads to the injustice and hardship of statelessness.

She stated that UNHCR welcomed the opportunity to take part in the session, and to speak with the members of the Ad Hoc Committee about the legal and practical tools at our disposal to address the manifold challenges associated with racism and xenophobia in many contexts today. The principle of non-discrimination is articulated in the 1951 Convention Relating to the Status of Refugees, which in its Article 3 binds States Parties to apply its provisions without discrimination as to race, religion or country of origin. Subsequent multilateral instruments — including notably the International Convention on the Elimination of Racial Discrimination (ICERD) — elaborated and developed further in crucial ways the content of this principle and the specific obligations of states to refrain from and prevent discrimination, including where it affects asylum seekers, refugees, stateless persons and others under UNHCR's mandate.

In UNHCR's view, the standards which exist in international law at present provide a solid framework for protection against discrimination in its many forms today. The challenge, in UNHCR's view, is to ensure more effective observance of these standards in practice. This can be done, among other ways through training and ensuring accountability of state officials and organs; through processes for enforcing anti-discrimination rules; and through initiatives to foster tolerance and inclusiveness, as well as countering racist and discriminatory attitudes, rhetoric and actions. She elaborated on a number of tools and elements that can contribute to these goals in the following points of her presentation.

She addressed the question of how to tackle the particular vulnerability of refugees and asylum seekers to racist and xenophobic attitudes. She noted that many manifestations of racism and xenophobia are not directed against asylum seekers or refugees per se, but against non-nationals more broadly. However, refugees, asylum seekers and members of minorities may be particularly vulnerable to the effects of discrimination due to a less secure legal status or the absence of a supportive network in society. Some extremist

political parties, movements and groups may also explicitly incite discrimination against new arrivals, by unjustifiably blaming them for wider social problems.

Refugees, asylum seekers, stateless and internally displaced persons, due to their specific protection needs and vulnerabilities, can suffer multiple form of discrimination, and may become victims of rejection, stigmatization, exclusion, or event violent attacks. Many children report little positive contact with host communities in their countries of asylum, but rather negative experience of xenophobia, racism and discrimination. There is evidence that such experience, coupled with other hardships of forced displacement, can increase young refugees' vulnerability to recruitment by or victimization at the hand of gangs, other criminal groups and radical extremists.

She explained that, institutionally, the protective role of the ICERD is more critical than ever in addressing elimination of racial discrimination, promoting understanding, outlawing hate speech, and criminalizing membership in racist organizations. Parties to the ICERD are obliged to review and amend their laws and policies to ensure that they do not discriminate on the basis of race, and to guarantee the right of everyone to equality before the law regardless of race, colour, or national or ethnic origin, Additionally, the Committee's General Recommendation No. 30 provides guidance to States where it elaborates in particular on the relevance of the ICERD for non-citizens.

She noted that States can nevertheless do more to act in the spirit of the ICERD and the Durban Declaration. Global refugee numbers, and the higher number of arrivals in numerous individual countries worldwide, have underscored the need for States to develop efficient and effective, longer-term multi-stakeholder strategies and programmes which truly facilitate refugees' inclusion and self-sustainability. The Durban Declaration and Programme of Action and the Outcome Document urge States to develop national action plans, to monitor their implementation in consultation with relevant stakeholders and to establish national programmes that facilitate the access of all, without discrimination, to basic social services. The Outcome Document also recommends that States establish mechanisms to collect, analyse and disseminate reliable and disaggregated statistical data and that they set up independent bodies to receive complaints from victims.

She argued that more can be done effectively and comprehensively to train law enforcement, immigration, and border officials. Such training should aim to sensitize them to racism, racial discrimination, xenophobia and related intolerance, but also make clear their legal obligations to take or refrain from taking certain actions, as agents of the State. Greater concerted action is needed to counter xenophobic attitudes and negative stereotypes directed against non-citizens by politicians, law enforcement, immigration officials, and the media, and grant refugees non-discriminatory access to services.

She informed that in March 2016, together with the OECD, UNHCR organised a high-level meeting on integration, in order to counter myths and use research evidence to demonstrate how refugees can benefit economies, as well as to make the case for early investment in refugees' integration and social inclusion.

Greater efforts are required from all concerned parties — States, the UN and other international and regional organization, as well as NGOs and community groups — to address these challenges. The success of any such effort will directly proportional to the political will of States to put in place systems for the protection of basic rights and mechanisms for ensuring their effective implementation. This needs to be complemented by activities aimed at preventing racist and intolerant attitudes from developing, such as human rights education and public information campaigns to promote respect and tolerance.

UNHCR can provide support to partners in initiating public awareness campaigns in host communities in order to promote tolerance, and combat racism and xenophobia. Information strategies targeted at sensitizing host communities may include projects to better inform communities about the root causes of mixed movements and the human suffering involved. She also noted that UNHCR launched awareness-raising campaigns to "roll back xenophobia; "the Diversity initiative" in Ukraine; as well as Joint IPU-UNHCR handbooks for parliamentarians on "Human Rights" (2016); "Migration, human rights and governance" (2015), "Nationality and Statelessness" (2014) and "Refugee Protection: A

Guide to International Refugee Law" (2001) — soon to be issued in an updated edition — as well as the IPU Resolution on "Migrant Workers, People Trafficking, Xenophobia and Human Rights" (2008). UN has also launched the "TOGETHER" global initiative, that promotes respect, safety and dignity for everyone forced to flee their homes in search of a better life.

She emphasized that real partnership with persons of concern to UNHCR and their communities is essential in addressing racism, xenophobia and intolerance. This, after all, is about their experiences and their lives, and that they needed to be engaged in all stages, from development of any strategic approach for a particular national or local context, through its implementation. The most effective way to eradicate fear of 'the other' is typically through personal encounters and interaction.

The unanimous adoption of the New York Declaration for Refugees and Migrants by UN members States last September was a clear acknowledgement of this imperative. The Global Compact on Refugees envisaged in the Declaration aimed to ensure equitable and predictable responsibility-sharing arrangements to address both large-scale movements of refugees and protracted refugee situations. The principle of international cooperation, which is key to ensure global stability, building public confidence in our institutions, and bolstering refugee protection, will lie at its core.

In reaction to Ms. Garlick's presentation, the Chair-Rapporteur asked about the refugee status situation in Zimbabwe and the onward movement of refugees to other countries in the SADC region, to which Ms. Garlick explained that the fact that refugees moved on again to other countries did not necessarily mean that they were not in fact, refugees. She reiterated the need for regional solidarity and burden-sharing in this regard, and agreed with Ms. Bailliet on the need for effective procedural rights for refugees.

The representative of the European Union expressed agreement with Ms. Garlick on the sufficiency of the current legal framework for refugees. She asked the expert to elaborate on its work with parliamentarians, especially with regard to the role of political narratives.

The representative of South Africa stated that South Africa recognized the dignity of migrants and refugees and appreciated the benefits they brought to societies. Through annual consultations with UNHCR, it was working on improving the domestic refugee situation in respect of access to education, health, water and sanitation. While there was still room for improving the societal attitudes and educating the public, the xenophobic waves which had taken place had further spurred the Government to address the situation. She stated that the issues in South Africa were happening elsewhere in the world which suggested a global approach, and in this regard, a binding international law was needed and collective work on a protocol would be beneficial.

Ms. Garlick acknowledged the efforts undertaken by South Africa to deal with the refugee situation the country. She responded also to the query about the role of parliamentarians, explaining that UNHCR shared knowledge, tools and facts to national and regional parliaments and recommended an upcoming new guide to refugee law addressed to parliamentarians. She stated that refugees were referred to in many national contexts as being "illegally present" and she noted that no person could be illegal. She referred to the 1951 Refugee Convention which in article 31, provided for non-penalization for illegal entry and stay, adding that in some cases refugees did not have the access to the means to enter legally.

Ms. Bailliet also commented on the important role of parliamentarians, and also to the need to educate society, noting that many lawyers were unaware that national constitutional protections applied to refugees.

At its 7th meeting on 27 April, the Ad Hoc Committee continued its consideration of agenda item 6 on "Protection of refugees, returnees and internally displaced persons against racism and discriminatory practices", during which Krassimir Kanev, Chairperson of the Bulgarian Helsinki Committee and E. Tendayi Achiume from the School of Law of the University of California, Los Angeles, United States of America, and Research Associate at

the African Centre for Migration and Society, University of Witwatersrand, South Africa, presented on this topic.

Mr. Kanev, Chairperson of the Bulgarian Helsinki Committee, gave a presentation entitled "Approaches to combating racial discrimination in Bulgaria". He highlighted the wide-ranging discrimination faced by Roma and other ethnic minorities in Bulgaria, in the areas of employment, housing, including forced evictions, segregation in education and health care, selective targeting by the criminal justice system, exclusion from political decision-making and public incitement to hatred and violence. He also pointed out the prevalence of Islamophobia including attacks on mosques, negative media coverage of Islam and Muslims in general and public incitement to hatred, discrimination and violence through marches and rallies in front of mosques. Migrants in particular were also subjected to public incitement to hatred, discrimination and violence, including through a number of demonstrations against migrants, physical violence through "migrant hunters" and refusals to register and expulsion of migrants from different towns in the country.

Mr. Kanev also provided several examples of incitement to hatred against migrants and hate speech in the media as well as statements made by political party activists. Despite such prevalence, there had been no prosecution even in the most flagrant of cases, owing to racist bias among the police and the prosecution, as well as political influences and corruption. He added that the Protection against Discrimination Commission (PADC), heard complaints by victims and there were some successful proceedings against private individuals, businesses and media, but it had a mixed record when the perpetrators were politicians. Mr. Kanev also provided examples of a number of cases of discrimination that were brought before the European Court, and had ruled in favour of victims of discrimination. He therefore recommended that collective litigation by NGOs on behalf or in support of victims, collective complaints before international bodies had a better chance of addressing human rights violations and discrimination faced by migrants and ethnic minorities in Bulgaria. He further recommended the establishment of a system of specialized independent adjudicative and preventive mechanisms at the domestic level.

Ms. Tendayi Achiume gave a presentation entitled "Structural Xenophobic Discrimination against Refugees." She pointed out that refugees and involuntary migrants share the same chaotic, dangerous migratory routes and that many perpetrators of xenophobic discrimination and violence do not distinguish between refugees and other migrants. She then provided a review of demographics of refugees, emphasizing that displacement was rooted in structures or conflicts involving foreign sovereigns, including foreign military intervention. She added that the exclusion of refugees or discrimination against refugees is overwhelmingly exclusion or discrimination along racialized lines. Ms. Achiume then provided a number of different scenarios in which refugees faced structural xenophobic discrimination with a disproportionate and harmful impact of laws, policies, and practices, on refugees on account of their status as foreigners, even in the absence of explicit anti-foreigner prejudice. She took the example of a banking policy that prohibits refugees and asylum seekers from opening bank accounts as a measure for protecting against untraceable money laundering, and described the multifarious implications of such a policy to refugees. She outlined limitations faced by refugees and asylum seekers in the employment and housing sectors, as well as in access to social services, leading to overall structural inequality.

Ms. Achiume delved into the point that on one hand, the "purpose or effect clause" of Article 1 of ICERD clearly requires the regulation of policies whose effect is to nullify or impair the equal exercise of human rights on account of differentiation on account of race, colour, descent or national or ethnic origin. On the other hand, criminalization of acts of a xenophobic or racist nature would almost certainly not include this type of approach because criminal convictions typically require intent, at least in common law jurisdictions. She thus reiterated that Article 1 of ICERD remained ambiguous about the extent and scope of its prohibition of xenophobic discrimination. She concluded that while the CERD's General Recommendation 30 was important because it stated that differential treatment based on citizenship or immigration status constitutes discrimination, Ms. Achiume argued whether ICERD member states uniformly defer to CERD's interpretive guidance, and whether the General Recommendation 30 is viewed as authoritative enough, giving each

state to engage in its own legitimacy/ proportionality analysis. She argued that this had implications for determining the global baseline for when structural exclusion of refugees that violates their human rights is prohibited xenophobic discrimination. This may merit some clarity by a possible international guidance or baseline.

During the interactive discussions, the representative of the Bolivarian Republic of Venezuela asked Ms. Achiume about policies, practices and laws which would allow access to health care and education for refugees and asylum seekers who would otherwise not be able to access such services due to the lack of documents or knowledge about the processes. The representative of the European Union sought clarification from Mr. Kanev on the efficacy of criminal procedures and asked Ms. Achiume for her views as to how the new mandate of the Committee could contribute to clarifying tensions between Articles 1.1 and 1.2 of ICERD and how could the idea of additional protocol overcome those challenges. The representative of Pakistan behalf of OIC, asked for more information from the panellists on the issue of criminalisation of xenophobia and on the proportionality issue stipulated in the ICERD General Recommendation 30. The representative of Pakistan also highlighted the comments of the Secretary General of OIC that Islamophobia is a contemporary manifestation of racism and combating Islamophobia as well as vilification of all religions and denigration of symbols and personalities sacred to all religions is a matter of priority.

In response, Mr. Kanev pointed out that criminalization has not worked in Bulgaria, given the few prosecutions, except in cases when private individuals are involved in severe forms of racial discrimination when there may be criminal prosecution. Ms. Achiume emphasized on the importance of temporary documents, along with education and awareness-raising about the legitimacy of such documents among all stakeholders to facilitate access to services by refugees and asylum seekers. She also suggested a comprehensive approach including through the framework of national action plans to better understand how the barriers operate and how to address them. She added that on the issue of criminalisation, a comprehensive approach was necessary whereby criminalisation should not be the final destination. Aside from punitive measures, Ms. Achiume said while criminalisation is important, that the expressive function of criminal law is also important, as there would not be a dramatic shift in the circumstances of an average refugee, migrant or an asylum seeker by merely through a criminal prohibition of a xenophobic act. On the tension between Article 1(1) and 1(2), Ms. Achiume said that there needed to be further clarity to tackle the constraints in ICERD as legitimacy and proportionality are left to the discretion of states meaning wide discretion where citizenship-based discrimination is at play, even where citizenship-based discrimination results in the human rights violations against non-nationals. The problem lies in the lack of clarity as to what extent non-citizens are entitled to equal enjoyment of human rights and ICERD does not do enough to clarify this, and therefore the need for a standard at the global level, clarifying that citizenship discrimination that results in human rights violations is not explicit to states.

Anexo II

[Inglés únicamente]

Programme of Work — 9th Ad Hoc Committee on the Elaboration of Complementary Standards (as adopted 24.04.2017)

	1st week				
	Monday 24.04	*Tuesday 25.04*	*Wednesday 26.04*	*Thursday 27.04*	*Friday 28.04*
10:00–13:00	Item 1 Opening of the Session Item 2 Election of the Chair Item 3 Adoption of the Agenda and Programme of Work — General statements	Item 4 continued Comprehensive anti-discrimination legislation	Item 5 continued Protection of migrants against racist, discriminatory and xenophobic practices Peggy Hicks, Director, Thematic Engagement, Special Procedures and Right to Development Division, Office of the High Commissioner for Human Rights; Kristina Touzenis, International Organization for Migration, Geneva	Item 6 continued Protection of refugees, returnees and internally displaced persons against racism and discriminatory practices Krassimir Kanev, Chairperson, Bulgarian Helsinki Committee; E. Tendayi Achiume, Assistant Professor of Law, University of California — Los Angeles School of Law	Item 8 General discussion and exchange of views on items 5 and 6
15:00–18:00	Item 4 Comprehensive anti-discrimination legislation	Item 5 Protection of migrants against racist, discriminatory and xenophobic practices E. Tendayi Achiume, Assistant Professor of Law, University of California — Los Angeles School of Law;	Item 6 Protection of refugees, returnees and internally displaced persons against racism and discriminatory practices Cecilia Bailliet, Professor & Director of the Masters Programme in Public International Law, University of Norway;	Item 7 General discussion and exchange of views on item 4	Item 9 Update discussion on Xenophobia

	Ibrahima Kane, Open Society Initiative for Eastern Africa	Madeline Garlick, Chief of the Protection Policy and Legal Advice Section, Division of International Protection, United Nations High Commissioner for Refugees

2nd week

	Monday 1.05	*Tuesday 2.05*	*Wednesday 3.05*	*Thursday 4.05*	*Friday 5.05*
10:00–13:00	Item 10	Item 12	Item 14	Item 15	
	Update discussion on Procedural gaps with regard to the International Convention on the Elimination of All Forms of Racial Discrimination	General discussion and exchange of views on items 9 and 10	Discussion on General Assembly resolution 71/181	General discussion and exchange of views	Conclusions and Recommendations
	—			—	—
	Update discussion on National Mechanisms			Conclusions and Recommendations	General discussion and exchange of views
15:00–18:00	Item 11	Item 13	Item		Item 16
	Update discussion on racism in sport	General discussion and exchange of views on item 11		Compilation of the Report	Adoption of the report of the ninth session

Anexo III

[Inglés únicamente]

List of attendance

Member States

Algeria, Azerbaijan, Bangladesh, Belgium, Bolivia (Plurinational State of), Brazil, Burundi, Canada, China, Colombia, Congo, Cote d'Ivoire, Cuba, Czechia, Djibouti, Egypt, Estonia, Greece, Guatemala, Haiti, India, Italy, Japan, Jamaica, Jordan, Kuwait, Libyan Arab Jamahiriya, Luxembourg, Malaysia, Malta, Mexico, Morocco, Nigeria, Pakistan, Qatar, Russian Federation, Singapore, Slovakia, South Africa, Spain, Sudan, Switzerland, Tunisia, Ukraine, United Kingdom of Great Britain and Northern Ireland, Venezuela (Bolivarian Republic of), Zambia, Zimbabwe.

Non-Member States represented by observers

Holy See.

Intergovernmental Organizations

African Union, Organization of Islamic Cooperation, European Union.

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

African Commission of Health and Human Rights Promoters, Indian Council of South America and the Indigenous Peoples and Nations Coalition, International Youth and Student Movement for the United Nations (ISMUN).

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

Culture of Afro-Indigenous Solidarity, World against Racism Network (WARN).