الأمم المتحدة

A/HRC/51/56

الجمعية العامة

Distr.: General
30 September 2022
Arabic
Original: English

مجلس حقوق الإنسان

الدورة الحادية والخمسون

12 أيلول/سبتمبر – 7 تشرين الأول/أكتوبر 2022

البند 9 من جدول الأعمال

العنصرية والتمييز العنصري وكره الأجانب وما يتصل بذلك من أشكال التعصب: متابعة وتنفيذ إعلان وبرنامج عمل ديربان

تقرير اللجنة المخصصة المعنية بوضع معايير تكميلية عن أعمال دورتها الحادية عشرة* **

الرئيسة – المقررة: قدرا أحمد **حسن** (جيبوتي)

موجز

يُقدم هذا التقرير عملاً بمقرر مجلس حقوق الإنسان 103/3 وقراريه 21/6 و30/10. وهو موجز لمداولات الدورة الحادية عشرة للجنة المخصصة المعنية بوضع معايير تكميلية، والمناقشات الموضوعية التي جرت أثناء الدورة.

* تُعمّم مرفقات هذا التقرير كما وردت وباللغة التي قُدمت بها فقط.

** قُدم هذا التقرير بعد انقضاء الموعد النهائي بغية تضمينه أحدث المعلومات.

أولاً- مقدمة

1- تقدم اللجنة المخصصة المعنية بوضع معايير تكميلية هذا التقرير عملاً بمقرر مجلس حقوق الإنسان 103/3 وقراريه 21/6 و30/10.

ثانياً- تنظيم الدورة

2- عقدت اللجنة المخصصة الجزء الأول من دورتها الحادية عشرة في الفترة من 6 إلى 13 كانون الأول/ديسمبر 2021. وأُرجئت الدورة بسبب غياب الرئيسة – المقررة لظروف شخصية طارئة اقتضت منها مغادرة جنيف. واستُؤنفت الدورة واختُتمت في 18 تموز/يوليه 2022. وخلال الدورة الحادية عشرة، عقدت اللجنة 15 اجتماعاً بنسق مختلط في قصر الأمم في جنيف.

ألف- الحضور

3- حضر الدورة ممثلون عن الدول الأعضاء والدول غير الأعضاء الممثلة بمراقبين والمنظمات الحكومية الدولية والمنظمات غير الحكومية التي تتمتع بمركز استشاري لدى المجلس الاقتصادي والاجتماعي (انظر المرفق الثالث).

باء- افتتاح الدورة

4- افتتحت رئيسة فرع سيادة القانون والمساواة وعدم التمييز في مفوضية الأمم المتحدة السامية لحقوق الإنسان الدورة الحادية عشرة للجنة المخصصة المعنية بوضع معايير تكميلية.

جيم- انتخاب الرئيسة-المقررة

5- انتخبت اللجنة المخصصة في جلستها الأولى قدرا أحمد حسن، الممثلة الدائمة لجيبوتي لدى مكتب الأمم المتحدة والمنظمات الدولية الأخرى في جنيف، رئيسة – مقررة بالتزكية.

6- وشكرت الرئيسة – المقررة اللجنة المخصصة على انتخابها. وأعربت عن أملها في أن يساهم المشاركون مساهمة بنّاءة وبروح التعاون في أعمال الدورة، وشددّت على ضرورة إبراز آراء جميع الوفود والتجمعات الإقليمية والمجتمع المدني في الوقت الذي تعمل فيه اللجنة على الوفاء بولايتها.

7- وذكّرت بأنه، عملاً بمقرر مجلس حقوق الإنسان 103/3 وقراريه 21/6 و30/10، كُلفت اللجنة بوضع معايير تكميلية، على سبيل الأولوية والضرورة، في شكل اتفاقية أو بروتوكول إضافي (بروتوكولات إضافية) للاتفاقية الدولية للقضاء على جميع أشكال التمييز العنصري، بحيث تسد الثغرات القائمة في الاتفاقية وتقدم كذلك معايير شارعة جديدة تهدف إلى مكافحة جميع أشكال العنصرية المعاصرة، بما في ذلك التحريض على الكراهية العنصرية والدينية. ومنذ عام 2017، تعمل اللجنة بموجب ولاية محدّثة نابعة من قرار الجمعية العامة 181/71 وقرار مجلس حقوق الإنسان 36/34، الذي طلبت فيه الجمعية والمجلس إلى الرئيس – المقرر أن يكفل شروع اللجنة في المفاوضات المتعلقة بمشروع البروتوكول الإضافي للاتفاقية الذي يجرّم الأفعال ذات الطبيعة العنصرية وكره الأجانب. وأشارت الجمعية العامة فيما بعد إلى تلك الولاية في قراراتها 157/72 و262/73 و137/74 و237/75 و226/76.

8- وأشارت الرئيسة – المقررة إلى أن القضاء على التمييز العنصري هو هدف من أهداف الأمم المتحدة منذ إنشائها، وأنه منصوص عليه بأوضح صورة في الاتفاقية الدولية للقضاء على جميع أشكال التمييز العنصري. ومع ذلك، في السنوات الأخيرة، ما زال الملايين من الناس في جميع أنحاء العالم يقعون ضحايا للعنصرية والتمييز العنصري وكره الأجانب وما يتصل بذلك من تعصب. وعلى وجه الخصوص، يقع الناس ضحايا للأشكال والمظاهر المعاصرة لهذه الظواهر، التي يتزايد نشرها على الإنترنت ويتخذ بعضها طابعاً عنيفاً. وقد أبرز ذلك أهمية عمل اللجنة. واسترعت الرئيسة – المقررة الانتباه إلى الاحتجاجات والحركات التي حصلت في العديد من البلدان في أعقاب مقتل المواطن الأمريكي الأعزل جورج فلويد على يد الشرطة. وعلاوة على ذلك، خلفت جائحة مرض فيروس كورونا (كوفيد-19) غير المسبوقة عواقب صحية مدمرة بشكل خاص على العديد من الفئات العرقية، بما في ذلك الأشخاص المنحدرون من أصل أفريقي، وأثارت أعمال تمييز ضد المنحدرين من أصل آسيوي وأججت خطاب الكراهية الموجه ضد الطوائف الدينية. وحثت الرئيسة – المقررة اللجنة على زيادة جهودها من أجل تعزيز حماية العدد المتزايد من ضحايا المظاهر المعاصرة لهذه الآفات.

9- وقدمت عدة تحديثات بشأن المسائل التي أُثيرت منذ الدورة العاشرة للجنة المخصصة، التي عُقدت في الفترة من 8 إلى 18 نيسان/أبريل 2019، وأعربت عن أملها في أن تستأنف اللجنة عملها بسلاسة في الدورة الحادية عشرة، دون أن تخسر زخم الدورات السابقة. وبيّنت الرئيسة – المقررة كيف أرست اللجنة، على مر السنين، الأساس للمضي قدماً، واستمعت إلى مدخلات من أكثر من 70 خبيراً بشأن مجموعة متنوعة من المواضيع المتعلقة بالأشكال المعاصرة للعنصرية والتمييز العنصري وكره الأجانب وما يتصل بذلك من تعصب. وأشارت إلى أن اللجنة اعتمدت بتوافق الآراء في دورتها العاشرة وثيقة بعنوان "موجز للمسائل والعناصر الممكنة المتعلقة بتنفيذ قرار الجمعية العامة 262/73 وقرار مجلس حقوق الإنسان 36/34 بشأن بدء المفاوضات المتعلقة بمشروع البروتوكول الإضافي للاتفاقية الذي يجرّم الأفعال ذات الطابع العنصري والتي تنم عن كره الأجانب"، مما أتاح للجنة البدء في رسم طريقها إلى الأمام بشأن وضع المعايير التكميلية.

10- وأشارت إلى مشاورة الخبراء[1] فيما بين الدورات التي عُقدت بنسق مختلط في جنيف يومي 21 و22 تشرين الأول/أكتوبر 2020 من أجل النظر في وثيقة عناصر الدورة العاشرة، التي تلقى جميع المشاركين تقريرها مسبقاً[2]. واقترحت أنه ينبغي للخبرة القانونية المحددة المقدمة في تلك المشاورة أن تساعد اللجنة على إيجاد فهم مشترك للمسائل المطروحة، فضلاً عن تحديد العملية المقبلة.

11- وقالت الرئيسة – المقررة إنها تقر باختلاف آراء الوفود بشأن بعض القضايا، وأعربت عن أملها في أن تجري اللجنة مناقشات مفتوحة وعمليات لتبادل الآراء في الطريق الذي تسلكه نحو التوصل إلى توافق في الآراء.

12- وأوضحت أن برنامج عمل الدورة الحادية عشرة مكرس للنظر في تقرير مشاورة الخبراء مسألة مسألة، التي ستشمل كل منها إحاطة من أحد الخبراء المشاركين في المشاورة المعقودة فيما بين الدورات، ويعقبها تبادل للآراء ومناقشات. وينبغي للمشورة القانونية والاقتراحات التي قدمها الخبراء بشأن القضايا الأربع التالية أن تساعد على المضي قدماً بعمل اللجنة: (أ) نشر خطاب الكراهية؛ (ب) والجرائم السيبرانية العنصرية (شبكات وسائل التواصل الاجتماعي والشركات العاملة في هذا المجال)؛ (ج) وجميع الأشكال المعاصرة للتمييز على أساس الدين أو المعتقد؛ (د) والتدابير الوقائية لمكافحة التمييز العنصري والتمييز على أساس كره الأجانب.

(1) عُقدت حلقة الخبراء الدراسية عملاً بالفقرة 6 من قرار مجلس حقوق الإنسان 29/42.

(2) https://www.ohchr.org/sites/default/files/2021-12/ReportIntersessionalLegalExpertConsultation.pdf.

13- وبناءً على طلبات المنسقين الإقليميين، شجعت الرئيسة - المقررة مشاركة الخبراء التقنيين الوطنيين وأشارت إلى أن إحدى مزايا النسق المختلط للاجتماع هي أنه يمكّن الخبراء الوطنيين من المشاركة في الدورة عبر الوسائل الافتراضية، مما سيسمح للجنة بإجراء مناقشات تقنية وموضوعية لمساعدتها وإثراء عملها. وأشارت إلى أن الأيام الثلاثة الأخيرة من الدورة ستُخصص لإجراء مناقشة عامة وتبادل الآراء، فضلاً عن إعداد استنتاجات الدورة وتوصياتها.

14- واختتمت الرئيسة - المقررة كلمتها بالإعراب عن توقعها بالتزام اللجنة ودعمها لها في الوفاء بولايتها. وحثت المشاركين على مواصلة المشاركة في العملية الهامة للتصدي للأشكال المعاصرة للعنصرية والتمييز العنصري وكره الأجانب وما يتصل بذلك من تعصب، التي لا تزال تحدث وتتطور في كل منطقة من مناطق العالم.

دال- إقرار جدول الأعمال

15- أقرّت اللجنة المخصصة في جلستها الأولى جدول الأعمال التالي لدورتها الحادية عشرة:

1- افتتاح الدورة.

2- انتخاب الرئيسة - المقررة

3- إقرار جدول الأعمال وبرنامج العمل.

4- معلومات محدّثة عن اللجنة المخصصة وعرض عام ولمحة عامة عن تقرير مشاورة الخبراء المعقودة فيما بين الدورات.

5- عرض ومناقشة بشأن نشر خطاب الكراهية.

6- عرض ومناقشة بشأن جميع الأشكال المعاصرة للتمييز على أساس الدين أو المعتقد.

7- عرض ومناقشة بشأن الجرائم السيبرانية العنصرية.

8- عرض ومناقشة بشأن التدابير الوقائية لمكافحة التمييز العنصري والتمييز على أساس كره الأجانب.

9- مناقشة عامة وتبادل للآراء.

10- الاستنتاجات والتوصيات الصادرة عن الدورة.

11- اعتماد الاستنتاجات والتوصيات الصادرة عن الدورة.

هاء- تنظيم الأعمال

16- قدَّمت الرئيسة - المقرِّرة في الجلسة الأولى أيضاً مشروع برنامج عمل للدورة، الذي جرى إقراره. ويرد برنامج العمل، بالصيغة التي نُقح بها لاحقاً، في المرفق الثاني بهذا التقرير. ودعت الرئيسة - المقررة المشاركين إلى الإدلاء بتعليقات عامة. وأعربت الوفود عن تهانيها للرئيسة - المقرِّرة بمناسبة انتخابها وأدلت ببيانات افتتاحية.

17- وأكد ممثل كوبا من جديد التزام بلده بولاية اللجنة المخصصة، واستعداده لمواصلة السعي البنّاء لإحراز تقدم في إنجاز الولاية. وللأسف، بعد مرور 20 عاماً على اعتماد إعلان وبرنامج عمل ديربان، ومرور أكثر من نصف قرن على دخول الاتفاقية الدولية للقضاء على جميع أشكال التمييز العنصري حيز

النفاذ، فإن هدف مكافحة جميع أشكال العنصرية والتمييز على أساس العرق وكره الأجانب وأشكال التعصب الأخرى لم يتحقق بعد. وقال إن العنصرية الهيكلية لا تزال قائمة، وازداد خطاب الكراهية والعنف بدافع الكراهية ضد الأقليات والمهاجرين واللاجئين، وفي بعض الحالات، ضد مجموعات من الناس برمتها. وقد أدّت الأزمة العالمية المتعددة الأوجه التي اشتدت بسبب جائحة كوفيد-19 إلّا إلى مفاقمة هذا الوضع. ويرد في دستور كوبا، الذي اعتُمد عن طريق استفتاء وبموافقة أغلبية الشعب في عام 2019، تصديق للحق في المساواة وحظر التمييز وتعزيز لهما. وأعرب عن التزام كوبا الراسخ بمواصلة مكافحة التحيز والقوالب النمطية العنصرية التي قد تستمر في مجتمعها. وتدعو كوبا جميع الدول إلى التحلي بالإرادة السياسية لتوحيد قواها في مكافحة التمييز العنصري وجميع أشكال التعصب من خلال الحوار البناء والتعاون في جميع محافل الأمم المتحدة.

18- وقال ممثل الجزائر إن الجزائر تعلّق أهمية كبيرة على عمل اللجنة المخصصة وعلى الحاجة إلى معايير تكميلية لتعزيز الإطار الدولي لحقوق الإنسان من أجل مكافحة العنصرية وكره الأجانب والتمييز العنصري وما يتصل بذلك من تعصب، ومواجهة التحديات الراهنة في هذا الصدد. وأعربت الجزائر عن قلقها حيال ازدياد أعمال العنصرية والعنف والكراهية القائمة على أساس الدين والعرق، ولا سيما ضد الأشخاص المنحدرين من أصل عربي وأفريقي والأشخاص الذين يؤدون شعائر الإسلام، وكذلك اللاجئين والمهاجرين والنساء والأطفال، في سياق جائحة كوفيد-19. وتؤدي هذه الأعمال إلى أيديولوجيات شعبوية ومتطرفة آخذة في الازدياد، وكذلك إلى سياسات تقوم على العنصرية والتمييز وتقوض كرامة هؤلاء الأشخاص. وشدد على ضرورة تعزيز ثقافة التسامح من خلال إلغاء جميع السياسات والقوانين التمييزية عن طريق وضع وسائل ردع وسبل انتصاف واضحة.

19- وأبرز ممثل العراق تعارض العنصرية والتمييز العنصري وكره الأجانب وما يتصل بذلك من تعصب تعارضاً تاماً مع ميثاق الأمم المتحدة والإعلان العالمي لحقوق الإنسان. وقال إن المساواة وعدم التمييز هما مبدآن أساسيان من مبادئ القانون الدولي وحقوق الإنسان. وعلى الرغم من المبادرات العديدة التي اتخذتها البلدان لمكافحة العنصرية وضمان التمتع الكامل بحقوق الإنسان، لا يزال الكثير من الناس يقعون ضحايا لهذه الظاهرة. وتشكل الاتفاقية الدولية للقضاء على جميع أشكال التمييز العنصري الأداة المثلى لدعم الجهود الدولية الرامية إلى مكافحة العنصرية واتخاذ التدابير المناسبة لمكافحتها. ولا تزال العنصرية منتشرة على نطاق واسع وهي مصدر لعدم الاستقرار في المجتمع، مما يقوض الديمقراطية. وقال إنه لا بد من أن يتضمن البروتوكول الإضافي للاتفاقية العناصر التالية: (أ) تجريم جميع أشكال التمييز المعاصرة، بما في ذلك التمييز القائم على أساس الدين أو المعتقد، مثل كراهية الإسلام – وهو حالياً أكثر أشكال التمييز على أساس الدين أو المعتقد انتشاراً؛ و(ب) احترام الاختلافات بين الثقافات والبلدان؛ و(ج) النظر في الظروف المختلفة لمختلف البلدان؛ و(د) احترام اللاجئين والمهاجرين وطالبي اللجوء؛ و(هـ) تدابير لمكافحة المظاهر الواسعة الانتشار لجرائم الكراهية والتمييز على وسائل التواصل الاجتماعي.

20- وقال ممثل اليابان إن بلده يواصل التصدي للعنصرية والتمييز العنصري وكره الأجانب وما يتصل بذلك من تعصب. وأحد الأمثلة على ذلك هو قانون القضاء على خطاب الكراهية لعام 2016، الذي يراعي أهمية دعم حرية التعبير بالتوازي مع تعزيز الجهود الرامية إلى القضاء على الخطاب والسلوك التمييزيين ضد الأشخاص من أصل غير ياباني. وينبغي أن تواصل اللجنة المخصصة تركيزها على التنفيذ الكامل والفعال للاتفاقية الدولية للقضاء على جميع أشكال التمييز العنصري بغية تحقيق هدف القضاء على آفة العنصرية بجميع أشكالها. وقال إنه نظراً إلى غياب اتفاق واضح بشأن الثغرات الممكنة في الاتفاقية أو عدم تضمنها أي أحكام تعالج الأشكال المعاصرة للعنصرية، فمن غير المناسب في المرحلة الراهنة البدء في مفاوضات بشأن بروتوكول إضافي للاتفاقية يجرم أفعالاً معينة. وتمثل مكافحة

العنصرية والتمييز العنصري وكره الأجانب وما يتصل بذلك من تعصب تحدياً يواجهه كل دولة، وهو تحد يمكن التغلب عليه من خلال التضامن والتعاون. وتماشياً مع إعلان وبرنامج عمل فيينا، تشجع اليابان جميع الدول على السعي إلى التوصل إلى توافق في الآراء. ولا تزال اليابان ملتزمة التزاماً قوياً بالقضاء على جميع أشكال التمييز العنصري.

21- وذكر ممثل المملكة المتحدة لبريطانيا العظمى وأيرلندا الشمالية أنه من الواضح أن الاتفاقية الدولية للقضاء على جميع أشكال التمييز العنصري تشكّل أساس جميع الجهود الرامية إلى منع العنصرية ومكافحتها والقضاء عليها، وينبغي أن تبقى كذلك. وقال إن تنفيذ الاتفاقية أمر أساسي لمكافحة انتشار العنصرية في جميع مناطق العالم. والاتفاقية هي صك متجدد يمكنه التصدي للتحديات الجديدة والناشئة. وخلال جميع دورات اللجنة المخصصة البالغ عددها 10 دورات، لم يكن هناك توافق في الآراء بشأن الثغرات الممكنة في الاتفاقية أو عدم تضمنها أي أحكام تعالج الأشكال المعاصرة للعنصرية. وقد ذكر أعضاء لجنة القضاء على التمييز العنصري أنه لا حاجة إلى بروتوكول إضافي للاتفاقية، وأن الثغرات موجودة على مستوى التنفيذ أو من الممكن معالجتها في التعليقات العامة التي يصوغونها. ولا تزال المناقشات مستمرة بشأن الحاجة إلى معايير تكميلية للاتفاقية؛ وترى المملكة المتحدة أنه من غير الضروري وضع بروتوكول إضافي للاتفاقية. وقال إن مكافحة العنصرية والتمييز العنصري وكره الأجانب وما يتصل بذلك من تعصب مستمرة وموضع اهتمام للجميع. وستبقى المملكة المتحدة منخرطة في المناقشات وتتطلع إلى إجراء حوار بناء وتبادل أفضل الممارسات في هذا الصدد.

22- وقال ممثل جنوب أفريقيا إن الاتفاقية الدولية للقضاء على جميع أشكال التمييز العنصري هي إحدى الاتفاقيات البارزة بشأن القضاء على العنصرية والتمييز العنصري في العالم. ومع ذلك، فقد اعتُمدت هذه الاتفاقية في عام 1965، عندما كان العالم مختلفاً جداً ولم تتمكن جميع الدول من المشاركة في إعدادها كدول حرة وكيانات غير مستعمَرة. وقد تغير العالم تغيراً كبيراً منذ ذلك الحين، واجتمع في عام 2001 من أجل تناول قضايا العنصرية في ضوء المستجدات المعاصرة. وبحلول ذلك الوقت، كانت جميع الدول تقريباً قد تخلّصت من نير الاستعمار. وفي الوثيقة الختامية لذلك المؤتمر، وهي إعلان وبرنامج عمل ديربان، أعربت الدول بالإجماع عن آرائها بشأن العنصرية المعاصرة وفهمها لما يشكل العنصرية والتمييز العنصري وكره الأجانب وما يتصل بذلك من تعصب، فضلاً عن معالجة قضايا مثل العنصرية النظمية. وقال إن جنوب أفريقيا كانت تأمل في أن يُنفذ إعلان وبرنامج عمل ديربان تنفيذاً كاملاً بعد 20 عاماً من اعتمادهما، ولكن للأسف لا يرغب عدد من الدول في التعامل مع الطريقة الجديدة لفهم العنصرية وكيفية تأثيرها على أكبر عدد من الناس في العالم. وتعتقد البلدان والمجموعات التي لم تكن تشكّل جزءاً من المحادثة في عام 1965 أن هناك ثغرات في الاتفاقية، وأن فهم ماهية العناصر التي تشكّل العنصرية المنهجية وكيف أنها لا تزال تؤثّر على حياة الناس في جميع أنحاء العالم، يحتاج إلى تحديد واضح من أجل تشكيل فهم مشترك للقضايا لدى جميع الدول. ولذلك تشجع جنوب أفريقيا جميع الدول على المشاركة من جديد في اللجنة المخصصة من أجل سد تلك الثغرات. وفي حين أن الاتفاقية صكٌ حظي بالتصديق في جميع بلدان العالم تقريباً، فقد جرى تحديث جميع الصكوك. وعلى نطاق منظومة الأمم المتحدة، حُدثت معظم الصكوك بإدراج عدد من البروتوكولات الإضافية منذ إنشائها. وذكر أنه ينبغي ألّا يُوجد استثناء عام للاتفاقية. وقد شجعت جنوب أفريقيا جميع الدول على العمل مع اللجنة بعقلية منفتحة من أجل إيجاد فهم مشترك.

23- وقال ممثل الصين إن بلده يعلق أهمية كبيرة على اللجنة المخصصة. ومن المؤسف أنه بعد مرور 20 عاماً على اعتماد إعلان وبرنامج عمل ديربان، لا يزال العالم يشهد تصاعداً في العنصرية والتمييز العنصري وكره الأجانب وما يتصل بذلك من تعصب. وتؤيد الصين دور اللجنة تأييداً تاماً وتتطلع

إلى مواصلة الدورة وتأمل أن يجري المشاركون فيها مناقشات مثمرة وأن يجدوا سُبلاً للتصدي بشكل أفضل للتحديات الراهنة التي تواجه العالم.

24- وأشار ممثل باكستان، متحدثاً باسم منظمة التعاون الإسلامي، إلى الأهمية الكبيرة التي توليها المنظمة لولاية اللجنة المخصصة. وقال إن منظمة التعاون الإسلامي تجدد دعمها لوضع معايير تكميلية من أجل تعزيز الهيكل الدولي القائم لحقوق الإنسان الرامي إلى مكافحة العنصرية والتمييز العنصري وكره الأجانب وما يتصل بذلك من تعصب. وأعرب عن الأسف من أنه بعد مرور 14 عاماً على إنشاء اللجنة، لا يزال إحراز تقدم مجدٍ أمراً بعيد المنال، ولكن التحديات في هذا المجال المواضيعي قد تضاعفت. ولم يعد الوضع الراهن مقبولاً. وأعربت منظمة التعاون الإسلامي عن قلقها البالغ إزاء الزيادة المضطردة في حوادث التمييز والكراهية والعنف والعداء القائم على الدين، ولا سيما ضد الأفراد المسلمين والمجتمعات المسلمة. وما زالت تتفشى الكراهية المعادية للمسلمين وكراهية الإسلام، التي كثيراً ما تتسامح معها بعض الدول أو تأذن بها، وتحدث في غالب الأحيان تحت ستار مكافحة الإرهاب أو الأمن القومي. ويؤجج صعود السياسات الشعبوية والأيديولوجيات اليمينية المتطرفة في جميع أنحاء العالم من الكراهية الدينية والعنف ضد السكان المسلمين. وبتأثير من هذه الأيديولوجيات، سنّت عدة بلدان تشريعات تضفي الطابع المؤسسي على التمييز ضد المسلمين وتنميط النساء والفتيات المسلمات وتقيّد حرية ارتدائهن الحجاب أو النقاب. وكثيراً ما يكون اللاجئون والمهاجرون ومجتمعات السكان الأصليين كذلك أهدافاً للتمييز المنهجي الذي يقوض كرامتهم وحقوقهم وحرياتهم. وقد زادت جائحة كوفيد-19 من حدة تلك الاتجاهات المقلقة. وتدين منظمة التعاون الإسلامي بشدة كراهية الإسلام بجميع أشكالها ومظاهرها، وتكرّر دعوتها إلى إبطال هذه القوانين التمييزية وإلغائها. وترى منظمة التعاون الإسلامي أن ثقافة السلام والوئام والتسامح المتبادل والتوفيق هي الحلول الأساسية للعنصرية والتمييز العنصري وكره الأجانب وما يتصل بذلك من تعصب. ويتعين أن يكون العمل الإيجابي مصحوباً بتدابير رادعة، مثل الإشارة إلى أنماط الإفلات من العقاب، ومساءلة الجناة، وتوفير سُبل الانتصاف لضحايا هذه البلاوى. وكرّرت منظمة التعاون الإسلامي النداءات التي وجهها مجلس حقوق الإنسان في قراره 36/34 لبدء المفاوضات بشأن بروتوكول إضافي للاتفاقية الدولية للقضاء على جميع أشكال التمييز العنصري. وسيكون البروتوكول أداة حاسمة للمساعدة في سد الثغرات القانونية والتنظيمية القائمة في مكافحة جميع أشكال العنصرية المعاصرة، بما في ذلك كراهية الإسلام. وأكّدت منظمة التعاون الإسلامي للرئيسة – المقررة التزامها بهذا المسعى.

25- وقالت ممثلة الاتحاد الأوروبي إن الاتحاد الأوروبي يرفض جميع أشكال التمييز ويدينها، وإنه لا يزال ملتزماً التزاماً راسخاً بمكافحة جميع أشكال العنصرية والتمييز العنصري وكره الأجانب وما يتصل بذلك من أشكال التعصب، داخل الاتحاد الأوروبي وفي شتى أنحاء العالم. وتتعارض هذه الظواهر مع احترام كرامة الإنسان وقيم الحرية والديمقراطية والمساواة واحترام حقوق الإنسان، التي يقوم عليها الاتحاد الأوروبي وتشكل المبادئ المشتركة لدى جميع الدول الأعضاء فيه. وقالت إن الاتحاد الأوروبي اتخذ خطوات هامة منذ انعقاد اجتماع اللجنة المخصصة في نيسان/أبريل 2019. وفي أيلول/سبتمبر 2020، اعتمدت المفوضية الأوروبية أول خطة عمل لها على الإطلاق بشأن مكافحة العنصرية؛ وفي عام 2021، نظّمت المفوضية والرئاسة البرتغالية مؤتمر قمة هاماً بشأن مكافحة العنصرية. وفي أيار/مايو 2021، عُين منسق جديد لمكافحة العنصرية مكلف بنقل إجراءات مناهضة العنصرية إلى المؤسسات الأوروبية. وجرى التركيز بدرجة كبيرة على تنفيذ خطة عمل الاتحاد الأوروبي لمكافحة العنصرية، وأصدرت المفوضية الأوروبية إطاراً جديداً هو الإطار الاستراتيجي المعزز الذي يركّز على تحقيق المساواة والإدماج والمشاركة لفائدة طائفة الروما. وقدّمت أيضاً استراتيجية الاتحاد الأوروبي الشاملة الأولى على الإطلاق بشأن مكافحة معاداة السامية وتعزيز الحياة اليهودية. وعلاوة على ذلك، وفي محاولة لتعزيز مبدأ عدم التمييز ومنع العنصرية وكره الأجانب وغير ذلك من أشكال التعصب ذات الصلة، ومكافحتها، وفّر الاتحاد

الأوروبي أيضاً التمويل لبناء مجتمعات شاملة، وتعزيز احترام التنوع في التعليم، وتشجيع التعددية والديمقراطية في الخارج. وذكرت أن الاتحاد الأوروبي يرى أن الاتفاقية الدولية للقضاء على جميع أشكال التمييز العنصري، التي تضم بين أطرافها جميع الدول الأعضاء في الاتحاد الأوروبي، هي أساس جميع الجهود الرامية إلى مكافحة العنصرية ومنعها والقضاء عليها، وينبغي أن تبقى كذلك. وقالت إن الاتفاقية هي الأساس الوطيد للعمل، وهي صك متجدد قادر على التصدي للتحديات الجديدة والناشئة على السواء. ولذلك، ينبغي أن ينصب التركيز المشترك على تشجيع التنفيذ الكامل والفعال للاتفاقية. وسلّطت الضوء على عدم قابلية جميع حقوق الإنسان للتجزئة وترابط هذه الحقوق، وقالت إنه ينبغي ألّا يُنظر إلى الاتفاقية بطريقة منعزلة، بل ينبغي قراءتها بالاقتران مع الصكوك القائمة الأخرى، بما في ذلك المادتان 19 و20 من العهد الدولي الخاص بالحقوق المدنية والسياسية، بشأن حرية التعبير والتحريض على الكراهية. ويبدو أنه لا يوجد اتفاق بشأن الثغرات الممكنة في الاتفاقية أو عدم تضمنها أي أحكام تعالج الأشكال المعاصرة للعنصرية، ولا دليل على هذه الحجة. ولا يزال الاتحاد الأوروبي ملتزماً بالأهداف والالتزامات الرئيسية المتعهد بها في المؤتمر العالمي لمكافحة العنصرية والتمييز العنصري وكره الأجانب وما يتصل بذلك من تعصب، وبالعمل مع الفريق العامل الحكومي الدولي المعني بالتنفيذ الفعال لإعلان وبرنامج عمل ديربان. ومع ذلك، فإن موضع التساؤل هو ما إذا كانت ستة أسابيع من الاجتماعات في السنة هي الطريقة المثلى لاستخدام الموارد المتاحة لمكافحة العنصرية، نظراً إلى أن مجلس حقوق الإنسان والجمعية العامة قد أنشآ مؤخراً مسارات إضافية للتصدي للعنصرية. وقالت إن الاتحاد الأوروبي لا يزال مقتنعاً بأنه ينبغي تجنب تكاثر آليات وعمليات متابعة ديربان وازدواجيتها، وأنه ينبغي تخصيص الموارد في المقام الأول لاتخاذ تدابير ملموسة لمكافحة العنصرية وجميع أشكال التمييز على أرض الواقع، والتغلب على العقبات الكامنة أمام تنفيذ الصكوك الدولية القائمة. ويبقى الواجب المشترك للأمم المتحدة هو مكافحة آفة العنصرية، وهذا هدف لا يمكن تحقيقه إلّا بالتغلب على الانقسامات، بما في ذلك الانقسامات بشأن إعلان وبرنامج عمل ديربان، والتصدي بطريقة توافقية للطريقة التي يمكن بها إحراز تقدم حقيقي نحو هدفها المشترك – ألا وهو عالم خالٍ من العنصرية والتمييز العنصري وكره الأجانب وما يتصل بذلك من تعصب. وأعربت عن تطلع الاتحاد الأوروبي إلى تقاسم خبراته الخاصة والاستماع إلى المساهمات من جميع أنحاء العالم.

26- وقال ممثل جمهورية فنزويلا البوليفارية إن اللجنة المخصصة آلية هامة تتمتع بولاية واضحة لوضع معايير تكميلية للاتفاقية الدولية للقضاء على جميع أشكال التمييز العنصري، عملاً بقرارات الجمعية العامة وقرار مجلس حقوق الإنسان 36/34. وقال إن هذه لحظة تاريخية من أجل تناول الولاية المسندة إلى اللجنة في وقت لا تزال فيه مظاهر العنصرية والتمييز مرئية، والتحديات عديدة، لا سيما في البلدان المتقدمة حيث يقع أفراد الأقليات ضحايا للاستبعاد والتمييز والفقر. وتدين جمهورية فنزويلا البوليفارية تصاعد خطاب الكراهية والتحريض على الكراهية، فضلاً عن صعود الأحزاب السياسية اليمينية المتطرفة التي تهدد الإنجازات التي تحققت من أجل حماية حقوق الفئات الضعيفة، ولا سيما الأشخاص المنحدرون من أصل أفريقي. وقال إن جمهورية فنزويلا البوليفارية تقدر عمل اللجنة في وضع معايير تكميلية للاتفاقية من شأنها أن تسمح بإحراز تقدم وسد الثغرات، وتوفير معيار جديد لتعزيز الكفاح ضد جميع أشكال العنصرية المعاصرة، بما في ذلك التحريض على الكراهية العنصرية والدينية. ولا تزال جمهورية فنزويلا البوليفارية ملتزمة بمكافحة العنصرية والتمييز العنصري وكره الأجانب وما يتصل بذلك من أشكال للتعصب، نظراً إلى أن هذه التحديات ما زالت تشكل تهديدات رئيسية للبشرية جمعاء يتعين مواجهتها.

27- وقال ممثل جمهورية إيران الإسلامية إن بلده يؤيد البيان الذي أُدلي به باسم منظمة التعاون الإسلامي. ولاحظ مع الأسف أنه على الرغم من إصدار العديد من الوثائق ذات الصلة، واتخاذ تدابير عديدة لمكافحة العنصرية وكره الأجانب وما يتصل بذلك من تعصب، ولا سيما بعد مرور 20 عاماً على اعتماد إعلان وبرنامج عمل ديربان، فإن العالم يعاني من أشكال متجددة من التمييز العنصري. وبعد

مرور أربعة عشر عاماً على إنشاء اللجنة المخصصة الهامة، لا يزال يتعين إحراز تقدم ملموس في وضع معايير تكميلية. وقد أظهر الاعتراض الدولي على الأوجه الناشئة لكراهية الإسلام والعنصرية وكره الأجانب وما يتصل بذلك من تعصب، ولا سيما خلال جائحة كوفيد-19، أن المجتمع الدولي بحاجة إلى تحديد العقبات الرئيسية الماثلة في طريق مكافحة العنصرية واتخاذ إجراءات جادة للقضاء عليها. وقال إنه ليس هناك من شك في أن العنصرية والتمييز العنصري وكراهية الأجانب وما يتصل بذلك من تعصب هي أمور لا تزال تنافي المقاصد والمبادئ الواردة في ميثاق الأمم المتحدة والإعلان العالمي لحقوق الإنسان، وأن المساواة وعدم التمييز مبدآن أساسيان من مبادئ القانون الدولي. وقد أثبتت جائحة كوفيد-19 أن المكافحة الفعالة لأعمال العنصرية والتمييز العنصري بجميع أشكالهما أصبحت ضرورية وملحة أكثر من أي وقت مضى. ودعا إلى بدء العمل على مشروع البروتوكول الإضافي للاتفاقية الدولية للقضاء على جميع أشكال التمييز العنصري، إذ يعتقد بلده أن البروتوكول الإضافي سيكون أداة هامة لمكافحة جميع الأشكال المعاصرة للعنصرية والتمييز.

28- وأعرب ممثل مصر عن بالغ قلقه لأن اللجنة المخصصة لم تتمكن من تحقيق أهدافها، رغم السنوات الطويلة من الخبرة والعمل، وأن المفاوضات لا تزال تركز على ما إذا كان من الضروري وضع معايير تكميلية. وشدّد على ضرورة احترام الولاية التي أسندها مجلس حقوق الإنسان إلى اللجنة، وأعرب عن رفضه الشديد لأي محاولات للتشكيك فيها، وأشار إلى أنه من المهم للغاية مواصلة العمل بسبب تصاعد آفة العنصرية وازدياد التمييز في جميع أنحاء العالم. وقد لُوحظت مؤخراً مظاهر جديدة للعنصرية والتمييز العنصري، لم تكن متوقعة في البداية في الاتفاقية الدولية للقضاء على جميع أشكال التمييز العنصري، ومن هنا تأتي الحاجة إلى معايير تكميلية، لا سيما في ضوء انتشار العنف وخطاب الكراهية، بما في ذلك على المستوى الرسمي، والعنف ضد الأقليات، ولا سيما في بعض المحافل الدولية التي تجري فيها مناقشة هذه المسألة. ومن الضروري حالياً سد الثغرات القائمة، سواء أكانت في الصكوك الدولية القائمة أو القوانين الوطنية لمكافحة التمييز العنصري. وقال إن مصر على ثقة بأن اللجنة ستستفيد من التقدم المحرز فيما سبق بحيث يتسنى وضع معايير تكميلية وضمان التقيد بالاتفاقية.

ثالثاً- مناقشات عامة ومواضيعية

ألف- معلومات محدّثة عن اللجنة المخصصة وعرض عام ولمحة عامة عن تقرير مشاورة الخبراء المعقودة فيما بين الدورات

29- نظرت اللجنة المخصصة، في جلستيها الثانية والثالثة، في البند 4 من جدول الأعمال، وهو "معلومات محدّثة عن اللجنة المخصصة وعرض عام ولمحة عامة عن تقرير مشاورة الخبراء المعقودة فيما بين الدورات". وفي الجلسة الثانية، قدّمت الرئيسة – المقررة معلومات محدّثة عن اللجنة المخصصة، نظراً إلى وقوع أحداث كثيرة منذ دورتها العاشرة. ولخصت مداولات تلك الدورة وسلّطت الضوء على بعض الاستنتاجات والتوصيات، واسترعت الانتباه إلى الوثيقة المعنونة "موجز للمسائل والعناصر الممكنة المتعلقة بتنفيذ قرار الجمعية العامة 262/73 وقرار مجلس حقوق الإنسان 36/34 بشأن بدء المفاوضات المتعلقة بمشروع البروتوكول الإضافي للاتفاقية الذي يجرّم الأفعال ذات الطابع العنصري والتي تنم عن كره الأجانب" التي اعتُمدت في الدورة ذاتها. وقدمت كذلك لمحة عامة عن مشاورة الخبراء القانونيين فيما بين الدورات، التي عُقدت في اجتماع مختلط يومي 21 و22 تشرين الأول/أكتوبر 2020 في جنيف. وفي ذلك الحدث، اجتمع خبيران قانونيان من كل منطقة، وعضو من اللجنة المعنية بالقضاء على التمييز العنصري، والمقرر الخاص المعني بالأشكال المعاصرة للعنصرية والتمييز العنصري وكره الأجانب وما

يتصل بذلك من تعصب، من أجل النظر في موجز القضايا ووثيقة العناصر الممكنة التي صيغت في الدورة العاشرة. وأحاطت الرئيسة – المقررة علماً بالعرض الذي قدمه الرئيس – المقرر السابق في الدورة الخامسة والسبعين للجمعية العامة، وجلسة التحاور التي أُجريت مع اللجنة الثالثة، استجابةً لطلب الجمعية العامة الوارد في قرارها 262/73.

30- وفي الجلسة الثانية أيضاً، أدلى ممثل الكاميرون ببيان عام باسم المجموعة الأفريقية. وقال إن المجموعة الأفريقية تعتبر الاتفاقية الدولية للقضاء على جميع أشكال التمييز العنصري إحدى الوثائق البارزة في مكافحة العنصرية والتمييز العنصري وكره الأجانب وما يتصل بذلك من تعصب. ومع ذلك، فإن المجموعة تفهم أيضاً أن الوثيقة نتاج عصرها، وأنها بقيت من بين الاتفاقيات الدولية القليلة التي لم يجرِ الاستفاضة فيها أو تحديثها من خلال وضع بروتوكولات إضافية. وأشار إلى أنه عندما أُبرمت الاتفاقية، كانت الغالبية العظمى من الدول الأفريقية لا تزال تحت الحكم الاستعماري، شأنها في ذلك شأن معظم البلدان في الجنوب العالمي. وقال إن تلك البلدان – التي كانت لا تزال تعاني تحت حكم الاستعمار – لم يكن لديها سوى هامش محدود، إن وُجد، للمساهمة مساهمة حرة في تحديد ما يعتبر عنصرية نظمية أو هيكلية، وتعريفها وتفسيرها. وفي الواقع، فإن العديد من الدول التي شاركت في صياغة الاتفاقية كانت هي نفسها عنصرية هيكلياً، وكانت بالكاد تعترف بأي حقوق للأفارقة أو الأشخاص المنحدرين من أصل أفريقي. ولم يُسمع صوت تلك الدول المحررة حديثاً إلّا في وقت لاحق، عندما تحرر المزيد من الدول من اضطهاد الاستعمار. وقال إن الأمر استغرق حتى عام 2001 لكي يجتمع العالم أخيراً لصياغة وثيقة تبرز التطلعات الحقيقية للأغلبية الساحقة من الناس في جميع أنحاء العالم، الذين وقعوا ضحايا للتمييز العنصري. وفي حين أن هذه الوثيقة، أي إعلان وبرنامج عمل ديربان، تعكس النظرة الحقيقية للطريقة التي ينظر بها العالم إلى العنصرية والتمييز العنصري، فإنه للأسف، بعد 20 عاماً من اعتمادها، لا تزال العديد من الدول التي استبعدت ضحايا العنصرية من المشاركة في وضع الاتفاقية غير منخرطة في تنفيذ إعلان وبرنامج عمل ديربان. وقال إن المجموعة الأفريقية تجد صعوبة في فهم السبب في أن تلك الدول نفسها لا تتمكن من إدراك الحاجة إلى إيجاد فهم مشترك بشأن العنصرية والتمييز العنصري مع أولئك الذين استبعدوا الضحايا من المحادثة وارتكبوا العنصرية وما زالوا يفعلون ذلك، وفي كثير من الحالات من خلال العنصرية النظمية. وتدعو المجموعة الأفريقية جميع الدول إلى التضافر من أجل إجراء مناقشة صادقة حول وثيقة عمرها 56 عاماً، وإدراك أنها كُتبت في وقت كانت فيه العنصرية النظمية وخطاب الكراهية ضد الأفارقة والمنحدرين من أصل أفريقي هما القاعدة وليس الاستثناء. وحثّ اللجنة المخصصة على العمل معاً لتحديث تلك الاتفاقية الهامة. وقال إنه يصُعب على الذين استُبعدوا من المحادثة قبل 56 عاماً قبول الحجة التي مفادها أنه لا جدوى من الخوض في مسائل قررها الآخرون نيابة عنهم.

31- وسلّطت ممثلة الاتحاد الأوروبي الضوء على عدة جوانب حاسمة في تقرير مشاورة الخبراء المعقودة فيما بين الدورات. وقالت إن التقرير لم يتضمن معلومات عن أي اتفاق بشأن الحاجة إلى معايير تكميلية للاتفاقية الدولية للقضاء على جميع أشكال التمييز العنصري. وجرت مناقشات كثيرة بين الخبراء بشأن الصياغة وبعض المصطلحات الواردة في موجز العناصر الممكنة لمشروع بروتوكول إضافي. وفي الواقع، فإن الخبراء أوصوا في التقرير بأنه "ينبغي استعراض العناصر المقترحة من حيث اتساعها وغموضها لاستيفاء الصياغة والمفاهيم والتعاريف الدقيقة والمفصلة التي تتطلبها مبادئ القانون الجنائي". ويفهم الاتحاد الأوروبي من ذلك أن الاقتراح ليس جاهزاً للانتقال إلى المستوى التالي وينبغي إعادة النظر فيه واستعراضه بدقة قبل اتخاذ خطوات إضافية. وقد أجرى الخبراء مناقشات مماثلة لتلك التي تجري في اللجنة المخصصة منذ دورتها الأولى في عام 2009. ولم تخلص اللجنة إلى وجود ثغرات موضوعية أو إجرائية في الاتفاقية، وهو أيضاً رأي لجنة القضاء على التمييز العنصري. وقالت إنه في الدورة الثامنة للجنة المخصصة، المعقودة في تشرين الأول/أكتوبر 2016، أشار رئيس لجنة القضاء على التمييز

العنصـــري إلى اســـتنتاجات تقرير تلك اللجنة لعام 2007 بشـــأن المعايير الدولية التكميلية[3]، وذكر أن الأحكام الموضوعية للاتفاقية تكفي لمكافحة التمييز العنصري في الظروف المعاصرة، مضيفاً أن المادة 1 من الاتفاقية تقدم أوسع تعريف للتمييز العنصري. ولم يذهب الخبراء الخمسة الذين أعدوا تقرير عام 2007 إلى حد الاستنتاج الصريح أن هناك حاجة إلى وضع بروتوكول إضافي، وذكروا بدلاً من ذلك أن هناك حاجة إلى التحسين، وهو ما يمكن تحقيقه من خلال التعليقات العامة، على سبيل المثال. وانطلاقاً من هذا المنظور، لم يتمكن الاتحاد الأوروبي من تأييد بدء المفاوضات بشأن وضع بروتوكول إضافي للاتفاقية يجرّم الأفعال التي تتسم بطابع العنصرية وكره الأجانب. وقالت إن الاتحاد الأوروبي لا يعارض مبدأ اعتماد معايير تكميلية في حد ذاته؛ وأعربت عن تفهمه للحاجة إلى فهم مشترك. بل إن الأمر يعود بالأحرى إلى حقيقة أن تحديد الثغرات يجب أن يستند إلى البيانات وليس إلى الآراء. ويجب أن يكون قرار اعتماد المعايير مبرراً تبريراً عقلانياً، وقائماً على الأدلة، ومن الناحية المثالية، صادراً بتوافق الآراء. وقالت إن الاتحاد الأوروبي ليس متأكداً من أن هذه الشروط مُستوفاة حالياً، ليس لأنه يعتقد أنه لا حاجة إلى إحراز تقدم – فهناك دائماً مجال للتقدم – بل لأن إمكانية إحراز تقدم بهذه الطريقة غير واضحة.

32- وفي الجلسة الثالثة، قدمت الأمانة لمحة عامة مفصلة على المشاورة والتقرير الخاص بها، الذي أُتيح للمشاركين قبل بداية الدورة الحادية عشرة. ودعت الرئيسة – المقررة المشاركين إلى مناقشة التقرير.

33- وسأل ممثل جنوب أفريقيا عما إذا كان الخبراء قد أسدوا مشورتهم بشأن طريقة إدارة الآراء المتباينة في اللجنة المخصصة، إذ تعتقد بعض الدول أنه لا توجد ثغرات في الاتفاقية الدولية للقضاء على جميع أشكال التمييز العنصري بينما ترى دول أخرى عكس ذلك، وسأل عن الطريقة التي يمكن بها المضي قدماً في وضع معايير تكميلية.

34- وأيد ممثل باكستان، متحدثاً باسم منظمة المؤتمر الإسلامي، البيان الذي أدلى به ممثل جنوب أفريقيا، مشيراً إلى أن أسئلة عدة أثارها الخبراء القانونيون تظهِر تنوع الآراء داخل اللجنة المخصصة نفسها. وقال إنه كان سيكون من دواعي تقديره الحصول على إجابات من الخبراء القانونيين على بعض هذه الأسئلة. وقد أشارت المناقشات في اللجنة إلى وجود ثغرات في العديد من المجالات. وقال إنه يتفق مع الخبراء على أنه، عند تناول خطاب الكراهية، ينبغي مواءمة البروتوكول الإضافي مع المادتين 19 و20 من العهد الدولي الخاص بالحقوق المدنية والسياسية، نظراً إلى أن هدف البروتوكول الإضافي هو تعزيز صكوك حقوق الإنسان القائمة بشأن العنصرية ومكافحة مظاهرها الجديدة والناشئة. وشدّد على أن الصك الإضافي الجديد يجب أن يتماشى مع الصكوك القائمة. وقال إن القضايا المتعلقة بانتشار المحتوى المتاح على الإنترنت وتداوله تتطلب اهتماماً خاصاً. ويتمثل موقف منظمة التعاون الإسلامي في ضرورة حظر الدعوة إلى الكراهية والعنف والتمييز، على الإنترنت أو خارجه. وفي حين أن الإجراءات الإيجابية ضرورية، فإن التدابير العقابية مهمة أيضاً في مكافحة خطاب الكراهية، لا سيما عندما يكون بمثابة التحريض على العنف، بما في ذلك العنف القائم على العرق أو الدين أو اللون أو المعتقد. ويكمن التوازن بين الحقوق والمسؤوليات في صميم القانون الدولي لحقوق الإنسان. وأشار إلى أن قرار مجلس حقوق الإنسان 18/16 ينص على خطة عمل شاملة لتعزيز الحوار عندما يتعلق الأمر بالكراهية الدينية، واقترح أن تستخدم اللجنة عناصر من هذا القرار في البروتوكول الإضافي. وبدا الخبراء متفقين على أن هناك ثغرات قائمة في المعايير القانونية الدولية لمكافحة التمييز الديني. وقال إنه لا يتفق مع موقفهم الذي مفاده أنه ينبغي فصل التمييز القائم على أساس الدين أو المعتقد عن التمييز العنصري، لأن ذلك يتعارض مع النهج المتعدد الجوانب. وأشار إلى أن لجنة القضاء على التمييز العنصري قد تطرقت إلى ذلك بالتفصيل،

(3) A/HRC/4/WG.3/7.

وأن إدارة جميع حقوق الإنسان تتناول أشكال التمييز كافة في الوثيقة نفسها. وذكّر بأن العهد الدولي الخاص بالحقوق المدنية والسياسية لا يفصل بين الكراهية العنصرية والكراهية الدينية التي تشكل تحريضاً على التمييز أو العداوة أو العنف.

35- وذكر ممثل مصر أن تقرير مشاورة الخبراء مهم لأنه يشير إلى الثغرات الموجودة في الاتفاقيات الدولية التي لا تتناول جرائم معينة، وهو ما يتطلب وضع بروتوكول إضافي. وقال إن بلده يؤيد البيانات التي أدل بها ممثل جنوب أفريقيا وممثل منظمة التعاون الإسلامي. ولما كانت مسألة التعاريف قد أثارها الخبراء، فمن الواضح أن هناك ثغرات، ويجب على الخبراء أن يدلوا برأيهم بشأن كيفية سد هذه الثغرات. وقد كان هناك اتفاق على الصعيد الدولي على ضرورة حظر مختلف أشكال التمييز، التي تشكل الاتفاقية الدولية للقضاء على جميع أشكال التمييز العنصري سابقة بشأنها. وقد اعترف الجميع بتلك الجرائم وأدانوها عند وقوعها.

36- وبناءً على طلب الرئيسة – المقررة، أوضحت الأمانة أن الهدف من مشاورة الخبراء القانونيين هو التماس آراء أولية من الخبراء بشأن وثيقة العناصر التي وافقت عليها اللجنة المخصصة في دورتها العاشرة. ثم ستتفق اللجنة في الدورة الحادية عشرة على الإجراءات التي يمكن اتخاذها في المستقبل، سواء أتعلق الأمر بسد الثغرات القانونية أو بالتماس مشورة قانونية إضافية.

باء- عرض ومناقشة بشأن نشر خطاب الكراهية

37- نظرت اللجنة المخصصة، في جلساتها الرابعة والخامسة والسادسة، في البند 5 من جدول الأعمال المتعلق بنشر خطاب الكراهية. وفي الجلسة الرابعة، قدمت جوانا بوثا، الأستاذة المساعدة ورئيسة قسم القانون العام في كلية الحقوق، جامعة نيلسون مانديلا في بورت إليزابيث، جنوب أفريقيا، والمحامية لدى المحكمة العليا في جنوب أفريقيا، عرضاً عن الآراء والتوصيات والاستنتاجات التي صاغها الخبراء بشأن نشر خطاب الكراهية في مشاورتهم فيما بين الدورات، وذلك في يومي 21 و22 تشرين الأول/أكتوبر 2020. ويرد في المرفق الأول بهذا التقرير العرض والمناقشة التي أعقبته.

38- وفي الجلسة الرابعة أيضاً، أبلغت الرئيسة – المقررة اللجنة المخصصة بأنها اضطرت إلى التغيب عن جنيف لعدة أيام لظروف شخصية طارئة. وترأس الاجتماعات اللاحقة الرئيسان المؤقتان، جوليا إيمين – شاندورو، الممثلة الدائمة لناميبيا لدى مكتب الأمم المتحدة والمنظمات الدولية الأخرى في جنيف؛ وسالومون إريث، الممثل الدائم للكاميرون لدى مكتب الأمم المتحدة والمنظمات الدولية الأخرى في جنيف.

جيم- عرض ومناقشة بشأن جميع الأشكال المعاصرة للتمييز على أساس الدين أو المعتقد

39- نظرت اللجنة المخصصة، في جلستيها السابعة والثامنة، في البند 6 من جدول الأعمال، وهو جميع أشكال المعاصرة للتمييز على أساس الدين أو المعتقد. وترأست السيدة إيمين – شاندورو الجلسة 7، وترأس السيد إيهيث الجلسة الثامنة. وفي الجلسة السابعة، استمعت اللجنة إلى عرض قدمه دودو ديين، الخبير المستقل السابق المعني بحالة حقوق الإنسان في كوت ديفوار، والمكلف السابق بولاية المقرر الخاص المعني بالأشكال المعاصرة للعنصرية والتمييز العنصري وكره الأجانب وما يتصل بذلك من تعصب، والمسؤول السابق في منظمة الأمم المتحدة للتربية والعلم والثقافة، بشأن الآراء والتوصيات والاستنتاجات التي صاغها الخبراء بخصوص مسألة جميع الأشكال المعاصرة للتمييز على أساس الدين أو المعتقد في المشاورة التي عُقدت فيما بين الدورات. ويرد في المرفق الأول بهذا التقرير موجز للعرض والمناقشة التي أعقبته.

40- وفي نهاية الجلسة الثامنة، ذكر ممثل جنوب أفريقيا أنه لاحظ أثناء استعراض وثائق الدورة أن الوثائق، بما فيها تقرير مشاورة الخبراء، لم تقدم سوى القليل من المقترحات الملموسة بشأن الصيغة التي ستُستخدم في البروتوكول، بل تضمنت بدلاً من ذلك أسئلة وقضايا. وقال إنه كان يود لو أن الخبراء عملوا على وضع نص فعلي. وأوضحت الأمانة أن العملية قد بدأت بالفعل بوثيقة عناصر الدورة العاشرة والنتائج التي اتفقت عليها الدول. وقد كان التكليف الممنوح للخبراء القانونيين عملاً بقرار المجلس 29/42 هو النظر في عناصر مشروع بروتوكول إضافي للاتفاقية الدولية للقضاء على جميع أشكال التمييز العنصري أعدته اللجنة المخصصة في دورتها العاشرة، وإعداد تقرير عن المداولات والتوصيات لتقديمه إلى اللجنة في دورتها الحادية عشرة. وفي تلك المرحلة، تمكن الخبراء من تقديم تعليقات وأسئلة، ورؤى واقتراحات قانونية. واقترح مندوب جنوب أفريقيا أن تستعرض الأمانة التعاريف الواردة في الوثائق الدولية القائمة، وأن تجمع التعاريف القائمة التي تحظى بتوافق الآراء لكي تنظر فيها اللجنة المخصصة.

دال- عرض ومناقشة بشأن الجرائم السيبرانية العنصرية

41- نظرت اللجنة المخصصة في البند 7 من جدول الأعمال، المتعلق بالجرائم السيبرانية العنصرية، في جلساتها التاسعة والعاشرة والحادية عشرة، التي حلت خلالها السيدة إيمين - شاندورو والسيد إيهيث محل الرئيسة - المقررة. وفي الجلسة التاسعة، استمعت اللجنة إلى عرض قدمته جوانا كوليزا، أستاذة القانون الدولي في جامعة لودز، بولندا، وعضو في اللجنة العلمية لوكالة الحقوق الأساسية التابعة للاتحاد الأوروبي، ورئيسة المجلس الاستشاري للمنتدى العالمي للخبرات السيبرانية، وتناولت الآراء والتوصيات والاستنتاجات التي صاغها الخبراء بشأن مسألة الجرائم السيبرانية العنصرية في المشاورة المعقودة فيما بين الدورات. ويرد في المرفق الأول بهذا التقرير موجز العرض والمناقشة التي أعقبته.

هاء- عرض ومناقشة بشأن التدابير الوقائية لمكافحة التمييز العنصري والتمييز على أساس كره الأجانب

42- وفقاً لبرنامج العمل، من المقرر أن تتناول اللجنة المخصصة في جلستها الثانية عشرة البند 8 من جدول الأعمال بشأن التدابير الوقائية لمكافحة التمييز العنصري والتمييز على أساس كره الأجانب. وبسبب صعوبات تقنية، لم يتسنَ تقديم عرض آنا سبين برادلي، نائبة رئيس جامعة كاليفورنيا للإنصاف والتنوع والشمول في جامعة كاليفورنيا، لوس أنجلوس، وأستاذة القانون السابقة في جامعة كولورادو، الولايات المتحدة الأمريكية، بشأن الآراء والتوصيات والاستنتاجات التي صاغها الخبراء بخصوص هذه المسألة في المشاورة المعقودة فيما بين الدورات.

43- ودعا السيد إيهيث، الذي تولّى رئاسة الجلسة، المندوبين إلى الإدلاء ببيانات بشأن التدابير الوقائية لمكافحة التمييز العنصري والتمييز على أساس كره الأجانب. واقترح أن ينظروا في مسائل من قبيل ما إذا كان ينبغي أن يتضمن البروتوكول الإضافي صيغة ملزمة قانوناً فقط، وما إذا كان ينبغي أن يتضمن تدابير تكفل التحقيق حسن التوقيت والفعال في الادعاءات المتعلقة بالأفعال ذات الطابع العنصري وكره الأجانب، ووصول الضحايا إلى سُبل انتصاف فعالة، ومساعدة الضحايا بالموارد القانونية لضمان وصولهم إلى سُبل انتصاف فعالة.

44- وقال ممثل جنوب أفريقيا إن وفده لا يعتقد أن البروتوكول الإضافي ينبغي أن يتضمن صيغة ملزمة قانوناً فقط، نظراً إلى أن المبادئ التوجيهية مرحب بها دائماً في وثيقة من هذا القبيل من أجل المساعدة على تحقيق فهم أفضل للموضوع والمصطلحات وطريقة التفسير. وقال إن وفده يرى أن صيغة تتضمن عناصر توجيهية ستكون مناسبة.

45- وذكر ممثل منظمة غير حكومية، هي رابطة حقوق الإنسان الدولية للأقليات الأمريكية، أن عدم القدرة على التصدي للفصل العنصري وغيره من الجرائم المرتكبة ضد الإنسانية المرتبطة بالعنصرية بسبب الافتقار إلى الإرادة السياسية لا يزال يمثل مشكلة. وسيكون من المهم النظر في أثر قرار مجلس حقوق الإنسان 7/48 على تركة الاستعمار. وقد أُدرج الاستعمار بشكل مباشر في جدول الأعمال، شأنه شأن الجرائم المرتكبة ضد الإنسانية التي تسببها العنصرية، ولكن يبدو أن الإجراءات الخاصة تفتقر إلى الإرادة السياسية أو هي تسعى إلى الحد من مدى ارتباط الفصل العنصري بإنكار الحق في تقرير المصير. واقترح أن تنظر اللجنة المخصصة في ضرورة أن تتلقى لجنة القضاء على التمييز العنصري الالتماسات وتحيلها إلى الهيئات المناسبة داخل منظومة الأمم المتحدة، وفقاً للمادة 15 من الاتفاقية الدولية للقضاء على جميع أشكال التمييز العنصري.

46- وفي الجلسة الثالثة عشرة، أبلغ السيد إيهيث، متحدثاً بصفته الرئيس المؤقت، اللجنة المخصصة باتخاذ قرار بشأن عقد الدورة الحادية عشرة. ولظروف شخصية طارئة، ستبقى الرئيسة – المقررة غائبة عن جنيف. وبالنظر إلى برنامج العمل، هناك حاجة إلى ضمان حضورها عند النظر في المسألة الهامة المتعلقة بالاستنتاجات والتوصيات الصادرة عن الدورة. ولذلك، تقرر، بالتشاور مع الرئيسة – المقررة، رفع الدورة الحادية عشرة واستئنافها في أقرب وقت ممكن في عام 2022.

واو- عرض ومناقشة عامة وتبادل للآراء

47- استؤنفت الدورة الحادية عشرة للجنة المخصصة في 18 تموز/يوليه 2002. وفي الجلسة الرابعة عشرة، قدمت الرئيسة-المقررة، في إطار البند 9 من جدول الأعمال، معلومات محدثة موجزة عن اللجنة المخصصة، وأجرت اللجنة مناقشة عامة وتبادلت الآراء بشأن الدورة الحادية عشرة، وذلك بهدف اعتماد الاستنتاجات والتوصيات الصادرة عن الدورة في إطار البند 10 من جدول الأعمال.

48- وفي الجلسة الخامسة عشرة، وفي إطار البند 8 من جدول الأعمال، استمعت اللجنة المخصصة إلى عرض قدمته السيدة سبين برادلي (انظر الفقرة 49 أعلاه)، التي لخصت التوجيهات المقدمة في مشاورة الخبراء القانونيين المعقودة فيما بين الدورات بشأن مسألة التدابير الوقائية لمكافحة التمييز العنصري والتمييز على أساس كره الأجانب. ويرد في المرفق الأول بهذا التقرير موجز العرض والمناقشة التي أعقبته.

رابعاً- اعتماد الاستنتاجات والتوصيات الصادرة عن الدورة

49- في الجلسة الخامسة عشرة أيضاً، اعتمدت اللجنة المخصصة الاستنتاجات والتوصيات الصادرة عن الدورة الحادية عشرة، في إطار البند 10 من جدول الأعمال. وتحاورت اللجنة، في إطار ولايتها، مع الخبراء القانونيين بشأن المسائل الأربع على النحو المفصل أدناه.

50- وفيما يتعلق بنشر خطاب الكراهية، خلصت اللجنة المخصصة إلى أنه ينبغي لها ما يلي:

(أ) الحصول على مساعدة سياقية وقانونية بشأن سد الثغرات القانونية المحتملة أو التماس المزيد من آراء الخبراء بشأن قضايا محددة مثل التجريم، والسياق التاريخي للقانون والمعاهدات، وتعاريف المصطلحات؛

(ب) النظر في وثيقة تبين الصيغة والتعاريف المستمدة من الصكوك الدولية القائمة التي يمكن استخدامها في وضع البروتوكول الإضافي؛

(ج) الاستفادة من التعاون الدولي في منع نشر خطاب الكراهية ومكافحته، والحصول على المساعدة في القضاء عليه.

51- وفيما يتعلق بجميع الأشكال المعاصرة للتمييز على أساس الدين أو المعتقد، خلصت اللجنة المخصصة إلى أنه ينبغي لها ما يلي:

(أ) إجراء المزيد من المناقشات بشأن مكافحة جميع الأشكال المعاصرة للتمييز على أساس الدين أو المعتقد وتحديد العناصر التي يتعين إدراجها في بروتوكول إضافي لسد الثغرات القانونية المحتملة؛

(ب) النظر في استخدام العناصر الواردة في خطة العمل في قرار مجلس حقوق الإنسان 18/16 (مكافحة التعصب والقولبة النمطية السلبية والوصم والتمييز والتحريض على العنف وممارسته ضد أشخاص بسبب دينهم أو معتقدهم) من أجل تعزيز المناقشات بشأن الدين أو المعتقد في سياق البروتوكول الإضافي.

52- وفيما يتعلق بالجرائم السيبرانية العنصرية، خلصت اللجنة المخصصة إلى أنه ينبغي لها ما يلي:

(أ) دراسة الأعمال المنجزة في إطار عمليات الأمم المتحدة الأخرى المتعلقة بالتصدي للجرائم السيبرانية، مثل فريق الخبراء الحكوميين المعني بالتطورات في ميدان المعلومات والاتصالات السلكية واللاسلكية في سياق الأمن الدولي، والفريق العامل المفتوح العضوية المعني بالتطورات في ميدان المعلومات والاتصالات السلكية واللاسلكية في سياق الأمن الدولي، واللجنة المخصصة الجديدة لوضع اتفاقية دولية شاملة بشأن مكافحة استخدام تكنولوجيات المعلومات والاتصالات للأغراض الإجرامية، التي كان من المقرر تقديمها مع مشروع عام 2020 بشأن اتفاقية دولية بشأن الجريمة السيبرانية في كانون الثاني/يناير 2022؛

(ب) استكشاف سُبل ربط عناصر عملها بشأن الجرائم السيبرانية العنصرية بعملية الأمم المتحدة وعملها العام بشأن الجرائم السيبرانية، على النحو المفصل في الفقرة الفرعية (أ) أعلاه.

53- وفيما يتعلق بالتدابير الوقائية لمكافحة التمييز العنصري وعلى أساس كره الأجانب، خلصت اللجنة المخصصة إلى أنه ينبغي لها أن تعيد النظر في مشاريع أحكام الفقرة 108(ز) من نص العناصر توخياً لمزيد من الدقة، وأن تنظر في إيجاد صياغة وعبارات بديلة في تلك الفقرات.

Annex I

Summaries of the presentations and initial discussions on the agenda topics

Presentation and discussion on dissemination of hate speech

1. At its 4th, 5th, and 6th meetings, the Ad Hoc Committee considered agenda item 5 on the dissemination of hate speech. Joanna Botha, Associate Professor and Head of the Department of Public Law at the Faculty of Law, Nelson Mandela University, Port Elizabeth, South Africa, and Attorney of the High Court of South Africa, gave a presentation on the advice, recommendations, and conclusions drawn by the experts on the dissemination of hate speech at their intersessional consultation of 21–22 October 2020.

2. Ms. Botha briefly situated the background of the experts' mandate, "to consider the elements of a draft additional protocol to the Convention and to prepare a report on our deliberations and recommendations for the Ad Hoc Committee at its 11th session," and noted that the purpose of her presentation at the 11th session is to report on the first issue the experts considered: dissemination of hate speech, as addressed in paragraph 108(a)–(d) of A/HRC/42/58, the report of the 10th session of the Ad Hoc Committee.

3. Ms. Botha then discussed article 4 of the ICERD – noting that article 4(a) has been the subject of much academic and political discussion – and outlined the interpretation of dissemination of hate speech in General Recommendation 35. She outlined the nexus between hate speech and discrimination, and highlighted the mandatory nature of article 4, which shows how central it is to the struggle against racial discrimination. She stated that it is a mistake to think that the ICERD defines hate speech, and that General Recommendation 35 clarifies this. She explained that racist hate speech can take many forms and is not confined to only explicitly racial remarks – it can include acts, signs, pamphlets, language, symbols, and can be both verbal and non-verbal, and occur offline or online. She also noted that recommendations apply to racist hate speech, whether from individuals or groups, in whatever form it manifests, orally or in print, or disseminated through electronic media, including the internet and social media, plus non-verbal forms of expression, for example display of racist symbols, images, and behaviour at public gatherings, including sporting events.

4. Ms. Botha then outlined state obligations regarding hate speech, which include giving urgent attention to all manifestations of racist hate speech and taking effective measures to combat them; taking "immediate and positive measures" to eradicate incitement and discrimination, and dedicating the widest possible range of resources to eradication of hate speech – including legislative, executive, administrative, budgetary, and regulatory instruments, plans, policies, programmes, and regimes; taking a holistic and integrated approach to regulation of hate speech; adopting legislation to combat racist hate speech that falls within the scope of article 4 of the ICERD.

5. Ms. Botha discussed factors and context to consider for criminalization, which she views as very important. Factors to consider include the content and form of speech; the economic, social, and political climate at play; the position or status of the speaker and the audience to whom speech is directed – which she considers very important, as a high-status speaker can lead to greater violence; the reach of the speech, or how broadly it is disseminated; and the objectives, or purpose, of the speech, which is important for determining incitement and whether a defence is available. Ms. Botha also stressed that restrictions cannot be too broad or vague. They must be formulated with precision, due regard, and a balanced approach. She noted, specifically that insult and slander cannot be criminalized for these reasons.

6. Addressing specific expert elaborations on the proposed draft elements in paragraph 108, Ms. Botha noted the experts' general discomfort with the wording. She recalled that the experts were uncomfortable that the criminal provisions would apply "irrespective of the author," as they all agreed authorship is a key component of a standard criminal law analysis, even though the experts understand the desire to capture both the original author and people who share the content. She explained that when an act is being criminalized, we need to

ensure that there is a very strict and precise definition being used, and that much of the language in paragraph 108 is not precise enough to meet this standard.

7. Ms. Botha noted the experts' suggestion that "acts" should be quite broad, including, for example, the display of signs, symbols, and gestures. She stressed the experts' position that, for criminalization to be appropriate, stronger definition for "racist," "xenophobic," and "religion/religious" should be elaborated. She also addressed the issue of online versus offline speech and that the experts agreed that everything which applies offline should also apply online, but there is more potential for material to "go viral" online, thus there is more potential for harm in that venue.

8. Discussing elements (a)–(c) of paragraph 108, Ms. Botha noted the experts' opinion that "hate speech" in 108(a) is far too broad and too vague. Terminology needs to have a precise, consistent definition and specific requirements when it is being used for the purposes of criminalization. She also believes there should be available defences, but that these do not necessarily need to be elaborated.

9. On 108(b) the experts agreed that the wording was quite problematic, as it conflates hate crimes and hate speech. Legally-speaking, as hate crime occurs when an existing criminal act is committed with a discriminatory bias. All States Parties should be regulating hate crimes, but there must be a distinction between regulation of hate crimes and criminalization of hate speech.

10. Ms. Botha relayed that the experts found paragraph 108(c) far too broad, but also redundant because a precise definition of hate speech would capture everything mentioned in this clause. She noted the experts felt it confused things rather than adding clarity or precision.

11. Regarding thematic issues, experts at the consultation focused on the interplay between criminal and civil law. While they believe criminalization of hate speech is necessary, it must be done with a precise definition and reserved for the most egregious cases. The experts also agreed – as has been stressed by CERD and the ICERD – that it would be misguided to rely only on legal measures and that positive and preventive measures are necessary as well. When law is involved, they also agreed that in addition to criminal law measures, civil law and effective human rights standards are of vital importance for a standard to have a broad range of recourse.

12. In response to Ms. Botha's presentation, the representative of South Africa acknowledged that the group of experts were asked specifically to look at the draft, and that he has heard their cautions to deal very specifically and carefully with language, but notes it would have been helpful to receive some language proposals as well. He shared that South Africa has been grappling with the subject of hate speech recently, and they have even had a case where someone said something discriminatory in Greece and it was prosecuted in South Africa, and requested that Ms. Botha share about the South African process.

13. Ms. Botha responded that, insofar as language is concerned, her presentation and the expert report have been shared with the Member States, and in her view when the dissemination of hate speech is criminalized, we need to use specific language, mainly "the advocacy of hatred against a person or group of persons based on the grounds which are specified in the Convention itself," potentially extending and exploring that, "and which incites to harm." From her perspective those are standard, clear terms that should be used for the criminalization of hate speech because it also captures hatred, intention, incitement, and harm – the key elements.

14. She also responded to the South African delegate's request to explain a bit about what is happening in South Africa, and she explained that the wording she had just suggested comes not only from the ICCPR, but also from the South African Constitution, which specifically protects freedom of expression but states that it does not extend to hate speech, as she has defined it.

15. Ms. Botha then outlined a piece of South African legislation known as the Promotion of Equality and Prevention of Unfair Discrimination Act, which was passed in 2000, and prohibits unfair discrimination, anti-human rights legislation, creates equality courts, and

prohibits hate speech. However, there is a problem with the prohibition of hate speech in this Act, as it is done in very broad terms and has just been declared unconstitutional due to overbreadth, even at a human rights level. She stated that it is not only overbroad, but also vague and very confusing to understand, so now the legislature has to go back and create a more precise definition for hate speech so that it can be operative even, she stressed, at a human rights level in equality courts.

16. She then noted that the case the delegate raised about the individual who disparaged people of African descent in South Africa on a European beach was very well dealt with, because the South African equality act contains a wide range of remedies, including positive measures that can be put in place where people can be educated and compelled to experience what it is like to be a member of the marginalized group and to understand the implications thereof. She explained that the Equality Act does well to prohibit discrimination, but it does not do well on hate speech due to the overbroad definition, nor has it yet properly enacted the provisions promoting equality. She also noted that South Africa does not have a specific hate crime offence, nor does it regulate hate crimes properly, although a number of bills have been put forward. She stated that from her perspective, South Africa is a perfect example of a country which should be criminalizing hate speech and regulating hate crimes, but which is not doing so perhaps because of some uncertainty as to what the standards are.

17. The representative of the EU made a statement on dissemination of hate speech, sharing that the EU is deeply concerned with rising hate speech including online, and the use of digital tools to spread hatred and violence and we have been working to prevent such incidents related to direct and indirect discrimination in order to punish perpetrators as well as to ensure justice, protection, and support to victims, and has been working closely with online platforms and internet service providers on these matters. In general, she stated, the European Union does have quite firm framework legislation on combating certain forms of racism and xenophobic crimes, and this sets the frame for common response of all member states to hate speech and hate crimes since it obliges member states to penalize the public incitement to violence against a group of persons or a member of such a group defined by reference to race, colour, religion, descent, or national or ethnic origin and that has to do with hate speech specifically. She noted, furthermore, that member states of the European Union must also ensure that racist or xenophobic motivation is considered as an aggravating circumstance, or alternatively that such a motivation may be taken into account in determination of penalties for any other criminal offences. This legislation, she explained, is also complemented by rules to protect victims of crime since it obliges member states to ensure their non-discriminatory treatment of victims of crime, including in respect to their resident status, and pays particular attention to the victims of bias-motivated crime. The delegate shared that, when it comes to the opinions expressed during the expert consultation, the European Union shares many of the outlined on pages 6–8 of the report, and agrees with the position that the ICERD already covers hate speech, hate crimes, and racial superiority, as well as racial profiling and discriminatory access to human rights, and that CERD has already given recommendations on these issues to many individual countries, including Member States. She suggested that it may be useful to look first at what already existed before trying to add elements to the existing law.

18. Ms. Botha responded that she is aware of the EU's position in relation to the regulation of hate crimes and dissemination of hate speech, both online and offline, and agrees that what the EU does is exceptional, but stressed that, in her view, more is needed to ensure a common standard at the international level because the recommendations we have are merely that, and the Convention itself does not use the word hate speech at all. It is clear that other Member States and States Parties are not doing what is required of them, which could surely be addressed with clearer standards as to the level of compliance.

19. The representative of the Russian Federation expressed support that this work should continue, and made a comment about the presentation. The delegate noted that, despite efforts of the international community, around the world we are observing the more active use of hate speech, as well as incitement to acts of hatred and violence and the growth of extremist movements who spread an ethos of racial superiority. He said it is to be noted that these phenomena take place in states which declare themselves to be democratically mature, and to be promoting democratic standards, and such states take almost no actions or measures to

halt hate speech, incitement to hatred, incitement to violence, and the right to free expression and opinion. The Russian Federation considers this position to be damaging and to violate international standards in the area of human rights, which are undergirded by the International Convention on the Elimination of Racial Discrimination, as well as the International Covenant on Civil and Political Rights. Freedom of expression should not be justification for extremist movements to be able to promote any kind of racist dialogue, he stated. He also noted the danger we experienced in the first part of the 20th century, given the rise of Nazism. The representative raised serious concerns regarding the violation of human rights and dissemination of violent rhetoric in online spaces, and stated that this phenomenon is strengthened by contemporary technology. He stated it is clear that measures must be taken to prevent and halt the spread of hate speech in social media, and that it is important to recognise the necessity to create legislative, institutional, political, and administrative frameworks in the area of online communication.

20. The representative of Pakistan posed a question about the contextual factors and 5 points outlined by Ms. Botha for determining hate speech. Recalling the workshop organized in Rabat a number of years ago by the OHCHR, he noted that some of the factors from the Rabat outcome were the same, but two or three were different. He requested the speaker to compare both thresholds, but also noted that under freedom of expression some States are making vague laws and providing space that could lead to hate speech and incitement to violence. He wondered if it would be feasible for any country to apply a five or six layer test to determine what constitutes hate speech, because many may not have the time or capacity to apply such an elaborate test, as it could result in a number of losses to innocent lives or damage to property.

21. Ms. Botha thanked the representative of Pakistan for mentioning the Rabat Plan of Action, which deals specifically with article 20 of the International Covenant on Civil and Political Rights, and places an obligation on States Parties to limit freedom of expression to regulate hate speech. She went through the 6-part threshold test noting that the first step is context, which is very much the same as she mentioned earlier. The second is speaker and the speaker's status, and the audience to whom the speech is directed, which is also the same as one of the steps she mentioned. The third step is intent, and she expressed hope that she had been clear when commenting on the wording of paragraph 108(a) versus the recommendations of the Committee that she specifically dealt with intent and required the in the language used that there be the advocacy of hatred and the incitement of harm, and that is encapsulated in the intent requirement out of the test from the Rabat Plan. The fourth Rabat Plan requirement is content and form, which is exactly the same as the number one requirement of the recommendation coming from the Committee. The fifth, she stated, is the extent of the speech act, which is talking about reach, and when we speak of dissemination, we obviously mean speech that is disseminated and broadcast, not just a conversation. And the sixth requirement is likelihood, including imminence, which is looking at potential for harm – in other words that this speech act has a very real possibility not necessarily of causing physical harm to the group targeted, but could be indirect harm in the form of psychological and emotional well-being being undermined, but also it is the standing in society being undermined. That where a group is targeted because of who they are based on skin colour, religion, language, ethnicity, and cost as members of an outgroup that is not wanted that this undermines their standing in society which is an indirect harm, but also undermines the social cohesion that is necessary for a democratic state that actually prizes everybody's worth and capability.

22. Ms. Botha explained that her recommendations come directly from the CERD committee itself, and she believes it has encompassed what is in the Rabat Plan of Action. She agreed that this is an urgent and pressing matter which needs to be dealt with sooner rather than later. Insofar as the relevance of this test is concerned, she stated the point is that the wording of any protocol or complementary standard should be clear as to what states parties obligations are. This test – the Rabat Plan of Action test plus the test that she mentioned earlier would also assist domestic institutions in formulating their criminal prohibition and then prosecuting authorities being able to decide what speech falls in the ambit thereof. These, she explained, are considered standard, good requirements for regulating hate speech under the criminal law.

23. Noting there were no further requests for the floor at that time, the Chair-Rapporteur proceeded with a question of her own. She sought Ms. Botha and the delegations' views on the discussion elements paper circulated in advance of the 11th session, and sought further understanding on the benefits, risks, and challenges of a criminal law versus a civil law approach, and whether a regulatory framework is sufficient to eliminate hate and discrimination.

24. Ms. Botha responded first by outlining the risks. She explained that if the standard is not clear – if legislative measures are too broad, or too vague – they can end up stifling freedom of expression, which is vital to ensure the importance of democracy and the peoples' views and voices are heard, and that they feel valued. She notes that she has stressed throughout her presentation and this dialogue the importance of freedom of expression and proper balancing. She explained that the risk of an unclear standard is that, in an attempt to promote human equality and dignity, there might be a regulator that is too broad and captures insults and ridicule, which in her view should never form part of criminal legislation. That part should be reserved for civil law, but even with civil law and human rights law there is a need for a precise regulator – though in those cases it need not include intent, because it is the impact on the victim that is important.

25. As for the benefits, Ms. Botha noted that it is critically important that we do not see regulation in isolation. We need to appreciate that when we aim to combat, to eliminate, to protect victims of unfair discrimination and racial and religious violence, this is a huge problem that is caused by humanitarian crises, international conflicts, human mobility, migration, climate change, etc. She stressed that we need to understand the necessity of a multi-faceted approach to deal with this crisis. Human rights law is important, the civil law is important, the criminal law is exceptionally important to deal with those cases which are egregious, which aggravate hatred, which call for groups to be eliminated, that call for groups to be othered, not to be wanted at all, because when the victims of those speech acts were ignored, in essence it deemed them unworthy, that they were not wanted in our society, and the authorities are not prepared to put a law in place to deal with that type of situation. Ms. Botha noted that when a state enacts legislation at multiple levels to protect the victims of such speech discrimination, at a criminal level, a civil and human rights level, and has measures in place to overcome discrimination – positive measures – then the benefit is that everybody in society feels worthy and feels that the state respects their rights. The work done on victims and not being felt wanted and the state ignoring the symbolic value of the law in this respect is absolutely critical. She also stressed that we need to get it right, because freedom of expression is also important.

26. Addressing the question of challenges, Ms. Botha suggested the need to accept that this should not be a political process can be a challenge, as can egos, and historical challenges as to who can and cannot be racist and who can and cannot be protected. She said it is important to draw lines empathetically, fairly, and humanely, and to bring everyone to the table. She also stressed that she believes the benefits outweigh the risks and challenges.

27. The Chair-Rapporteur followed up by asking Ms. Botha what, to her view, does the additional protocol aim to prevent or protect against, and how would the additional protocol ensure regulation of hate speech does not place undue limits on freedom of opinion and expression?

28. Ms. Botha responded that, in her view, the additional protocol aims to prevent a situation where States Parties can say they are uncertain of what the standard is and what is required of them. She noted that the existing Convention is unclear on exactly what States are required to regulate, because it merely says "an offence punishable by law," which could be interpreted to not necessarily include the criminal law. While she thinks that is a stretch, she stated it is clear that more certainty is needed as to what states' obligations should be in this respect, and also given the proliferation of what is going on now in the world in relation to discrimination and hate speech, it's clear that we need to do more. She reiterated that the Convention needs to be clearer, made priority, and it needs to be completely up-to-date with the online space. In her opinion, the existing Convention does not speak too clearly to what States Parties' obligations are.

29. On the issue of ensuring freedom of opinion and expression is protected, Ms. Botha noted that she has aimed to answer that, but wished to stress that the criminal law should be reserved only for those cases that fall within a very strict test, and that we have a threshold test that States Parties can use to assess what is and isn't speech deserving of criminal sanction. She further explained that penalties must be consistent, and that we need to look at custodial sanction. She noted these are very complex issues that need to be explored in more detail and tapped into to ensure there is due regard for all rights in the human rights framework.

30. The representative of South Africa commented that the African Group and South Africa have raised that the ICERD was written 56 years ago and that the writers, unfortunately excluded many of the people that were victims of racial discrimination, since they were mostly colonies and, in many of the countries, had no rights at all – including in some of the countries that actually proposed and wrote the document. The fight for racial freedom in those countries still had not finished, and it was only more than a decade later that many of the freedoms of movement and equality came about in many of these countries. In 2001 the Durban Declaration and Programme of Action brought almost 200 countries in the world together where the issue of the definitions and elaborations of what is understood as racial discrimination, racism, systemic racism, racist hate crimes and it was elaborated by countries which wrote the ICERD in 1965 and ones that were not at the conversation in 1965 working together. He stated that, unfortunately, some of those countries who wrote the 1965 document do not support the DDPA and are working very hard against it, while others support it. The problem was that the Convention must be one of the only conventions that is old and without an additional protocol. For example, the Convention on social and economic rights, women's rights, and children's rights have additional updates as the world has changed and people have accepted the rights of these groups, yet this Convention seems to be a "holy cow', and the African Group did not understand why some states considered it is so perfect as to not require any elaboration, especially because the document itself has only a small section that speaks in broad, general terms about racial discrimination. It did not specify what was meant by racial discrimination. He indicated the lack of participation from some of these countries, which was needed for further elaboration. In light of this, the representative asked, how the Committee might move forward. He highlighted the need to bring the Committee together to form a common understanding in order to elaborate and update the ICERD.

31. Ms. Botha replied that, in her view, recognizing this problem, perhaps in relation to the SDGs and looking at how SDGs are met might be useful. She believes the way forward is to acknowledge upfront that is a very real problem undermining our world, and victims and people are regularly targeted, ostracized, and made to feel othered. She noted that she suspects, ironically, that some of the Member States the representative mentioned do, in fact regulate this type of speech in their own countries very well, and further ironically some of the Member States who push for the additional protocol to be implemented actually in their own countries do not regulate online and offline hate speech and discrimination. Ms. Botha suggested that we need a common approach where there is buy in that this is an issue we all face. It is a reality that when people are made to feel unwelcome in a society because they are different, that you're undermining the whole ethos of society and who we are as a people. We need to acknowledge this problem and do more work like we did at Durban, which was in 2001 – but now we are in 2021. She noted that if we look at the SDGs, some of them spotlight exactly what is happening here, so perhaps the answer is to work together as teams and not in silos to do our best to change the world for the better. She stated that she does think it is time for us to move past a Convention that was developed in the 1960s.

32. The Chair-Rapporteur requested Ms. Botha's reflections on whether the additional protocol should provide guidance on offline and online provisions separately? She also asked who are the intended perpetrators of the criminal provisions, and does the identity of the author matter? Does the reach of a powerful author provoke a different response than a less powerful actor? What is the required intent to prove the criminal act?

33. Ms. Botha responded that, in her view, the basics – what the elements are – of hate speech at the criminal level are the same online or offline; but the reality is that with online hate speech and the hate groups and organization thereof there would need to be more specific requirements as to what constitutes online speech, as opposed to offline speech and what it is that you're trying to regulate. She noted that, the basic elements should be the same for the

offence, but you would need to require a bit more particularity as to the distinctions between the two. Experience shows, if one looks at the European example and the work that is being done by EU and indeed other countries, to regulate the issue of online hate speech, and cybercrime, and cyber speech, that you need to be more specific there.

34. On the second and third questions, which Ms. Botha found had some overlap, she responded that when you deal with a criminal sanction, the identity of an author and their reach that that would be a critical factor in deciding a) whether or not to prosecute, b) whether there has been incitement of hatred, because then you look at the audience as well – the intended audience as well as possibly the unintended audience, and c) would look at the impact of the harm. Because it's the potential for harm that is really important when deciding if someone should be prosecuted for the criminal offence of hate speech. Ms. Botha clarified that she was not suggesting that this be part of the elements, but when it comes to the hearing of the case and deciding whether or not to prosecute, and if this person is found guilty what the sanction should be, then undoubtedly the author of the speech is going to be really important. She explained that this is why she believes there is a problem with the wording to the introduction of to paragraph 108 where it say "irrespective of the author." She suggests that it be removed, and for it to be made clear that this is relevant to the consequences of hate speech.

35. Ms. Botha also raised the issue of required intent, and the need to distinguish between hate speech that is so serious as to warrant criminal regulation and hate speech which should be dealt with as a human rights-type intervention. She stated that intent is necessary in criminal law to protect freedom of expression: there must be intent to advocate hatred, which is different than insult, ridicule, and offense. She explained that hatred has been defined quite extensively in international law and also at various domestic levels. She noted that in her extensive work on the problem with hate, she has found it clear that hate against people who are different to us is a specific intent where you advocate that hatred, and you must also incite others to harm societal well-being or the group of individuals. So incitement requires intent, advocacy requires intent at the criminal level. At the human rights level, which is different from the criminal or civil levels, she notes it is necessary to look at the words that were actually used, who it targets, and the impact of that speech. But she stressed the need for a criminal law response as well and questioned why this type of hate is any different than murder or rape, for example, when the harm can be as severe.

36. The Chair-Rapporteur then questioned Ms. Botha about whether there are any existing regulations on hate speech outside of ICCPR article 20. Ms. Botha responded that the ICCPR is the go-to, but that there are other treaties that talk about discrimination and hate speech: CEDAW, for example, in the context of women. But in those cases, Ms. Botha explained, it is all done peripherally in a way that does not address the issue head-on. From her perspective, the primary international treaties are the ICERD and the ICCPR.

37. At its 5th meeting, the Chair-Rapporteur was called away from Geneva on an urgent personal matter, and Ms. Julia Imene-Chanduru, Permanent Representative of the Republic of Namibia to the United Nations in Geneva chaired the meeting. She recalled the presentation by Ms. Joanna Botha at the 4th meeting, and suggested the 5th meeting begin by considering the definitions in the Committee's discussions. She asked the Committee how to define racism, xenophobia, hate speech, hate crime, racial profiling, intolerance, racist and xenophobic content, and opened the floor for discussion, reminding delegates that the questions are from the elements document that had previously been circulated.

38. The representative of Venezuela delivered a statement about hate speech where he expressed appreciation for the work of the Committee and the discussions intended to steer it toward consensus on the elaboration of complementary standards which will allow a filling of gaps in the Convention, to strengthen the fight against racism, racial discrimination and forms of related intolerance, which include hate speech and incitement towards racial hatred. He requested that steps be taken to eliminate incitement to racial hatred as part of the complementary standards, and stated that all should be concerned about the upswing around the world, particularly in developed countries, of increased incitement of racial hatred and racial incitement as well as extremist speech all used by political parties including political parties of a neo-fascist and extreme right which put at risk all that had been achieved in the

field of human rights, in particular concerning Afro-descendants and other vulnerable groups. He explained that Venezuela itself has taken key steps to ensure that diversity is one of the strengths of the Venezuelan state through proactive approach to involve all sectors of society in line with the provisions of the convention. In 2017, it adopted constitutional law against hatred and for peaceful coexistence and tolerance, the purpose of which is to recognize diversity and ensure tolerance and prevent and stamp out any forms of hate or discrimination, harassment or violence.

39. The representative of Cameroon expressed the importance of this Committee to his country, and the essential, important nature of the subject matter it deals with. He wished to underscore the pertinence of ensuring that the Committee contribute to a specific determination and definition of the terminology. He noted that the majority of international texts, including the Charter and the Conventions, as well as various other international instruments contain very specific and clear definitions with regard to what is hate, racial hate speech, racism and all of the terminology concerning this subject matter. He stated that his delegation insisted that in an increasingly globalized world, that is pursuing ways of peaceful and harmonious coexistence, practices such as racism are not acceptable in the current era and they hinder development. The lack of a specific definition, which is duly aligned with the definitions which found in existing texts, and also found in national legislation, is a major failing which must be addressed. Today's societies are clamoring and making their claims in the different political movements across the political spectrum which are emerging. Therefore there is a need to contribute to specific definitions that are easy to interpret, use and understand, and which would facilitate the crafting of a universal international instrument that will be broadly and universally accepted. The work being undertaken is vitally important, underlining the necessity to be very precise and specific with language. The definition of terms, clarification of language and meaning would put an end to any confusion. The additional protocol should be a useful one, that will contribute to the harmonization of relationships in and between societies.

40. The representative of the IHRC stated that IHRC has launched educational campaigns on television and social media to combat false and misleading news and hate speech and reduce the stigmatization of people due to their infection with coronavirus.

41. Ms. Imene-Chanduru then asked a further question of the Committee, requesting delegates' perspectives on whether there should be a distinction between the author of the speech and a person who forwards or shares it. The representative of South Africa responded that his country has been moving toward the criminalization of hate speech, and legislation has been drawn up and used in a number of cases where persons were seen to have used racial hate language that caused harm to the public. He noted some of these prosecutions have been quite successful and that as new laws are put in place, they are tested in the courts against the Constitution to ensure that it is defined and adheres to the best tests for what hate speech is. He agreed with the representative of Cameroon that it is extremely important for the Committee to elaborate further on the ICERD – as it is an older document and there is not common understanding of the terminology, and it would be very important to find common understanding. He expressed South Africa's understanding that there is a difference between the original author of hate speech, but the problem that comes with modern technology is while the original author might have been an important person, which makes it a serious issue due to the person's standing in the community, the problem is that these statements are often picked up by other internet influencers, and some of them have a much larger following than the original author themselves. They therefore spread it very quickly. He suggested that perhaps the Committee should classify between the two in its text and its language, but a lesser punishment or lesser form of damage done by the person who spreads it than the original author should not be assigned. While the intent of the original author is important, it could be possible for the person spreading the information to do more damage.

42. The representative of Cameroon stated that his South African colleague had raised a central issue of the debate, and noted that the problem facing the Committee is the question of whether the author of the crime and/or the accomplice to the crime should be held accountable, is a classic issue in criminal law. The question was who caused the greater harm, and what is the responsibility of the author and of the accomplice? He noted there is tremendous legal scholarship on this matter. But there needs to be a clear distinction between

the author and the person spreading the information. The delegate also raised the importance of intention, noting that perhaps there was a specific problem that the author was trying to resolve. He surmised that this work is quite delicate and will contribute to providing further specifics on the exact meaning of the terms and terminology that would be used in elaborating the additional protocol to the Convention.

43. Ms. Imene-Chanduru then asked whether the identity of the author matters: does the reach of a more powerful actor provoke a different response than a less powerful actor? The representative of Pakistan responded, stating that the person who is in power can damage the most with hate speech or incitement to violence, but for the sake of developing law or convention it would be difficult to differentiate on the individual based on their position, so in Pakistan's view, we need to treat them equally within the ambit of the additional protocol.

44. The representative of South Africa stated that the representative of Pakistan on behalf of the OIC made very valid points, adding that the position or status of a certain person may lead the audience to accept the words or speech more easily, therefore impacting the reach of the hate speech. But he questioned, how this could be differentiated in a treaty or document. He noted that a certain person may be very important in one country, but unknown in another. He stated that this equally in the text. He noted that, whilst in the end there is an effort to take the author to task in a legal situation, there they will judge the influence of such a person. But in a text you can't really do it. It's a fact that here one deals with the fundamental principle of it, and once it reaches prosecution, etc. if it ever goes that far, that's where the damage is done by the person would be evaluated and that includes the person's status in society. Because a person of high value and status in society can very easily do much more damage than an ordinary person does, but there should be no difference under the law. The law should treat everybody equally.

45. The representative of Cameroon commented that the relevant statements by the representatives of Pakistan on behalf of the OIC and South Africa raised the important issue of aggravating circumstances. When racial hate speech is disseminated by a high profile actor it was more likely to be accepted as this person is an authority. The author of the statement and the person who is spreading the hate speech disseminates the speech as a function of their social status was also an important consideration.

46. Ms. Imene-Chanduru posed another question to the Committee about whether there should be an emphasis on working with the private sector to accomplish the goals of the additional protocol. The representative of South Africa believed it extremely important to take the views of and work with civil society on these matters, as in the private sector and civil society there were media houses, which included social media systems. He noted that currently some of the social media platforms were addressing the issue of hate speech on their platforms, following pressure that various civil society movements. He stated that social media platforms could not argue they were only a platform for freedom of speech while cognizant of the harm which could result and that the platform is the vehicle that allows hate speech to be disseminated very easily and very far. He emphasized that civil society should help drive change and respond to calls from people, societies, and organizations in countries. He explained that South Africa's Constitution is very strict on freedom of speech, because of its past experience when apartheid restricted what people could say or publish. Therefore, South Africa believes the ability to say what needs to be said is sacrosanct, but no right is unlimited. He recalled that the ICERD itself and the ICCPR mention there are times when the ability for freedom of speech could eb limited, and that no right is absolute. The Committee should be very careful and narrow its definitions and focus in order not to infringe upon freedom of speech, but that there be a careful consideration of the kind of speech that caused harm or damage. Therefore he agreed with Ms. Botha that sometimes in writing regionally the documents are quite broad, but we should narrow the definitions to better target hate speech.

47. Responding to South Africa, Ms. Imene-Chanduru noted the importance of starting with definitions. The representative of the IHRC took the floor to agree with the South African representative, stating that IHRC sees false media reporting as a contributor to creating problems without accountability. Therefore, international laws must bring accountability and be applied equally. He stated that it created confusion when there is false

media reports on private and religious matters, and urged focus on such laws and how to make them equitable and effective.

48. At the Committee's 6th meeting, Mr. Salomon Eheth stood in for the Chair-Rapporteur during her continued absence and resumed the discussion on item 5 concerning the dissemination of hate speech. He recalled the presentation at the 4th meeting by Ms. Joanna Botha, and the discussion at the 5th meeting regarding definitions. He opened the floor for comment and suggested revisiting the differences between a criminal law versus a civil law approach to the issue.

49. The representative of South Africa commented on the issue of defining terminology and noted that many of the terms are clearly defined in other documents, including the DDPA. As for the discussion of criminal versus civil law, the difference was that often the victim of hate crime or hate speech or racism was usually a person from a disadvantaged community. The problem of using a civil law process is that the aggrieved party would likely need to employ a legal professional to take the perpetrator to civil proceeding. This was unlikely due to the availability of resources for the aggrieved party. Even in countries where there are public prosecutors or lawyers to assist, that access to that is almost impossible. Looking at the criminal justice system, if the speech itself or the incitement itself is aggrieved enough that it causes harm – it is not normal speech – and must be legislated. While complicated, with clear definitions, or narrow definitions, on what hate speech constitutes, there should be an ability by states to protect all their citizens. Civil law could also be useful resources could be made available to assist people.

50. Mr. Eheth shared that it is important to consider both civil and criminal law in the protection of victims. He then guided discussion to the responsibility of the author and those who spread information, and opened the floor. He raised the point that the South African delegate made about the risks and benefits of civil and criminal law and the protection of victims. He also asked how the Committee would address overbreadth and vagueness, and use precise definitions of language. He asked how the additional protocol would ensure that the regulation of hate speech does not place undue limits on freedom of expression and opinion.

51. The South African representative responded saying that it is important that terms be defined but that he thinks that the legal experts and lawyers should have done so, but they just asked a lot of questions. He articulated that the difference between hate speech and normal speech is the intent of the person to use derogatory language that deliberately is of a higher calibre that degrades people to an extent that it shows the speaker's superiority over them and that negative characteristics are put forward against the other person. He continued that also requesting their audience to suppress or to shun the other person and marginalize them would be captured by this. He stated that incitement to hatred is the similar. He recalled the case of Rwanda where, before the genocide there public speakers on the radio dehumanizing a segment of the population by calling them cockroaches, and noting that it invoked notions of extermination them through various means. He recalled the effect of that kind of hate speech, which dehumanization incited other people to treat a group as inhuman. He concluded by saying that normal speech is not necessarily with the full intent to cause harm, whereas hate speech is used to dehumanize or cause harm to people.

Presentation and discussion on all contemporary forms of discrimination based on religion or belief

52. At its 7th and 8th meetings, the Committee considered item 6 on all contemporary forms of discrimination based on religion or belief. Ms. Julia Imene-Chanduru, Permanent Representative of Namibia to the United Nations at Geneva stood in for the Chair-Rapporteur at the 7th meeting, and Mr. Salomon Eheth, Permanent Representative of Cameroon to the United Nations at Geneva stood in for the 8th meeting. At the 7th meeting, the Committee heard a presentation from Mr. Doudou Diene, United Nations Independent Expert on the situation of human rights in Cote d'Ivoire ; former United Nations Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; and former UNESCO official on the advice, recommendations, and conclusions drawn by the

experts on all contemporary forms of discrimination based on religion or belief at their intersessional consultation of 21–22 October 2020.

53. After his introduction by Ms. Imene-Chanduru, Mr. Diene began his presentation by outlining the relevant issues from the elements document and suggested that the main issue was to revisit paragraph 108(a)–(d) to elaborate actionable provisions, including a complete and precise definition of what constitutes "contemporary forms of discrimination on the grounds of religion or belief." He stated that combining religion and belief in this additional protocol alongside racial discrimination could have unintended consequences for existing ICERD provisions, but that separate standards addressing race or religion and belief could lead to a protection gap for individuals experiencing multiple and compounding forms of discrimination.

54. Mr. Diene outlined the questions raised by the legal experts at their consultation of whether an additional protocol to the ICERD is the proper venue for addressing discrimination on the basis of religion or belief; whether there is a nexus between race or racial identity and religion or belief; if there is merit to the idea of limiting the additional protocol to instances where there is a clear confluence or intersection between race or racial identity and religion or belief; what does the criminalization of all contemporary forms of discrimination based on religion or belief entail; might the term xenophobia be broad enough to capture discrimination on the grounds of religion or belief; and what could or should be the precise definition of what constitutes religion?

55. Mr. Diene stated that, in his view, contextual issues will be very important in the decision making process, and proceeded to highlight issues he considers risk factors. He noted that we are living in the context of very profound and multiculturalization of societies, where the issue of racism and discrimination is present and strong, because different communities living together in a multicultural society leads to this tension.

56. Mr. Diene explained that immigration is profoundly changing the reality and perception of identity and relationships between different communities and that it is now being instrumentalized by political parties. He also highlighted the ideological context, marked by the central issue of the link between identity and state security practices. He explained that since 9/11, this has become central, and the issue of race and religion have become entwined. He noted that the concept of terrorism is central in the way that governments are touching on race and religion.

57. He then explored the contradictory current context regarding belief, where there is a powerful movement on one side for respecting freedom of opinion and expression and freedom of information, but in the same society there is a strong dynamic of more people not believing in religion while using religion as an ideological instrument.

58. Mr. Diene also raised the issue of political agendas where some political parties – particularly extreme right parties – link race and religion together in their political messaging, and he cautioned that they are very close to gaining power and their influence is increasing. Mr. Diene then drew a connection to the context of neoliberalism, where the market is a central force, and consequently promoting materialist values rather than the human values linked to religion or belief.

59. Finally, Mr. Diene referred to what he considers a very slow crisis of erosion of international law where, after 9/11, there has been a debate between lawyers and experts about whether torture is acceptable to save lives. The simple fact that lawyers have been discussing this indicates to him that there is an erosion of international law, and it touches on complementary standards.

60. Ms. Imene-Chanduru thanked Mr. Diene, summarised some of the issues and questions raised by his presentation before opening the floor. The representative of Cameroon thanked Mr. Diene for his in-depth, extensive, and relevant analysis. He wished to stress the fact that religion-based discrimination is a fundamental concern both in international law and in domestic law – proof of this being that in international law all relevant instruments condemn all discrimination based on religion. All national domestic laws, considering the pyramid of laws, starting with the constitution, laws and rules, all prohibit all forms of discrimination based on religion. Having said that, religious beliefs, religious convictions,

constitute fundamental human rights and they are all well protected in law and enshrined in law. The representative agreed that as the world moves towards globalization, huge migratory flows and migration are being witnessed and the contemporary times were one of cultural plurality which emphasized the need to see social cohesion forged.

61. He also expressed his agreement with Mr. Diene about the ideological and international law contexts. The representative wished to focus on political movements that are making their voices heard globally and developing philosophies which might well infringe the idea of social cohesion and living together which might impact of people's freedom of religion and the protection of these fundamental rights. He noted that it is this kind of stigmatization and discrimination which modern society, moving towards globalization, must avoid and combat. He agreed with Mr. Diene that the world is a material one to the extent that belief in human values and humanism are almost taking a backseat, with materialism taking a front seat. All human rights recognize these rights, but the advent of technology is developing in such a way and at such a pace that one could think that everybody is developing in the same way. He also agreed with Mr. Diene about the issue of terrorism, noting that these issues are enshrined in international law, and that with the spike in terrorism these rights could have a tendency to be infringed.

62. The representative of South Africa responded to Mr. Diene's presentation, specifically concerning whether the term xenophobia wide enough to include other discriminatory terms, including that of religion. He recalled discussions from item 5 on dissemination of hate speech where experts recommended that it is very important from a legal basis for the text to be clear and that terminology should be narrow enough to focus and prosecute people who use such language or hate speech. The question therefore is if xenophobia, or the terminology for xenophobia becomes broader so as to include specific speech against religion will it not make it more difficult for any legal process in courts of law for the judges and juries, etc. to be able to ascertain what was the hate speech, incitement, or discrimination involved. The delegate noted that most Constitutions, including South Africa's, have very strict rules for discrimination on the basis of religion, any kind of religion. He agreed that countries are becoming much more multicultural than they were before and that tolerance and non-discrimination are changing, and the attitudes of countries have to change along with the demographics. He noted that the expert also raised the issue that there is a changing religious focus in certain countries, and a large shift toward people becoming non-religious as well, therefore laws have to adapt. The representative then asked Mr. Diene if the definition of xenophobia was broadened, would it not become more difficult to put into practice any discriminatory issues based on xenophobia. The representative questioned whether it would not be best, best when it comes to discrimination based on religious to focus on it separately rather than including it in the broad term of xenophobia.

63. The representative of Pakistan delivered a statement on behalf of the OIC, noting that international human rights law is explicit in the responsibility of all states to uphold the human rights obligations without any discrimination on the basis of race, colour, sex, language, and religion. This principle is codified and spelled out in the landmark Universal Declaration of Human Rights, all global human rights governance, as well as the Durban Declaration. The OIC knows the diversity of views of legal experts with reference to religious discrimination, either through an exclusively separate legal instrument or plugging the gaps with an additional protocol to the ICERD. Further, it is evident from these discussion that substantive gaps do exist in international legal standards for protection against discrimination on the basis of religion or belief. This recognition of legal gaps underscores the need for a legal instrument to counter contemporary forms of discrimination including Islamophobia. The OIC stands ready to begin negotiations on a new instrument while at the same time building on the committee's valuable work to strengthen the ICERD through an additional protocol. Evaluating this challenge from the perspective of multiple and compounding forms of intersectionality of discrimination remains paramount. CERD has been and continues to raise its concern over continuing incidents of discrimination on the basis of religion, including Islamophobia in certain countries. In its General Recommendation 32 CERD has recognized the intersectionality of racial and religious discrimination, which is also rooted in individuals national and ethnic origin. To a wide protection gap reinforcing ICERD through additional protocols is therefore timely and ripe to combat contemporary forms of

discrimination. For these reasons the OIC reaffirms its commitments to remain constructively engaged with trust that other stakeholders will constructively participate and engage to commence the process of negotiation on a legally binding instrument or an additional protocol to ICERD.

64. Ms. Imene-Chanduru sought reflections from the expert and posed two additional questions: first, is an additional protocol to the ICERD a proper venue to address discrimination on the basis of religion or belief; and second, what does criminalization of all contemporary forms of discrimination based on religion or belief entail? Mr. Diene responded that the Committee must consider two central points: first, that societies have been evolving for many years, especially considering powerful forces like immigration, and race and religion are not being associated with each other and instrumentalized as part of a political agenda for many powerful parties. This, he explained, means that there is a linkage in the contemporary intercultural and multicultural world. The race of people is being linked to their religious ideology. Experts at the consultation gave some meaningful points of reflection, but he wished to highlight the complex dynamic in which we are living. He said that in the post-George Floyd era as far as race is concerned, this means societies have witnessed and recognized that racism is violent. It kills. It kills individuals like George Floyd, but also groups. In some countries it is a slow-motion genocide, and recent genocide that we have seen in Africa and elsewhere.

65. Mr. Diene suggested that to combat the growing racism, we need to focus and promote the different instruments and institutions we have established to combat racism and help member states to do it, which means that we have to recognize the very excellent work being done by ICERD, because ICERD has not ignored the linkage between the two and the intersectionality. But given the centrality of racism I think it's important not to change the ICERD's mandate. Secondly, Mr. Diene said, we must recognize that religion is being instrumentalized by political groups using violence and religion, but at the same time communities that are at the forefront of developing materialistic values are going through violence and economic and social hardships and calling for meaningful life and they are relying on spiritual values. He said there is a test for spirituality and religion that must be taken into account. The consequence of this is that, while it is important to keep in mind the interconnectedness of the two issues, different mechanisms and institutions should do their work, but separated in terms of additional protocols. He stated that in his view, with the erosion of international law, the drafting of an additional protocol may be a difficult exercise, and it may not be to the international community's means to deal with race and religion as they are in their own fields but keeping in mind their linkage.

66. Mr. Diene concluded by highlighting what he sees as the three contemporary risk factors: first, the political instrumentalization and conflation of race and religion, and linkage many governments have made between state security and identity; second, immigration is altering the construction and reality of national identities and is drawing fear from certain communities, especially in Europe, and bringing the fact that political agendas are being based on the fear of immigration; and third, the context of neoliberalism, where the market is becoming the central force, and finance and the economy and materialistic values are prevailing, and communities where religion is taking less of a focus, political parties are linking these two issues. He stated that, while the churches are being emptied, the political parties are using nationalism to say they are defending Christian values, while not practicing them. He also reminded the Committee that religion, particularly Islam – though not the majority of Islam at all – is being used by certain groups as a means of violence and as political speech.

67. Mr. Diene urged the Committee to defend and protect the legal instruments that have been achieved so far. He said that if different instruments like the ICERD, ILO and others were accepted by governments and it they respect the integration of those norms in international law, he thinks they may change their policy.

68. Ms. Imene-Chanduru returned to the question posed by South Africa about whether incorporating religion into the term xenophobia would broaden that term too much. Mr. Diene stated that in some ways he had answered that, but thinks that broadening the linkage and engaging in the very long process of drafting and formalizing an additional protocol may

weaken the defence of countries in front of actual present-day challenges of the ideological instrumentalization of race and religion. He expressed his belief that we must reinforce existing international instruments and institutions and accept the separation, because in some ways the linkage is an ideological weapon being used by extreme right parties, those who are engaged in the strategy of identity as a central issue and defending their old national identities which they have built and adopted centuries ago – which included discrimination of different races, communities, and religions – and now refuse to recognize multiculturalism and pluralism. He suggested that we work on promoting pluralism and integrating that concept into the work being done, asking different mechanisms and institutions to make it more comprehensive, and calling on government to give value to the notion of pluralism in their societies, Constitutions, and instruments.

69. Mr. Diene expressed his belief that, while the media may make it appear so, we are not witnessing the increase of racism or intolerance, but rather witnessing a mutation, profound change, or the birth of multicultural, multi-ethnic, and multireligious societies, and all births are violent. He elaborated that we are living in the context of transformations, and the societies we are living in in a few years race and religion will be forces of transformation. These forces of transformation are being rejected by the old forces of ideological identity.

70. He noted that the law is an important instrument, but not unique and that the cultural and spiritual forces of civil society have an important role to play, so it will be important in the Committee′s work to invite legal experts by also take a multidisciplinary approach by inviting sociologists, anthropologists, and religious and spiritual leaders to testify about what they are encountering. He suggested that one of the weak parts of our strategy is that we have not strengthened the human dimension, which means understanding the powerful forces structuring societies and the international community.

71. The representative of Pakistan took the floor to pose a question to Mr. Diene. Noting first that they had read in the report of the legal experts while they were discussing discrimination on the basis of religion or belief and there were views from some of the experts in the report that we need to separate racial discrimination from religious discrimination because one can change their religion and race cannot be changed and certainly some other issues but Pakistan and the OIC do not agree with the argument, but they would like to know the expert′s perspective on this. The representative explained that when reading the Universal Declaration of Human Rights, other declarations, governance, the ICCPR, ICERD, or talking about discrimination, we need to prohibit discrimination based on race, colour, language, or religion, and it has been indicated in the same article. The delegate sought clarity on why some legal experts give this argument and the reason behind it.

72. Mr. Diene responded that the answer is not simple, as there is an ideological debate going on new in the context of the linkage by governments and political forces of identity and security in the context where security is given very central priority. In the context where the market, in many ways is dehumanizing societies, promoting materialistic forces, and marginalizing spiritual and cultural and human values. In those contexts it should be recognized that the two are being linked and may be linked in historical contexts. But to combat each of them, we have to separate them very profoundly. Recognizing that tension, identifying the nature of that tension is the fact that this linkage is being ideologically instrumentalized, but at the same time knowing that is urgent and central to defend, promote the different instruments we have approved in all these past years on race and religion, and the institutions like ICERD and others we have established. Mr. Diene′s expressed concern that if the that linkage is accepted those political forces, who refuse the process of multiculturalization will eb reinforced, and the strategy to combat racism will be weakened.

73. Ms. Imene-Chanduru recalled that Mr. Diene mentioned that behind the complexity is the linkage between the two and that the two need to be separated, and asked how he proposed this might be done. Mr. Diene reiterated that the answer is not simple, the formulation of recommendations that may help existing institutions to link this complex reality and this dynamic of transformation and integrate that in their work would be useful. This means that the UN system and human rights mechanisms and institutions have to be strengthened, defended, but nuanced, and it needed to analyze why societies are becoming more multicultural at this time due to the dynamic of history, migration. The structure of

power which still does not reflect this diversity, and the promotion of materialistic values and the denial of centrality of spiritual values for different societies should also be explored. This understanding is important, therefore the work of the Committee should have a multidisciplinary approach through the involvement of lawyers, experts in human rights law, and social human science experts as well.

74. At the beginning of the 8th meeting, Mr. Eheth noted the important discussion held in the 7th meeting on item 6, and reflected on and summarized the presentation by Mr. Diene, and opened the floor requesting further comments on the issues raised at the 7th meeting.

75. The representative of the European Union delivered a statement, noting that the EU's position has long been that substantive discussions on issues such as the Rabat Plan of Action and the Istanbul Process are not part of the Ad Hoc Committee and should not be considered by the Committee. She clarified that this is not to say that these are not important topics, on the contrary, but the EU thinks that mixing the two processes – one is the fight against racism and the other is the fight against religious intolerance – in the end risks weakening them both, and therefore it is good to have these discussions separately and reinforce the fight against intolerance in each of these respective fields. She wished to underline that the report mentions that the experts generally also drew a hard line between racial discrimination and discrimination based on religion or belief. They explicitly recommend that paragraph 108(d) be revisited and that there should be reconsideration of whether an additional protocol to the ICERD is an appropriate venue for addressing discrimination on the grounds of religion or belief, and also recommend to reflect on whether the notion of criminalization, as such, is the right path. Consequently, the EU would like to strongly encourage the Ad Hoc Committee to follow the experts' lead on this matter and speak to that same position, though she recognizes this is likely not what many colleagues in the room want to hear, but it is her mandate to repeat this position.

76. The representative of South Africa noted the statement of the EU and indicated understanding of the position, noting South Africa had asked similar questions at the 7th meeting. He stated that he understands the experts also focused on the fact that there is a lot of intersectionality between religious intolerance and also the movement of certain people to join the two – racism and religious intolerance – and that often when they are speaking of one they also aim at the other. The representative notes that Mr. Diene mentioned xenophobia and when it is aimed at religions it is also aimed at those same peoples' race, that it intersects; and where it comes to this Committee, we should be looking at the use, especially by certain politicians, of the two where religion and race are both intersecting and hate speech and intolerance is aimed at both at the same time. The delegate noted that, as other colleagues mentioned earlier in the session, the importance of the Rabat process and other processes within the Human Rights Council to deal with religious intolerance are very important. His understanding from Mr. Diene's presentation is to look at the intersectionality of the two where they are used at the same time to aim at specific vulnerable groups.

77. The representative of Pakistan responded to the EU's comments, wishing to convey that the discussion of religion and intolerance on other platforms including the Istanbul Process meetings does not prevent us from discussing this issue in the Ad Hoc Committee, and in line with the mandate given by the Human Rights Council as we are moving towards negotiations to strengthen the international legal framework on racism and racial discrimination. He stated that, as highlighted by South Africa, the issue of intersectionality with regard to the basis of discrimination on multiple and aggravated forms of discrimination cannot be ignored. Pakistan thinks that in its last report the Committee rightly highlighted the issues, and noted that one thing the legal experts agreed on was that there is a gap in existing international standards in dealing with religious discrimination, although there were differences in their views on whether they should be dealt with in the additional protocol or whether there should be a separate protocol or separate instrument. But there was no ambiguity with regard to the gaps, and certainly a number of other issues have been highlighted over previous years that require the attention of the ad hoc committee to strengthen of collective endeavours in the fight against racism, so we think that's a very pertinent topic to be reflected in the additional protocol.

78. Mr. Eheth suggested focusing the Committee's analysis on the merits of the idea of limiting the additional protocol to instances where there is a clear confluence on the intersection between racial identity and religion or belief. The representative of South Africa stated that considered it a good idea to focus on the confluence of the two.

79. Mr. Eheth asked about the term 'xenophobia' and whether it was broad enough to capture discrimination on the basis of religion or belief. The South African delegate explained that, as far as South Africa understands, xenophobia is the discrimination, the fear of foreigners, of outsiders, of people other than oneself. He said that where it comes to religious belief that could occur specifically from inside your own country among your own citizens, not just people from outside or foreigners who come into your system. From his point of view, xenophobia would be too narrow to also capture religious discrimination from within the country itself. He reiterated his concern from the 7th meeting: if the term xenophobia gets broadened too much, it can basically then encompass everything; anything of anybody who's different to the majority, which will encompass so many different kinds of discrimination. For legal problems, during a court proceeding dealing with hate speech, etc. it would be very difficult to effectively prosecute when a term is too broad. He thinks that, in the case of intersectionality between the two where certain intolerance for religion is often equated directly with a certain "race", there is a clear intersectionality towards that. He noted that in Africa and many other places, people from various groups practice the same religion, and there can be intolerance towards those religions regardless of racial, national or ethnic origin. Xenophobia would catch everything, especially internally, and also thinks it should remain narrowly defined for when you aim or have prejudice against foreigners, or people coming into a country, or immigrants. This would be easier for courts to deal with than a broader definition.

80. The EU delegate agreed on the issue of intersectionality, and stated that the EU is also of the opinion that if you want to fight racism and racial discrimination in all its forms that require an intersectional approach. The key question is rather in the case of international law in general, what is needed and are the instruments there. She recalled that Mr. Diene also mentioned that there are good instruments already, and the ICERD is already being used to promote these kinds of approaches. In regard to discrimination based on religion or belief, she believes the ICERD forms a good basis and there are a number of general comments that add to the ICERD and that interpret the ICERD. Indeed, if the conclusion of this Committee is that more work needs to be done with regard to this specifically, then this could be something that the CERD Committee itself, could reflect upon if it believed that further guidance is needed as they have done for the past number of years on specific topics. She also wished to highlight more generally that part of the reason the EU is a bit reluctant in going along this path is because they have quite a solid framework on all these points, and feel strongly about protecting it. She noted that there is always room for improvement, which is also the case for the EU which they do recognize.

81. The representative of South Africa noted that the EU has been using regional laws and there is a lot of good practice within that system. He posed the question about court cases in the EU and asked whether those best practices could be shared with the Committee so that it may consider internalizing them, as these are the laws. He stated that the problem was that while general comments are good guidelines, how could they be internalized in a better form where states would be more inclined to implement them in a better manner. He requested that if the EU had found a way to put these general comments into hard law, that would be valuable information to share with the Committee.

Presentation and discussion on racial cybercrime

82. The Committee considered item 7 on racial cybercrime at its 9th, 10th, and 11th meetings, for which Ms. Julia Imene-Chanduru, Permanent Representative of Namibia to the United Nations at Geneva and Mr. Salomon Eheth, Permanent Representative of Cameroon to the United Nations at Geneva once again acted as interim Chairpersons, in the absence of the chair.

83. At the 9th meeting the Committee heard a presentation from Ms. Joanna Kulesza, Professor of international law, Faculty of Law and Administration, University of Lodz,

Poland; member of the Scientific Committee of the European Union Fundamental Rights Agency; and Chair of the Advisory Board of the Global Forum on Cyber Expertise, reflective of the advice, recommendations, and conclusions drawn by the experts on the topic of racial cybercrime at their intersessional consultation of 21–22 October 2020.

84. Ms. Kulesza began by displaying a list of documents that she strongly supports analysis of for the purpose of the work of the Ad Hoc Committee, and noting that international law does offer a detailed framework for addressing the challenges racial cybercrime has put on the international agenda. She explained that she would like to focus her intervention on one particular example, the Council of Europe Convention on Cybercrime, or Budapest Convention, so that she may draw conclusions and recommendations from lessons learned from that particular experience. She began with a brief analysis of the successes and challenges of the Convention, and more specifically on the first additional protocol addressing freedom of expression issues, hate speech, and what could be referred to as racial cybercrime.

85. Ms. Kulesza explained that the Budapest Convention is, arguably, the only international law treaty that addresses the challenges of racial cybercrime. She noted it is just 47 states within the Council of Europe, but the Budapest Convention′s reach is much broader as it includes states from outside the Council of Europe, including Africa, South America, Asia, and notably the United States who have been very involved in the drafting. She pointed to the success of 66 ratifications, but also highlighted those who have decided not to adopt the Budapest Convention.

86. Ms. Kulesza noted that here are ever more states considering signing and ratifying the Budapest Convention, but when the numbers and the process behind it were considered, it must noted there are certain states that are missing from those that are willing to accede to the convention. For example Ireland has signed it, but not ratified, as has South Africa and Poland. While not ratifying the convention does not imply that racial cybercrime is not addressed, she was trying to draw law-making conclusions, so those that are absent should be paid particular attention so the Committee might prepare a more accommodating instrument.

87. Ms. Kulesza stated that if she were to summarize this document briefly, should would say that the Cybercrime Convention in itself is a success. It is the only internationally-binding treaty on cybercrime, and it defines individual cybercrimes. No other international document does that. She explained that critics, however, highlight the fact that the collection of individual cybercrimes is somewhat arbitrary. You will find DDOS attacks, you will find data interventions as cybercrimes, you will find child abusive material – distribution, possession – as a cybercrime, rightfully so. But right next to it in the cybercrime convention, you will find intellectual property violations considered on equal footing as cybercrime and that has been one of the arguments that has been raised against ratifying the cybercrime convention by some of the great absentees.

88. Ms. Kulesza explained that the norms in the Budapest Convention are not self-executing, and highlighted two provisions of the additional protocol to indicate the mechanism behind it. She elaborated that the Cybercrime Convention needs to be transposed into national law, which effectively might imply the lack of uniformity among states or states parties. 66 states have ratified the convention. This is a success because the topic is so controversial, but at the same time the level of ratification is not as high as we might want it to be for a treaty that addresses a global challenge.

89. She also noted that there is not a cooperation mechanism that is automatically triggered. The Budapest Convention provides for states to act together on a largely voluntary basis. It is a very flexible standard that allows a state party to deny assistance in a cybercrime investigation. She noted that the Octopus Conference assists in the implementation, but it is a largely informal platform. Looking at the jurisdictional framework, it is also a reiteration of principles of international law and there is not a convention body that could assist member states or states parties in solving disputes or interpretation issues.

90. Ms. Kulesza suggested that the Budapest Convention offers a solution to the challenge that the Ad Hoc Committee is addressing, particularly through its additional protocol. She

noted that this is the additional protocol because the drafting states could not agree on the scope of racial cybercrime that should be added to the Convention itself, and it had proven to be too contentious because of political, social, and ethical issues.

91. Ms. Kulesza noted that the additional protocol contains a definition of "racist and xenophobic material", the distribution of which is to be prohibited. She explained that the formulation in the convention implies that states are to implement national laws that will achieve that aim, and the definition of racist and xenophobic material in the additional protocol to the Budapest Convention is not inventive. She elaborated that it barely repeats everything that we have known in international law and covers any written material, image, or other representation of ideas or theories that are directed at advocating, promoting, inciting hatred, discrimination, or violence against any individual or group based on racial or national or ethnic criteria if used as a pretext for any of these factors. Nothing near a comprehensive definition or as clear a definition as we could have based on current international law and human rights. She also noted the additional protocol articles that oblige each party to adopt such legislative or other measures as may be necessary to prohibit such activities.

92. Further to this, Ms. Kulesza highlighted that article 3, regarding the crime of racist discriminatory material being distributed, emphasizes the exemptions. Fundamentally, she notes the protocol itself introduces exemptions for states where a prohibition of such content would not reflect national values or be affordable under national laws. Consequently, she explained, if there is no law on hate speech in a given country, then likely that state would be exempt from implementing provisions of the protocol.

93. Ms. Kulesza then discussed the low ratification rate, as only 33 parties have ratified the additional protocol, including some states that are members of the Council of Europe, which tells us how controversial this regulation – as precise as it is – continues to be on a political level.

94. Ms. Kulesza then drew the Committee's attention to two current United Nations processes on cybersecurity. One is the United Nations Group of Governmental Experts (UNGGE), and the other is the United Nations Open-Ended Working Group. The scope of these two groups and their mandates are very similar, but the construction of their mandates is different. The UNGGE is composed government experts appointed by a select group of states with a select group of members, whereas anyone can join the open-ended working group to try and shape the way international law is applied in cyberspace.

95. Looking at the final conclusions of these groups, Ms. Kulesza notes one element is clear, which is that international law in its entirety applies in cyberspace, including all the provisions that have been subject to the elaborations of this Ad Hoc Committee. She also drew the Committee's attention to recent calls to establish an ad hoc committee that would look into confluence of international conventions on countering the use of information and communications technologies for criminal purposes, which will likely be launched in early 2022. This initiative was established in 2019 and in 2020 a draft was submitted of a potential international convention on cybercrime, detached from the Budapest Convention, which will likely be presented in January 2022 to the newly formed group of experts, which might be a chance to feed into ongoing processes with the expertise that has already been granted by the group, or on the contrary to relieve those experts of the work that will probably give them additional challenges while trying to reiterate these issues.

96. Ms. Kulesza concluded her presentation by noting that these instruments are merely the UN processes, but that there are other activities on the table. She explained that Internet governance – norms, principles, and laws – are developed by three groups of stakeholders: governments, business and civil society, and end-users and academics like herself. She highlighted two examples of complementary work. The first of which was Microsoft's 2018 tabling of the digital Geneva Convention to ensure that humanitarian law is applied online. She suggested that this was an interesting proposal because a large international company was inciting governments to keep cyberspace peaceful, including laws that would prohibit promotion of genocide. Ms. Kulesza noted that this proposal did not meet with much governmental support because it came from a private US company. But it also is a reflection of current ongoing processes within the business community.

97. In her second example, Ms. Kulesza highlighted a group she is involved with – the Internet Cooperation for Assigned Names and Numbers, which acts as the internet's phone book. It is very technical, and works toward cybersecurity with reference to what they call DNS abuse. She explained that there is a DNS abuse framework, or policy, which she believes may prove more effective than the legal measures we have in place thus far. It is the most effective measure in place right now, but it does not cover hate speech or racial cybercrime, as there is not consensus among registries and registrars that anything to do with hate speech or freedom of expression falls within the DNS abuse category. Ms. Kulesza explained that the DNS abuse definition includes child and sexual abuse material, as well as intellectual property rights violations, but does not include any kind of free speech categories and does not reference hate speech, or include any kind of privacy violations.

98. In terms of recommendation for venues to observe further advancement of racial cybercrime discussions, Ms. Kulesza pointed to ICANN, the UNGGE and open-ended working group, as well as the work of the new committee on cybercrime. Also the ITU and NATO, and technical organizations like the Internet Engineering Task Force.

99. 1The representative of South Africa noted that, whilst the Budapest Convention has been ratified by many countries, it is not a UN convention that would then be universally accepted by countries once signed, and there are a number of other issues with it that make it difficult for some countries to accept. He asked Ms. Kulesza, based on her study of the issue of cybercrime relating to racism, which texts she believes the Committee should take into an account in its document. He further elaborated that South Africa is quite active in dealing with issues of hate speech and racism on the internet, and that these issues are taken up at various levels. He noted that she has done a great deal of work across the board, and asked if there was a way experts like herself could propose language to the Committee that would be acceptable to all states. He acknowledged that Europe is doing a lot through their national laws and asked if there might be a way some of these regional laws and cases could be brought to this committee to be elevated as an international standard. He notes that modern technology platforms could become massive disseminators of hate crime and hate speech and racism, and often people are not held accountable for it, including the original author and the people who spread it. He commented that sometimes the initial author is not a very influential person, but the people who spread it are, and there can be two different motivations for that: one to raise awareness of stopping this type of hate crime, and the other to spread the message further. He asked how to accurately reflect all of this in the language.

100. 1Ms. Kulesza responded that she had a suggestion for a point of departure, that being the Budapest Convention and its additional protocol. She stated she personally views it as a well-balanced exercise that accounts for the different elements of international debate highlighted in the South African delegate's intervention. She suggested looking to articles 2 and 3, and potentially 4-6 of the additional protocol for wording that reflects current international compromise on racial cybercrime. While she is well-aware that this is not an international instrument, she stated that it is open to international signature and ratification and is, to her knowledge the best reflection of current international compromise. She did caution, however, that none of the 33 states who have ratified this language are big states who wish to govern cyberspace by their rules. She recommended, therefore, to start with the wording based articles 2 and 3 of the additional protocol and to seek input from the technical community. She noted there is a governmental advisory committee within ICANN, which could be a stream of expertise into technical solutions that would be effective to combat racial cybercrime.

101. The representative of the EU noted that, while the online world offers great opportunities for economic growth and is an enabler for communication serving freedom and democracy, it also offers unlimited platforms for extremism and intolerance to spread virally in a way that would have been unthinkable basically 15 years ago. And hate speech online not only harms targeted groups and individuals, it also stops citizens from speaking out for freedom, tolerance, and non-discrimination in online environments. Meaning that it has a chilling effect on the democratic discourse on online platforms. The European Commission has over the past years worked intensely to ensure that the internet remains a free, safe, and tolerant space where European Union laws are enforced with full respect to the right of freedom of expression and significant measures have been made in particular to counter the

proliferation of illegal hate speech online, as defined by national laws implementing the framework decision on racism and xenophobia. Among the main measures taken in this area, the European Commission has agreed with Facebook, Microsoft, Twitter and YouTube a Code of Conduct on countering illegal hate speech online to help users notifying illegal hate speech in these social platforms and to improve support to civil society, as well as coordination with national authorities. The Commission, closely manages the progress made on the implementation of the code, and regularly reports on its activities in this area. The results do show a very positive trend, because 2.5 years after the signature of the code, evaluations showed that IT companies respond within 24 hours in the majority of cases and remove on average 72% of reported content, compared to 59% in 2017 and only 28% in 2016. In addition to this progress in the removal of hate speech, the Code of Conduct has fostered synergies between the IT companies civil society, and member states' authorities in the form of a structured process of mutual learning and exchange of knowledge. And this has contributed to the effectiveness of the notification procedures and the quality of the content management policies in the companies. And it has also encouraged joint projects and learning opportunities in the area of education and counternarratives.

102. Another best practice or a development, with regard to racial cybercrime is that the commission published on the 22nd of July this year [2021], a study called Heroes and Scapegoats Right Wing Extremism in Digital Environments. And the study focuses on the different aspects of digital violence in right wing extremist content. So with that we mean visual or textual messages that express acceptance, condoning, justification, or acclamation of violence for the sake of a racial, nationalistic ideal. And the different strains of violent right-wing extremist content include identitarianism, counter-jihad, national socialism, white supremacy, and eco fascism. And emerging content strains include accelerationism, siege culture, and hive terrorism. The main aspects of this content that are examined in this report are either target-oriented, like toxic language including hate speech, dehumanizing language, and far right conspiracy theories; or perpetrator oriented. And the study also maps the online landscape and describes how this content is expressed on different platforms. Lastly the European Commission provides financial support to national authorities and civil society in this area through rights, equality, and citizenship program, as well as, for example, through the safer internet program, which aims at protecting children using the internet and other communication technologies – for example by fighting against racist and xenophobic content. With regard to the report of the expert seminar and based on national and regional experiences, it is worth investing in coregulation models and corporate social responsibility structures. We furthermore agree that all guidance should come from article 20 of the ICCPR as far as limiting the right to freedom of expression and opinion is concerned. The expert fully agreed with the references made to the Budapest Convention on cybercrime, because for all member states it is also a key document in this regard.

103. Ms. Kulesza replied that she strongly supports all those instruments, but was bound by the brevity of her presentation and wanted to highlight an instrument that was available for universal ratification.

104. The representative of Pakistan on behalf of the OIC took note of Ms. Kulesza's comments regarding the Budapest Convention, but would have appreciated hearing more about the views and observations of the legal experts on racial cybercrime, and details that might facilitate the work of the Committee for developing elements for the additional protocol. He noted that the Committee could take guidance from the Budapest Convention, but emphasized that the current discussion was in regards to an additional protocol under the ICERD. He asked for the view of the expert on three elements: first, why online hate speech is difficult to counter and why there are more challenges as opposed to offline. He elaborated that we cannot differentiate at times between the writer and the individual who disseminated because of the vague nature of the content available online at times, and at times it is difficult to identify the author. There is vagueness in terms of online material and material in cyberspace. Secondly, he sought advice on the issue of virality and spread, as it is very fast and need tools to counter these challenges. Thirdly, he sought input on how to address the challenges posed by private sector influence, particularly in cases where it is more influential than the government in terms of resources. He requested the expert's opinion on countering these challenges in the additional protocol because Pakistan thinks the ICERD cannot address

those challenges because it was negotiated years ago, and we are witnessing multiple and compounding forms of discrimination.

105. Ms. Kulesza replied that she was just using the Budapest Convention to point out phrasings that might be useful to the work of the Committee, as she believes it resembles as closely international consensus as we have gotten in the international dialogue. She continued to answer that, when we speak about viral spreading of content and the power that platforms hold, she would refer to the final points of her presentation. She believes that only through strong public-private partnerships, can this element of cybercrime be mitigated. She noted this might imply that the Ad Hoc Committee may consider including in their final wording a reference to the need to work together with private actors, and it might imply the need to go back to look at social responsibility of business as a necessary measure to implement existing human rights law. She expressed her strong support that the general provisions of international human rights law fail to address current challenges and it is the task of the Committee to try and adjust these principles to fit current challenges, and she believed that this could only be achieved by working together with the private sector. She reiterated that internet governance is the joint elaboration of norms and standards by governments, civil society, and business. Only through a reference to what is in international human rights law with regards to corporate social responsibility can these aims be achieved.

106. She also suggested that installing a platform, or body, that would resort to solving jurisdictional issues might be useful, and also pointed to the EU, where informal collaborations like the code of conduct working together with service providers to identify challenges and stop viral spread before it increases has proven effective. She also suggested building partnerships with the DNS community to work on stopping racial cybercrime though the DNS abuse framework. She noted, however that these are practical and pragmatic answers, whereas the mandate of the Committee is to work on the wording of law.

107. The representative of South Africa noted that an issue with a universally-available regional instrument for many states is the requirement to report consistently to a regional organization on the issue is not always feasible and therefore it could be suggested that an international instrument under the UN would more likely be universally ratified by all states. He asked if Ms. Kulesza might share further insights on some other instruments, especially language that the Committee could consider to move forward. He noted that the sooner this could be accomplished in an additional protocol, the less harm that would be done.

108. He continued to state that, although it was a very good document, the ICERD was written in 1965, and the world has changed a lot and the people who were in the room in 1965 were not the victims of the discrimination and it was only many decades later that many of the people who were not in the room were able to voice their concerns and definitions and elaborate on how they saw racism and systemic racism, hate speech, etc. where certain speech were very acceptable in 1965 and was not seen as hate speech or even racism because it was an accepted norm. A few decades later that was absolutely not the case and therefore it was difficult to understand when it was said that the ICERD is perfect and did not require further elaboration and that there are no gaps. He noted that in 2001, 200 countries came together and found consensus language on these issues, defining them, getting common understanding when they wrote the DDPA – the Durban Declaration and Programme of Action. He asked the expert how she might propose some other relevant language because in 2001, while internet and cell phones were very new the DDPA actually referred to it and about discrimination in the new technologies. He inquired about how to merge all the valuable language from regional instruments to use for the Committee's elaborations, as South Africa did not believe the ICERD did not have gaps, considering their country and people were not part of the conversation in 1965 and were victims of racial discrimination.

109. Ms. Kulesza responded that she pleased to support the Committee, but that she had not proposed wording for the Committee to consider at this specific point. She indicated that she would be pleased to follow up, and noted that the drafting and wording of the ICERD dating back to the 1960s might not be relevant to all the circumstances we are facing today. She explained that, through her research she has come to stand with those that say the technology is changing too rapidly for us to be able to develop a time-resistant international instrument. This is not to say that such a wording of a provision targeting racial cybercrime

should not be elaborated, but that she has learned that the quickest, most efficient way to address these processes and the internet governance ambience might not be through law and elaborating a binding standard for states, but rather working together with those who make those day-to-day decisions. She suggested if we work together with those actors, we deploy artificial intelligence analysis of algorithms to understand how the viral spread is imposed we might be able to achieve quicker and more tangible results. She stated she would be happy to work on wording that would be accurate today in 2021, and probably 2022, but that it would a challenge to frame wording that would still be viable in 2025 or 2031.

110. The representative of the IHRC took the floor with a statement that, according to the European Convention on Cybercrime held in Budapest in 2001, the fact is that national criminal courts today are facing fundamental difficulties which is the time lost between discovering violations of new technologies and amending the penal laws to combat them. Necessary amendments to national penal codes are often slow because they require the following steps to be achieved by discovering the content of violence in new technology, finding loopholes in the penal code to address them, and adopting new laws that criminalize computer-related offences. There are challenges in combating cybercrime such as the need for equipment and techniques that may not be available to investigate potential criminal acts, and the requirement to have regular updating of laws to accommodate new technologies.IT would be important to involve the private sector and civil society in combating cybercrime to assist public authorities.

111. Ms. Kulesza said she was pleased to comment on this statement, but that these comments would be somewhat departed from the racial cybercrime debate. She duly noted the representatives observations, and strongly agreed that there was a slowness to the judicial process, noting that this is has been a challenge addressed since the start of cyber investigations. She noted there is work being done in the European Union with advancing the conversation with critical infrastructure operators, including the DNS operators, and a large component of private-public partnerships as well. She suggested that these comments concerned issues of encryption, privacy, the right to have encryption keys by law enforcement authorities, and she noted a vivid ongoing debate around active cyber defence – the issue of infiltrating other networks, in the jurisdiction, or under the control of other states to obtain evidence or stop an attack. That is an ongoing international law discussion focused on cybersecurity and she strongly supported the observations made. She stated that these debates on the processes – the collection of electronic evidence; stopping of a cybercrime as it unfolds, was beyond the ambit of her current intervention, which focused on the problem of racial cybercrime.

112. Ms. Imene-Chanduru asked Ms. Kulesza elaborate further on article 3 of the Budapest Convention that she mentioned earlier. Ms. Kulesza explained the language, starting with article 2, explaining that racist and xenophobic material means any written material, any image, or any other representation or ideas or theories which advocate, promote, or incite hatred, discrimination or violence against any individual or group of individuals based on race, colour, descent or national or ethnic origin, as well as religion if used as a pretext for any of these factors.

113. She suggested that the Committee may also consider the current discussion around gender-based violence where gender is added to the scope of categories indicated when trying to define hate speech. While possibly a political issue, her recommendation would be to consider including such xenophobic material and also the concept of gender.

114. She continued that article 3 prohibits, as per national law, the distribution or otherwise making available of so-defined racist and xenophobic material to the public through a computer system. She noted the provisions of the Budapest convention indicates that such an act is to be committed intentionally and without a right, which she understands that, as per the explanatory report, for this to be the result of a certain compromise made by the negotiating parties. She reminded the Committee that the provisions of the Budapest Convention are non self-executing. She said she welcomes observations from the Committee about the possibility of installing a universal point of reference or commissioner, if it was appropriate, to support that work with a dedicated point of reference for defining racial cybercrime.

115. Ms. Kulesza noted the exemptions in article 3, paragraph 2 and 3, stating she believes this wording reflects the current compromise; however, it also reflects the challenge faced when looking at defining racist or xenophobic material, in general, here referred to as racial cybercrime. She read through the provision to highlight the challenge: "A party may reserve the right not to attach criminal liability to conduct as defined by paragraph one where the material we have defined for the purposes of this convention as racist or xenophobic advocates, promotes, or incites discrimination that is not associated with hatred or violence, provided that other effective remedies are available."

116. She noted that there is an ongoing debate around civil law remedies to the violation of individual rights. She viewed hate speech as falling outside the category of free speech and effectively requiring a criminal law provision. The consensus reflected in the Budapest Convention, however, does give a state the freedom to decide whether it wishes to introduce other effective remedies outside the scope of penal law. Paragraph 3 goes even further to trying to seek that balance between national and international understanding of freedom of expression. "A party may reserve the right not to apply paragraph 1, which provides for the prohibition of dissemination of racist and xenophobic material to those cases of discrimination for which duty to established principles in its national legal system concerning freedom of expression provide for effective remedies, as we have referenced in paragraph 2."

117. Ms. Kulesza then briefly noted that as a non-binding norm, article 4 refers to providing for criminal offences under domestic law, when committed intentionally and without the right, one threatens through a computer system with the commission of a serious criminal offence as defined in domestic law, persons for the reason that they belong to the group distinguished by race, colour, descent or national or ethnic origin as well as religion if used as a pretext for any of these factors, alternatively if that threat is addressed to a group of persons which is distinguished by any of these characteristics. She concluded that those are the examples she would use as a point of departure for the wording of the work of the Ad Hoc Committee.

Preventive measures to combat racist and xenophobic discrimination

118. At the second meeting of the 11th session on 18 July 2022, the Committee heard a presentation from Ms. Anna Spain Bradley, Vice Chancellor for Equity, Diversity, and Inclusion at the University of California Los Angeles and former Professor of Law at the University of Colorado summarizing the advice and comments provided at the intersessional legal expert consultation on the issue of preventive measures to combat racist and xenophobic discrimination.

119. Ms. Spain Bradley began her presentation by recalling the urgency for elaborating an additional protocol that has been felt in the years following the murder of George Floyd in the United States. She noted that the legal experts highlighted that the obligations to which States have already agreed remain necessary.

120. In evaluating the documentation from the 10th session of the Ad Hoc Committee, Ms. Spain Bradley explained that the experts began their discussion by positing the question of how to criminalize harms that are racist and xenophobic in nature in both real world and online contexts. She said the experts suggested the Committee look at how to address harms caused by individuals as well as groups and entities. The experts, she recalled, also offered language suggestions to make items clearer and more specific to avoid language that is vague, and she offered examples such as "cultural diversity," which she said is too narrowly constricted; and "education and awareness," which experts found to be overbroad.

121. Ms. Spain Bradley told the Committee that the legal experts talked at length about which measures state actors could take, and what to do with private actors and about online acts. She recalled the experts' emphasis on the importance of having states truly commit to education that is honest and full, and to acknowledge that history is subjective. More specifically, they discussed the need for education and training of specific groups – notably that governments should ensure that all people working for them are properly equipped to act in a way that does not further perpetuate racism and discrimination (including police).

122. Regarding the experts' thematic discussions, Ms. Spain Bradley indicated they found it paramount that the Committee endeavour to clarify what the existing obligations are, and

where they would extend to in the elaboration of a new complimentary standard. They suggested obligations should be extended to places and spaces that did not exist at the time the ICERD was drafted and signed.

123. Ms. Spain Bradley also noted the legal experts' insistence that there needs to be greater clarity around definitions in the additional protocol. They highlighted that neither racism or xenophobia are defined under international law, and that the International Court of Justice has had questions about the definitions that currently exist in the ICERD, most notably in regard to the definition of nationality and national origin.

124. Ms. Spain Bradley highlighted the need for practical realism about the role, type of, and reason for education and training. She noted that this is a broad category of activity, and that research shows that certain kinds of education are more useful: for example, doing activities with people who are different from ourselves has been shown to create new neural pathways in the brain and new habits.

125. Ms. Spain Bradley recalled the experts' suggestion that there is a need to distinguish between different kinds of racism that exist: systemic and structural racism in an entire field; institutional racism within an organization; interpersonal racism; and intrapersonal racism (that is, unconscious or implicit bias). They noted that preventive measures would need to distinguish between these and address each one.

126. She also stated that the experts discussed the increasing challenge of human migration and the need to address harms that they experience on the basis of their identities – particularly how religious and racial discrimination are sometimes connected, and there is a nuance needed to address both.

127. Ms. Spain Bradley concluded her presentation by stating that preventive measures are truly needed today, and that resources need to be put forth to address this cause. She suggested that we remind ourselves of the values of the United Nations Charter and for which the United Nations stands, and recalled that the fight against racism is a fight for dignity.

128. Responding to Ms. Spain Bradley's presentation, the representative of the European Union noted that there is already a preamble to the ICERD that speaks to preventive measures, as does article 3. Thus, in the EU's reading of the ICERD, there are already strong measures there. She asked Ms. Spain Bradley what is to be gained by adding more to it? The representative also recalled expert suggestions that the Committee be careful about including in a legally binding document items that are recommendations, and that the EU agrees on the goal, but perhaps not on the method for achieving it and sought guidance from Ms. Spain Bradley on how to address this.

129. The representative of South Africa expressed his understanding from Ms. Spain Bradley's presentation that experts do believe there are gaps that could be filled, and that states need to make sure they are doing training. He asked Ms. Spain Bradley what about non-state actors? He also noted that the ICERD does not speak much to systemic or structural racism, and asked how the Committee could deal with systemic, structural, and institutional racism that is engrained in both states and non-state actors when many countries do not criminalize racism or racial discrimination.

130. The delegation of Pakistan on behalf of the OIC stated that increasingly visible discrimination across the globe, particularly in relation to refugee and asylum seeker programs that discrimination based on race, nationality, or colour is being witnessed. He asked Ms. Spain Bradley – working under the assumption that there are serious legal gaps in the ICERD – which state obligations and non-state obligations should the Ad Hoc Committee consider?

131. Responding to the EU, Ms. Spain Bradley emphasized the need to understand that the goal of elimination of all forms of racial discrimination was absolutely true in 1965. She said the declaration had language that said this is a pervasive global problem that needs to be addressed, but that the two strong threads if it's not in the treaty, then treaty [the ICERD] walked this back a bit. She stated that there have been frustrations, her own included, about the limits of what has been achieved following the ICERD. This connects, she explained, to how we define racism and race, because we hear some countries saying that it doesn't happen

in their own countries. In her opinion, we are now back in a perspective that people are being harmed and the harms are much broader than they were in 1965, and that if we understand the elimination of all forms of racism then we reach the second question about what is needed for prevention.

132. On the issue of prevention, Ms. Spain Bradley highlighted two viewpoints: first that states are only obligated to do what is in the ICERD, and second that treaty language can be interpreted in light of the world we live in today – for example, in light of issues like migration where states are seeking guidance.

133. Ms. Spain Bradley highlighted another discussion about the criminalization of racist acts and the question of whether intent must be shown or whether it is just the outcome that should be the prevailing way to look at it. She discussed the need for states to harmonize legal mechanisms to hold non-state actors accountable, noting that without harmonization it is unlikely that non-state actors will be held accountable.

134. In addressing the question of Pakistan on behalf of the OIC, Ms. Spain Bradley communicated her understanding of the urgency, and noted that there are at least three cases the International Court of Justice is looking at related to the ICERD – particularly as the ICERD covers nationality, but not national identity. She suggested that this is a challenge that could be resolved through the elaboration of a complementary standard.

135. The Chair-Rapporteur asked two questions of Ms. Spain Bradley to assist in clarifying specific elements later: first, should the additional protocol promote restorative justice measures in cases of non-violent crime? Second, should the additional protocol contain measures guaranteeing timely and effective investigations and access to effective remedies for victims?

136. Ms. Spain Bradley replied by acknowledging that, speaking to the additional protocol, she wished to acknowledge that when speaking about prevention we are looking at societies and cultures as ecosystems. She explained that in closed ecosystems where people have to remain where they are, restorative justice is paramount, as it provides an approach where offenders can remain in this society. First, she suggested, it must be answered whether racism is a crime. If so, then restorative justice may be one way of accounting for that crime. If we criminalize, she stated, we will have to think of ways to account for what we have labelled as offences.

137. She also explained that, if people are going to be prosecuted, they will need to know for what they are being prosecuted, and will need to be accorded due process rights. These include knowing what the details of the offences are and expectations about the process. She stated that if an additional protocol calls for these kinds of accounting, it would need to be linked to the question of prevention and to the question of criminalization. She noted that some forms of restorative justice can be preventative, but not all.

Annex II

Programme of Work – 11th Ad Hoc Committee on the Elaboration of Complementary Standards, 6–17 December 2021 (as adopted 06.12.2021)

	1st week				
	Monday 06.12	*Tuesday 07.12*	*Wednesday 08.12*	*Thursday 09.12*	*Friday 10.12*
10:00 – 12:00	Item 1 Opening of the Session Mr. Yury Boychenko, Chief, Anti-Discrimination Section OHCHR Item 2 Election of the Chairperson Item 3 Adoption of the Agenda and Programme of Work -- General statements	Item 4 continued General presentation and overview of the intersessional expert consultation report	Item 5 continued Dissemination of hate speech Discussion	Item 6 All contemporary forms of discrimination based on religion or belief Expert introduction by Doudou DIÉNE, United Nations Independent Expert on the situation of human rights in Côte d'Ivoire; former United Nations Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; former UNESCO official	Item 7 Racial cybercrime Expert introduction by Joanna KULESZA, Professor of international law, Faculty of Law & Administration, University of Lodz, Poland; member Scientific Committee of the European Union Fundamental Rights Agency; Chair of the Advisory Board, Global Forum on Cyber Expertise
15:00 – 17:00	Item 4 Updates on the Ad Hoc Committee	Item 5 Dissemination of hate speech Expert introduction by Joanna BOTHA, Associate Professor and the Head of Department of Public Law, Faculty of Law, Nelson Mandela University, South Africa; Attorney of the High Court of South Africa	Item 5 continued Dissemination of hate speech Discussion	Item 6 continued All contemporary forms of discrimination based on religion or belief Discussion	Item 7 continued Racial cybercrime Discussion

	2nd week				
	Monday 13.12	*Tuesday 14.12*	*Wednesday 15.12*	*Thursday 16.12*	*Friday 17.12*
10:00 – 12:00	Item 7 continued Racial cybercrime Discussion	Item 8 continued Preventive measures to combat racist and xenophobic discrimination Discussion	Item 6 continued All contemporary forms of discrimination based on religion or belief Discussion	Item 9 continued General discussion and exchange of views Item 10 Conclusions and recommendations of the session	Item 10 continued Conclusions and recommendations of the session
15:00 – 17:00	Item 8 Preventive measures to combat racist and xenophobic discrimination Expert introduction by Anna SPAIN BRADLEY, Vice Chancellor for Equity, Diversity and Inclusion, University of California Los Angeles, Scholar and expert on international law and human rights; former Professor of Law, University of Colorado	Item 8 continued Preventive measures to combat racist and xenophobic discrimination Discussion	Item 9 General discussion and exchange of views	Item 10 continued Conclusions and recommendations of the session	Item 11 Adoption of the conclusions and recommendations of the 11th session

Annex III

List of attendance

Member States

Algeria, Angola, Armenia, Australia, Azerbaijan, Bangladesh, Bolivia (Plurinational State of), Brazil, Cameroon, China, Cuba, Djibouti, Egypt, Finland, Germany, Haiti, Indonesia, Iraq, Libya, Luxembourg, Mexico, Namibia, Nepal, Nigeria, Pakistan, Panama, Paraguay, Poland, Romania, Russian Federation, Saudi Arabia, Slovakia, South Africa, Sri Lanka, Switzerland, Tunisia, United Kingdom of Great Britain and Northern Ireland, Venezuela (Bolivarian Republic of), Zimbabwe.

Non-Member States represented by observers

Holy See, State of Palestine.

Intergovernmental Organizations

European Union, Organization of Islamic Cooperation.

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

International Human Rights Association of American Minorities (IHRAAM), International Human Rights Council, Human Rights Association for Community Development in Assiut, International Youth and Student Movement for the United Nations (ISMUN), Maat for Peace, Development and Human Rights Association.

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

ISMTS, UN Diplomatic Committee International Organization, Regional Court in Kielce/Poland.