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**RACISM, RACIAL DISCRIMINATION, XENOPHOBIA AND ALL FORMS  
OF DISCRIMINATION: COMPREHENSIVE IMPLEMENTATION  
OF AND FOLLOW-UP TO THE DURBAN DECLARATION AND  
PROGRAMME OF ACTION**

**Report of the Ad Hoc Committee on the elaboration of complementary standards  
on its first session <sup>1</sup>**

**Chairperson-Rapporteur: Mr. Idriss Jazaïry (Algeria)**

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<sup>1</sup> Annexes remain in the language of submission

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## **I. INTRODUCTION**

1. The Ad Hoc Committee on the elaboration of complementary international standards submits the present report pursuant to Human Rights Council decision 3/103 and resolution 6/21.

## **II. ORGANIZATION OF THE SESSION**

2. The Ad Hoc Committee held the first part of its first session from 11 to 21 February 2008 and the second part from 15 to 19 December 2008. During the first part, the Ad Hoc Committee held a total of eight meetings. During the second part, it held nine meetings.

### **A. Attendance**

3. Both parts of the session were attended by representatives of States Members, and regional groups national institutions, specialized agencies, and intergovernmental and non-governmental organizations.

### **B. Opening of the session**

4. At the first part of the session, the Deputy High Commissioner delivered opening remarks on behalf of the United Nations High Commissioner for Human Rights. She acknowledged that the issue of complementary international standards has been at the heart of the Durban follow up activities since the adoption of the Durban Declaration and Programme of Action itself, which in paragraph 199 provides for the elaboration of complementary international standards. She stated that through the analysis undertaken on complementary international standards, the Intergovernmental Working Group on the effective implementation of the Durban Declaration and Programme of Action has achieved considerable progress which has led along the years to the adoption of several important recommendations, including the one for two studies: one to be carried out by a group of five experts; and another by the Committee on the Elimination of All Forms of Racial Discrimination. Both studies are now placed before the Ad-Hoc Committee which is now entrusted with the task of elaborating complementary international standards in the form of either a convention or additional protocol(s) to the International Convention on the

Elimination of All Forms of Racial Discrimination in accordance with resolution 6/21 of the Human Rights Council which requests the “Ad Hoc Committee to fill the existing gaps in the International Convention on the Elimination of All Forms of Racial Discrimination and also providing new normative standards aimed at combating all forms of contemporary racism, including incitement to racial and religious hatred.”

5. At the second part of the session, the members worked on the basis of a programme of work drawn up for five days.

### **C. Election of the Chairman-Rapporteur**

6. The Ad-Hoc Committee elected H.E. Idriss Jazaïry, Permanent Representative of Algeria to the United Nations Office at Geneva as its Chairperson-Rapporteur by acclamation.

### **D. Adoption of the agenda**

7. During the first meeting of the session, the Ad-Hoc Committee adopted the agenda for the first part of its session (A/HRC/AC.1/1/1). During the first meeting of the second part, the Ad-Hoc Committee adopted the agenda for the second part of its first session, as indicated above.

### **E. Organization of work**

8. During the first part, the Ad Hoc Committee decided to postpone its meetings on 11 February 2008, in order to develop its programme of work. Upon reconvening on 18 February 2008, the Ad-Hoc Committee adopted the draft programme of work for the first part of its session. During the second part the Ad Hoc Committee worked for five days, for a total of nine meetings.

### **III. PROCEEDINGS OF THE FIRST PART**

#### **A. General statements on the programme of work**

9. The Chairperson-Rapporteur opened this part of the session by highlighting the evolution in the manifestations of racism which have followed the adoption of the Convention on the Elimination of All Forms of Racial Discrimination close to 40 years ago. He also stressed the need to do more to eliminate racism, as it is now exacerbated by current events. The Chairperson-Rapporteur highlighted that the focus of racism has shifted to discrimination on the basis of religious identity and within the context of counter-terrorism measures adopted by States.

10. He stated that while the Committee on the Elimination of All Forms of Racial Discrimination provides some guidance as to the different forms of racism, the latter has mutated and taken different forms the elimination of which is not specifically envisaged under the Convention. He also asserted that to refer to the problem as “defamation of religion” may be ambiguous considering that it is not as such religion but individuals and groups that are targeted. Derogatory comments on religion are intended to justify racial profiling and the dehumanizing of those who identify with it. As individuals are victimized, their human rights need to be protected, while recognizing that what is targeted is ultimately their identity. Because the virus that is racism has mutated we need to develop a new medication to counter it. The Chairperson-Rapporteur stated that it is within this context that complementary standards are of paramount importance. He stated that he looks forward to discussions within the Committee and that it is in the spirit of broadening as far as possible the basis for consensus that he will exercise the responsibility that has been entrusted to him by the Ad Hoc Committee under the Human Rights Council decision 3/103 which was reinforced by resolution 6/21.

11. He invited delegations to join him in tackling the process toward the elaboration of complementary standards in a manner devoid of polemics. He suggested that the purpose of the Ad Hoc Committee in elaborating complementary standards is to (i) protect victims (ii) provide reparation to the victims; and (ii) put an end to impunity.

12. The Chairperson-Rapporteur expressed his satisfaction regarding the consultations held with coordinators of regional groups of States during the week preceding the present one

concerning the programme of work. He also expressed his hope that delegations will come to an agreement on the content of the programme of work. The Chairperson-Rapporteur also highlighted the fact that a majority of delegations were keen to accept that the second part of the first session of the Committee resume during the week of 20 to 27 October 2008 and that the second part be dedicated to drafting specific proposals for the elaboration of complementary standards. Hence, the work achieved this week, would serve to prepare the Committee to move toward consensus on concrete proposals during the second part of the session. The Chairperson-Rapporteur paid tribute to the work achieved by his H.E. Juan Martabit, Permanent Representative of Chile to the United Nations Office at Geneva as Chairperson-Rapporteur of the Intergovernmental Working Group and said that he looks forward to interacting with his successor, H.E. Dayan Jayatileka, Permanent Representative of Sri-Lanka to the United Nations Office at Geneva. Thereafter, he introduced the programme of work and opened the floor for comments on its content starting with Item 3 entitled: "Overview of recommendations on complementary international standards adopted by the Durban Intergovernmental Working Group".

13. Delegates speaking on behalf of regional groups and as representatives of their own countries reiterated their commitment to combating racism, racial discrimination, xenophobia and related intolerance and highlighted the importance of promoting follow-up of the Durban Declaration and Programme of Action.

14. Speaking on behalf of the African Group, the delegate from **Egypt** stated that the Group supports the approach of the Chairperson-Rapporteur by dividing the first session of the Ad Hoc Committee into two. He asserted that this approach would allocate time to discuss previous reports and contributions which are necessary for the fulfilment of the Committee's mandate, as well as to make a final identification of the issues which are to be the subject of complementary standards and which will be presented in a draft form during the second part of the session.

15. The delegate from **Egypt** highlighted the mandate of the Committee as outlined under Human Rights Council decision 3/103 and which bears no ambiguity. It is, he stated, "to elaborate, as a matter of priority and necessity, complementary standards to the International Convention on the elimination of All Forms of Racial Discrimination, and also providing new normative standards aimed at combating all forms of contemporary racism and racial

discrimination.” In this connection, the delegate referred to the language of paragraph 199 of the Durban Programme of Action which calls for the elaboration of complementary international standards. He considered that the task to elaborate complementary standards has not been fulfilled by the Intergovernmental Working Group. With a view to moving forward the process of elaboration, the delegate advocated an approach for the Group consisting in inviting each delegation to “name your subject, present your written contribution in the form of draft complementary standards and negotiate”.

16. Speaking on behalf of the European Union, the delegate from **Slovenia** stated that European Union Member States believed that in order to fully respect the studies completed by the Committee on the Elimination of All Forms of Racial Discrimination and the five experts, the two studies in their entirety should be the subject of discussion. In this regard, the European Union recommended that the title of Item 3, be replaced by the following: “Overview on all contributions and studies as referred to in resolution 6/21 of the Human Rights Council (28 September 2007)”. Concerning Item 4, entitled: “The issue of complementary standards”, the European Union recommended to not include the list from paragraph 106 of the fourth session of the Intergovernmental Working Group (E/CN.4/2006/18) which follows the title of the Item. Turning to Item 5 entitled “Adoption of the draft report of the first part of the session”; the European Union suggested that the Committee should only proceed to the final adoption of the report of the inaugural session of the Ad Hoc Committee at the end of the second week if and when it is held.

17. **Slovenia** reiterated the European Union’s deep commitment to contribute to the elimination of contemporary forms of racism, racial discrimination, xenophobia and related intolerance. The delegate from Slovenia stated that the potential of existing mechanisms should be fully explored before reaching out for additional machinery whether at the substantial or procedural level. Within this context, the European Union welcomed the study by the Committee on the Elimination of Racial Discrimination and takes note of the study by the five experts. The European Union considered that we should all work on improving the effectiveness of existing international standards to overcome underlying obstacles to implementation of international standards.

18. Speaking on behalf of the Group of Latin America and Caribbean countries, the delegate from **Brazil** reiterated the Group’s position favouring a consensual approach. He stressed the

importance of the exercise of elaborating complementary standards. He also stressed that since their participation in the Bureau of the Preparatory Committee to the Durban Review Conference, the States of the region have maintained a strong will to participate in a constructive manner in the work of this Committee. Regarding the text of the draft programme of work, he expressed readiness to be flexible as regards specific language. He also hoped that the Committee would have a general exchange of views for the purpose of identifying the potential for consensus during this week. The delegate from Brazil went on to say that the Committee, once identified the consensual areas, could already start working based on a specific concrete text. He reassured the Chairperson-Rapporteur as to the Group's support for the work to be done. Moreover, he mentioned that the Group would like to reach agreement as to the dates for the second part of this session.

19. Speaking on behalf of the Organization of the Islamic Conference, the delegate from **Pakistan** stated that the persistence of racism, racial discrimination, xenophobia and related intolerance clearly demonstrates the need to look for new ways to address this problem with more resolve, with more humanity and with greater efficiency. She stated that Human Rights Council 3/103 acknowledged the fact that the Durban Programme of Action recognised the need to prepare complementary international standards to strengthen and update international instruments. Hence, she stated, the Ad Hoc Committee should focus on the identification of contemporary manifestations of racism with a view to finalising its recommendations on complementary standards to be elaborated in the form of a legal instrument or instruments. The delegate from Pakistan added that in the wake of 9/11, the most glaring form of discrimination has emerged in the shape of intolerance against a particular community and adherents of Islam. She highlighted that the Organization of the Islamic Conference has repeatedly expressed its concern about this contemporary form of discrimination which has manifested itself as intolerance against Muslims and Muslim communities and defamation of religions. Finally, she called attention to the fact that the concerns of the Organization of the Islamic Conference have been echoed and confirmed in several reports by the Mr Doudou Diène, the Special Rapporteur on Racism, Racial Discrimination and Xenophobia. While the Organization of the Islamic Conference condemns all forms of terrorism, it manifestly rejects its linkage with Muslims and discrimination based on religious intolerance.



20. The delegate from South Africa emphasized the need to follow the instructive paragraph 199 of the Durban Programme of Action which guides the work of the Ad Hoc Committee. The delegate also noted that a lot of work on complementary international standards was completed by the Intergovernmental Working Group and further noted that there were divergent views in this regard. The delegate from South Africa further highlighted the need to have the following goals and objectives in mind: (i) maximising protection of victims; (ii) maximising remedies for victims; (iii) zero tolerance for impunity. The delegate also indicated that in the past, the plight of the victims has been downplayed by derailing the issue of racism, racial discrimination, xenophobia and related intolerance.

21. Following interventions from several delegations, the programme of work was adopted to encompass Items 3, 4 and 5 with titles as follows: Item 3 was renamed, “Overview on all contributions and studies as referred to in resolution 6/21 of the Human Rights Council (28 September 2007)”; Item 4 was renamed, “Complementary standards”; and Item 5, “Draft report of the first part of the session”. The date of the second part of the session is to be determined.

**B. Overview on all contributions and studies as referred to  
in resolution 6/21 of the human rights council (28 september 2007)**

22. In addressing Item 3 of the programme of work, “Overview on all contributions and studies as referred to in resolution 6/21 of the Human Rights Council, as no general statement came from the floor, the Chairperson-Rapporteur invited the Member States to comment on the Conclusions and Recommendations on Complementary Standards adopted by consensus by the Intergovernmental Working Group at its sessions and compiled in one document. The compilation of the Conclusions and Recommendations began with the Second Session of the Working Group as no recommendation had been adopted during the first session.

23. Speaking on behalf of the African Group, the delegate from **Egypt** referred to paragraph 19 of the compilation which concerns substantive gaps and stated ‘additional instruments’ should provide greater precision to address the mutating forms of racial discrimination. Regarding paragraph 21, he stressed that the cooperation and coordination which is mentioned therein remain valid. Turning to paragraph 22, he emphasised that the thematic discussions on non-citizens and racial discrimination are well reflected in the International Convention on the elimination of All Forms of Racial Discrimination, and that there is a need for complementary

standards in this respect. He stated that the African Group agreed that with the establishment of the Ad Hoc Committee we all have to move forward and that although the report of the five experts is controversial, the Group is willing to discuss it. The problem, he said, was that the report of the five experts is somewhat politicised. Its recommendations contradict what the Special Rapporteurs and the Committee on the Elimination of All Forms of Racial Discrimination have been saying for many years. He felt that in view of the gravity of new forms of racism, it is impossible to tackle racism through general comments as recommended by the experts, especially since general comments do not constitute standards.

24. Following several interventions that were made, speaking on behalf of the African Group, the delegate from **Egypt** added that as early as 2001 we already knew that we needed complementary standards and so the studies were needed to determine the content and scope of complementary standards. He submitted that due to the emergence of new forms of racism, complementary standards are needed as the existing norms have proved to be insufficient, to combat for instance incitement to racial and religious hatred.

25. Turning to paragraph 25 of the compilation which speaks of “lack of political will”, the delegate from Egypt submitted that such a problem cannot be addressed by complementary standards. He pointed to the need to combat racial platforms that have been politically exploited. There was he felt a need to eliminate racial profiling as the Working Group on people of African Descent at its seventh session, adopted a recommendation for its criminalisation (A/HRC/4/39) (9 March 2007). Concerning domination by foreign occupation which still exists, such occupation should be recognised as illegal under international law, humanitarian law and human rights law. Its perpetuation was another manifestation of racism.

26. Concerning procedural gaps and the mandate of the Committee on the Elimination of All Forms of Racial Discrimination, the delegate from **Egypt** submitted that the African Group is open to country visits and urgent appeal procedures and cooperation. However, he believed that it is best that such be prescribed in an instrument instead of relying on the political will of States to allow such visits on a case-by-case basis. However, it is better to have it prescribed in an instrument instead of depending of the political will of the States itself. He highlighted the added value of an additional protocol to the Convention and proposed that the Committee on the Elimination of All Forms of Racial Discrimination be requested to draft an outline clarifying the

potential added value of an optional protocol and a draft of the possible main elements of such an optional protocol.

27. The delegate from **Belgium** highlighted the need to identify criteria for complementary standards. He stated that an evaluation should be conducted in order to avoid an approach that would result in process for the sake of process. He said that, if the problem is a lack of political will, victims are therefore poorly served with an additional text that would not be effectively implemented. Therefore, he said there was a need for criteria. The competing interests between freedom of expression and of religion require national evaluation as to whether or when to restrict them. Regarding the role of national mechanisms, the delegate from Belgium stated that national mechanisms are of great importance as they serve to enhance cooperation with the Committee on the Elimination of All Forms of Racial Discrimination and that they offer victims a forum to raise concerns at the national level.

28. The delegate from **Portugal** expressed the view that although there is a strong desire to have complementary standards it is not clear as to the format they should have and the scope they should cover. It is in light of this lack of clarity that the study by the five experts and the one by the Committee on the Elimination of All Forms of Racial Discrimination were requested. Consequently, we suggest that the Committee adopt basic criteria for determining the content of complementary standards needed including those pertaining to the implementation of existing norms which already benefit from broad consensus as universal standards in addition to the Durban Declaration and Programme of Action and the International Convention on the Elimination of All Forms of Racial Discrimination. He believed that it is best to reinforce the capacity of the Committee instead of elaborating a new optional protocol which will take time and which can hold up until ratification of a new instrument the implementation of measures that are already being applied *de facto*. Experience shows that it is better to have no optional protocol but to get the Committee on the Elimination of All Forms of Racial Discrimination to try to promote enforcement of the already existing practice.

29. The delegate from **Portugal** highlighted that in fulfilling their mandates the experts found that implementation at the national level is vital to combat racism. It is not the first time that experts focus on national implementation and not on complementary standards. If the experts are of the opinion that it is better to focus on implementation rather than on complementary standards. Their views should be considered on this basis.

30. The delegate from **Senegal** stated that it is necessary to move forward and leave behind questions pertaining to whether complementary standards are necessary. He believed that instead, the scope of the complementary standards should be discussed. He explained that following the adoption of the Universal Declaration of Human Rights in 1948, further standard setting was necessary in order to bring to life the principles contained in the document. Similarly, the entry into force of the Convention on the Elimination of All Forms of Racial Discrimination 39 years ago has been overtaken by events. Therefore, the adoption of a new instrument would help ensure the protection from manifestations of racism which are not covered under the Convention as new forms of racism, have emerged since the entry into force of the Convention.

31. The delegate from **Algeria** submitted that during the fourth session of the Intergovernmental Working Group, the latter clearly identified substantive and procedural gaps. Within this context the five experts and the Committee on the Elimination of All Forms of Racial Discrimination were invited to formulate recommendations to fill these gaps. Limiting his intervention to two distinct themes, namely foreign occupation and “defamation of religion”, the delegate went on to state that foreign occupation constitutes one of the worst forms of human rights violations. It is, he stated an aggravating factor of racism and racial discrimination, xenophobia and related intolerance. In this connection, he referred to the experience of the people of Algeria who have been denied justice and suffered tremendously as a result of colonialism. It is most unfortunate he declared that other peoples continue to suffer from colonialism aggravated by racism. It is the case he said in the Middle East and in many other regions of the world in which people suffer from foreign occupation. These practices must be combated he added.

32. Regarding the second theme, the delegate from **Algeria** asserted that indeed, since 11 September 2001, anti-Semitic policies directed against people of Arab descent in particular and extended by association to Muslims worldwide are being implemented. The delegate explained that these policies which aim at dehumanising the other by attacking his/her identity have been implemented before in the 20<sup>th</sup> century. Unless impunity is brought to an end, those who spread racial and religious hatred while using as an excuse freedom of expression, will manage to create

an environment viable for the emergence of a new kind of anti-Semitic campaign, and this time around under the guise of “Islamophobia”.

33. Regarding the issue of lack of political will, the delegate from **Algeria** underscored that in the absence of a legal obligation there is even less political will on the part of States. Therefore, complementary standards in the form of an instrument would help to bolster political will.

34. The delegate from **Syria** stated that foreign occupation entails various forms of racism and that the new persistent forms of racism sustained as a result of foreign occupation can only be tackled by new standards. He cautioned however, that, if there is no political will, the problem will remain the same even if complementary standards are adopted.

35. The delegate from **Pakistan** pointed out that racial profiling has been misused to target all Muslims, the majority of whom hold moderate views. This profiling provides fuel for extremist fringes. Moreover, the delegate stated that while we should not lose sight of the 60 years of normative standards which are put into place, due to the newly identified gaps we still need complementary standards to tackle new forms of racism.

36. The delegate from **Austria** warned of the importance of not losing sight of existing norms and stressed the need for their implementation. The group of five experts in their study , frequently mentioned the linkage between elaboration of complementary standards and implementation. The delegate cautioned that the body of already established human rights standards be not amended by the introduction of complementary standards concerning racism.

37. The delegate from the **Netherlands** stated that the real problem is one of implementation of the Convention, and late submission of States reports. He believed that these problems should first be resolved instead of resorting to the elaboration of complementary standards.

38. The delegate from **South Africa** sought clarification as to what is meant by developing the “criteria to be identified prior to the actual elaboration”. She further continued to emphasize the importance of political will within the broader context of implementation of existing standards. The delegate from South Africa also requested that those delegations who insist on implementation should at least share with others how the problems of racism have been

overcome, as a best practice. The delegate further urged that there be consistency when dealing with all human rights issues and not to raise a problem of implementation of existing standards only with respect to racism. The delegate from South Africa continued to also point out the issue of lack of political will which has undoubtedly led to impunity for racist incidents. These have been on the rise and continue to produce more victims, under the guise of freedom of opinion and expression. She stated that the need to exercise the right balance between certain rights is critical.

39. The delegate from the **Czech Republic** underscored that racism and racial discrimination are universal problems which require solutions from all regions; it is a universal problem that we have to tackle. Speaking on behalf of the Group of Latin America and Caribbean, the delegate from **Brazil** called for concrete proposals to enable the Committee to move forward in its work. The delegate from **Lesotho** emphasized the need to move forward and face the mandate of the Ad Hoc Committee which is to adopt complementary standards.

40. The delegate from **Mexico** called for a realistic and pragmatic approach and for an inclusive discussion. In this regard she suggested that the Committee adopt a methodology of work avoiding politicisation of the issues. Hence she recommended that the Committee proceed item by item. Concerning procedural gaps in particular, the delegate suggested to widen the discussion by exploring preventive approaches, taking into consideration that in some cases, racism or racial discrimination can give rise to grave human rights violations such as genocide or ethnic cleansing.

41. The delegate from the **Philippines** also expressed the need for an inclusive discussion in order to identify a common ground and bring participants closer. He agreed that perhaps the report of the five experts did not completely fulfil their mandate, but that there could be useful elements in the report.

42. The **United Kingdom** called on the Committee to demonstrate pragmatism and realism, and stated that the Committee is to strive to take an approach that is as effective as possible. The delegate from **Argentina** submitted that for each group of themes listed there was a need to reach consensus. He indicated that Argentina has set into place a national instrument and a national institution that deals with racism and racial discrimination. The delegate from South

Africa stated that she is further encouraged by the agreement regarding the existence of the nexus between the issue of racism and religious intolerance. She stated that the proposal by the five experts to correct the lacunae in international law merely through such a general comment is irrational and illogical as it would be disappointing to respond to the plight of victims of racism through such a general comment.

43. The delegate from **India** recalled that the list of areas and issues contained in paragraph 106 of the conclusions and recommendations of the fourth session of the Intergovernmental Working Group on the effective implementation of the Durban Declaration and Programme of Action did not enjoy consensus as constituting substantive gaps. He stated that it was a list of issues/areas which were put forward by individual delegations or groups of delegations which in their view constituted a gap. He added that since there was no agreement, the Working Group had to resort to an innovative formulation “identified and/or considered”. The delegate added that India considered many of the issues listed thereon as falling outside the scope of work of the Ad Hoc Committee which had to focus its work on issues concerned with racism. In this regard, he identified the issue of the internally displaced as one such issue. Accordingly, the Ad Hoc Committee should take up these issues one by one.

44. The delegate from India also stated that with regard to the issue of religious intolerance and defamation of religious symbols, his delegation recognized the “nexus” between racism and religious intolerance. This “nexus” has been defined in paragraph 2 of the Durban Declaration and Programme of Action which refers to “religion” in the context of multiple or aggravated forms of discrimination. He emphasized that the Ad Hoc Committee should consider the issue of “religious intolerance” in this framework.

45. The delegate from **Azerbaijan** intervened on the need for distinction between substantial gaps which refer to complementary standards and procedural gaps which refer to implementation. The delegate from Egypt clarified that both gaps would be covered by complementary standards. The delegate from **Switzerland** stated she believed that the five experts fulfilled their mandates. The study does not conclude that there are no gaps. Indeed, the study identified a gap in human rights education.

46. The Chairperson-Rapporteur stated that the formulation of the Ad Hoc Committee’s position on recommendation 40 of the group of five experts should not be construed as implying

that a declaration and a legal instrument such as that recommended by the experts are substitutable standards as international human rights instrument differs from soft law.

47. The Committee turned its attention to Paragraph 40 of the study by the five experts which provides the following: “The experts recommend that a convention on human rights education be adopted, to define positive obligations of States regarding the incorporation of human rights education in their educational systems, including in private, religious, and military schools”. In this regard, the delegate from Morocco indicated that para.40 has been fulfilled through resolution 6/10 (28 September 2007) of the Human Rights Council which “requests the Human Rights Council Advisory Committee to prepare a draft declaration on human rights education and training, to be presented to the Human Rights Council for consideration”.

48. The delegate from **Bangladesh** submitted that the concern for education should be extended to universal education not only to human rights education which is a broad issue that goes beyond the remit of the Ad Hoc Committee and that could not in any event suffice to address the challenge of racism.

49. Discussions were held on paragraph 40 of the experts study and resolution 6/10. The delegate from Switzerland expressed preference for a substantial recommendation rather than a procedural resolution. Speaking on behalf of the African Group, the delegate from **Egypt** called for caution in order to ensure that the adoption of a Convention be not ruled out as a result of a declaration. The delegate from Morocco stated that the Committee could consider that resolution 6/10 constitutes the Human Rights Council’s response to the experts’ recommendation. Various delegations suggested language for the text to ensure that it reflects their concerns accurately.

50. As a result, the language agreed upon is included in the report under the section entitled “conclusions and recommendations”.

51. The discussion on complementary standards as set out in the documents under review triggered reaction from many delegations. The Chairperson-Rapporteur opened the floor for comments.



52. The list of gaps mentioned in the said documents is as follows: the protection of persons belonging to specific groups, such as religious groups, refugees, asylum-seekers, stateless persons and migrants, migrant workers, internally displaced persons, descent-based communities as people of African descent, indigenous peoples, and minorities and of people under foreign occupation. Additional gaps and deficiencies examined also include multiple or aggravated forms of discrimination, xenophobia, ethnic cleansing, genocide, human rights education, religious intolerance and defamation of religious symbols, racial discrimination in the private sphere, incitement to racial hatred and dissemination of hate speech and xenophobic, defamatory caricatural pictures, through traditional mass media and information technology, including the Internet.

53. Regarding religious groups, the delegate from **Syria** stated that a convention is needed to tackle Islamophobia by encouraging States to adopt appropriate legislation at the national level. The problems posed by Islamophobia cannot be addressed through a general comment. Speaking on behalf of the Organization of the Islamic Conference, the delegate from **Pakistan** supported this view and added that general comments are not enough and that specific complementary standards on this issue are necessary. The delegate from **Liechtenstein** asserted that general recommendations can be adequate to tackle the nexus between racism and religion. Concluding observation and general comments of the Committee on the Elimination of All Forms of Racial Discrimination are important as they are referred to in international human rights law. The delegate from **Austria** cautioned that the issue of discrimination based on religion extends beyond the purview of the Convention on the Elimination of All Forms of Racial Discrimination and hence should be viewed within the broader human rights framework such as in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the 1981 Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief. The delegate recalled the existing human rights standards governing freedom of expression and its limitations which should not be re-negotiated.

54. Speaking on behalf of the African Group, the delegate from **Egypt** disagreed as he said there exist only an indirect link between racism and religion in the existing norms, so it is not well addressed. He added that the five experts erred in this regard. Religious groups are not covered by the Convention on the Elimination of All Forms of Racial Discrimination; therefore he said there was a need for an Optional Protocol with a direct link to religious groups while

focusing on racial discrimination. The delegate from **Belgium** stated that it is difficult to have an Optional Protocol on Religion if the main focus of the Convention is racial discrimination. He believed that a general comment is more appropriate. Speaking on behalf of the Organization of the Islamic Conference, the delegate from **Pakistan** added that Muslims are also perceived as a race when it comes to culture and geographical identity and that the link is therefore present. Hence, he stated the need for an optional Protocol.

55. The delegate from **Egypt** cited numerous examples from regional European Human Rights instruments which support the arguments made as to the necessity to improve the standards regarding incitement to racial and religious hatred; and to make more explicit the nexus between race and religion, spelling out the need to balance the exercise of freedom of expression with the requirements of the fight against racism.

56. The next theme discussed was the protection of refugees, asylum-seekers, stateless persons and migrants, migrant workers, internally displaced persons. The delegates from **Mexico** and **Senegal** highlighted the importance of filling the gap in the ratification of existing international standards that contribute to the protection of migrants from racism and racial discrimination. In this regard she referred to the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families.

57. The delegate from **Switzerland** stated that there is no need to draft a new instrument, as the instrument already exists and that there is no substantial gap, but a procedural gap. It lies mainly in the lack of ratification. The delegate from **Bangladesh** believed that there is also an implementation gap. The delegate from **Morocco** submitted that some of these groups are subjected to different forms of racism and racial discrimination including xenophobia and that there is a need for the Ad Hoc Committee to introduce new standards in this area.

58. Regarding descent-based communities **India** highlighted that the focus should be placed on descent only as pertaining to race such as in the case of people of African or Asian descent as reflected in the Durban Declaration and Programme of Action.

59. Turning to Indigenous Peoples, the delegate from **Mexico** referred to the conclusions and recommendations contained in the report of the five experts and recalled the recent adoption of the United Nations Declaration on the Rights of Indigenous Peoples.

60. Concerning Peoples under foreign occupation, the delegate from **Syria** highlighted the ideological racism that is entrenched in the chronic occupation in the Middle East. The racial motives and practices of foreign occupation should be highlighted and addressed accordingly. The delegate from **Pakistan** considered that foreign occupation constitutes the worst form of discrimination, and addressing this situation through a general comment is simply insufficient. As foreign occupation is not recognized under International Law, we are requesting that it can be dealt with under complementary standards. The delegate from **Egypt** stated that people living under foreign occupation are routinely and systematically denied the enjoyment of their human rights. He went on to add that although under International Humanitarian Law, foreign occupation is sometimes allowed under certain circumstances, indefinite occupation and the imposition of effective control are not. The situation in the Middle East should be ruled as illegal. Foreign occupation in itself engenders racial discrimination. The delegate from **Jordan** indicated that there is a contradiction between the recognition by the five experts that under foreign occupation international mechanisms themselves to protect affected population have limited impact and the fact that they conclude that only general recommendations would be warranted to protect the victims.

61. Regarding multiple forms of discrimination, the delegate from **Belgium** stated that this concept is not new as it is incorporated in the Durban Declaration and Programme of Action. In this regard, he stated that sexual violence; particularly in situations of conflict constitutes a striking example of aggravated forms of racial discrimination on the basis of gender, race and/or ethnicity. He added that this phenomenon has been dealt with inadequately at the international level. The delegate from **Mexico** recalled that the Durban Declaration in its paragraph 2 recognises that victims can suffer multiple or aggravated forms of discrimination. She also cautioned against engaging into a hierarchy or assimilation of different forms of discrimination. Speaking on behalf of the African Group, the delegate from **Egypt** asserted that the African Group recognises multiple discrimination as contained in the Durban Declaration and Programme of Action and does not recognise in any way the concept of “sexual orientation”.

62. Under Xenophobia, speaking on behalf of the African Group, the delegate from **Egypt** asserted that migrant workers, asylum seekers, and minorities all have in common the fact that they are liable to be victims of xenophobia. In this connection there is also a need for new standards. The delegate from **Mexico** stated that xenophobia has increased in recent years and

that further discussion is necessary in this area. The delegate from **Morocco** supports the elaboration of new standards to tackle this problem.

63. Concerning ethnic cleansing, the delegate from **Mexico** supported the recommendation of the five experts. Speaking on behalf of the European Union, the delegate from **Slovenia** expressed the view that in circumstances of ethnic cleansing there should be a need to consider the application of the responsibility to protect and emphasized that it is included in the draft concept as agreed by world leaders at the 2005 United Nations Summit. The delegate from Brazil emphasized on definitional gap.

64. There were no comments on genocide.

65. Regarding religious intolerance and defamation of religious symbols speaking on behalf of the Organization of the Islamic Conference, the delegate from **Pakistan** reiterated some of the points made by Pakistan in its general statement at the start of the session in which was highlighted the importance the Organization of the Islamic Conference attaches to this subject. The delegate from Pakistan stated that in recent years, discrimination on the basis of religion has been the most glaring form of discrimination. He stated that while the Organization of the Islamic Conference is particularly concerned about the recent manifestations against a particular community and followers of a specific religion, it believes that defamation of any religion, its religious symbols or its adherents based on their beliefs is a crude form of racio-religious intolerance that leads to incitement to violence and consequently affects the enjoyment of human rights by the members of that community.

66. The delegate from **Pakistan** also stated that the Organization of the Islamic Conference is not calling for selective treatment or the singling out of one religion but is raising a general concept which provides adequate safeguards against defamation of all religions. He added that the Organization of the Islamic Conference attaches extreme importance to the right to freedom of expression. The issue at hand, however, he said, is the responsible use of this right. Such a position is upheld by the existing legal instruments/covenants, including article 19 of the International Covenant on Civil and Political Rights; article 4 of International Convention on the Elimination of All Forms of Racial Discrimination or general comment number 15 of the Committee on the Elimination of All Forms of Racial Discrimination. In a similar spirit, the

Organization of the Islamic Conference stands for a balancing act whereby freedom of expression does not lead to or result in derision of any religion or as Prime Minister Tony Blair put it that “freedom of expression does not entail an obligation to insult”.

67. The delegate from **Belgium** submitted that the issue of religion is already addressed under several documents and instruments including the International Convention on the Elimination of All Forms of Racial Discrimination, the International Covenant on Civil and Political Rights, and the 1981 Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief. He said that they are sufficient to solve the problem.

68. The delegate from the Czech Republic indicated that defamation should be seen in a broader context rather than just as a racial one. The delegate from **India** stated that the issue of “defamation of religion” or negative stereotyping of religion was a case of abuse of freedom of expression or religious intolerance. He added however, that it could not be considered as purely a manifestation of racism. This was also the view of the Special Rapporteur on freedom of religion or belief. Accordingly, the human rights machinery should address the issue in a broader framework of religious intolerance taking into account all existing instruments, primarily the International Covenant on Civil and Political Rights. The nexus between ‘race’ and ‘religion’ he reiterated had been defined in paragraph 2 of the Durban Declaration and Programme of Action which should be the reference point for the Ad Hoc Committee. The delegate from Morocco stated that religious intolerance requires the development of additional standards.

69. At the suggestion of the Chairperson-Rapporteur the Committee members decided to begin by discussing further the contents of the recommendations made by the Committee on the Elimination of Racial Discrimination in the study requested by the Intergovernmental Working Group. The Chairperson-Rapporteur pointed out that there had been two key recommendations in this study, namely the issue of follow-up visits by members of the Committee on the Elimination of Racial Discrimination, as well as the issue of the creation of national mechanisms. The Chairperson-Rapporteur said that the visits recommended by the Committee on the Elimination of Racial Discrimination, should be made as a matter of principle and not on a case by case basis as is currently the case. On this issue, the delegate from **Belgium** added that the one other recommendation that he saw in the Committee on the Elimination of Racial Discrimination, document was that of an evaluation procedure and early warning. Regarding the

recommendations, the delegate from **Egypt** suggested that the matter should be referred to the Committee on the Elimination of Racial Discrimination, for further assessment and clarification, focusing on what the Committee on the Elimination of Racial Discrimination, thinks should be the next step: to ascertain the added value of the proposed optional protocol and to indicate the issues the Committee on the Elimination of Racial Discrimination would like to see included in such an instrument. The Ad Hoc Committee stands ready to further look into the views of the Committee on the Elimination of Racial Discrimination. (duplicated in section containing conclusions and recommendations)

70. The delegate from Egypt considered that defamation of religion constitutes the worst form of incitement to religious hatred.. In this regard, he clarified that the concept of defamation was well established in legal terms and covered both individuals and religious groups, as evidenced by numerous existing legislations in various parts of the world. He supported the adoption of complementary standards in this regard.

### C. Complementary standards

71. The delegate from **Egypt**, on behalf of the **African Group**, identified two key issues to be discussed under this agenda item. These were (1) incitement to racial and religious hatred, as found in the formulation of the language of the Human Rights Council decision 3/103 (a), and (2) xenophobia. The delegate said that the African group was going to table concrete proposals with regard to these issues during the next part of the first session of the Ad Hoc Committee.

72. The delegate from **Pakistan** said that for the Organization of the Islamic Conference, the most important issue that needed to be looked at within the context of developing complementary international standards is that of defamation of religions. The delegate from **Syria** supported the proposal put forward by Pakistan on complementary standards on the defamation of religion and advocated complementary standards also for racism as exemplified in foreign occupation. The delegate from **Algeria** said that there were genuine gaps in the current international framework, specifically with the issue of people under foreign occupation, and supported the proposal of Syria on the need to develop new standards in this respect.

73. The delegate from from **Turkey** took note that some topics were put forward by the African Group and Organization of the Islamic Conference and others. She added that it was

important to study carefully the topics presented before the committee. She stated that she was not in a position to formally support any of the topics and that xenophobia could be considered as a topic to be taken up by the Committee. The delegate from **Mexico** emphasized the need for further discussion on the issues raised without prejudging the outcome and guided by the need to achieve consensus.

74. The delegate **Morocco** supported the comments made by other delegates on the need for an elaboration of new standards to fill in the gaps referred to by Egypt and Pakistan.

75. Speaking on behalf of the European Union, the delegate from **Slovenia** stated that from the discussion of the Ad Hoc Committee so far there has been no consensus on complementary standards and that there was a need for further consideration of this issue.

76. The delegate from **South Africa** indicated that the statement/comment made by the European Union regarding the issue that complementary standards are not needed, should be clearly reflected in the report. She highlighted that the consensus outcome of the Durban Declaration and Programme of Action which was endorsed at the highest political level provides for paragraph 199 instructing the Commission on Human Rights (replaced by the Human Rights Council) to elaborate complementary standards.

77. The delegate from **Sweden** pointed out, on behalf of the European Union, that it was going to be very difficult for the Committee to achieve consensus if it decided to tackle themes outside the ambit of the documents currently before the Committee (i.e the recommendations by Committee on the Elimination of Racial Discrimination and those by the Group of 5 experts). He said that the discussions on complementary standards had already taken place under the IGWG and that it was not necessary to go back to those.

78. On the need for consensus in the work of the Committee, as raised by the delegate of **Sweden**, the delegate from **Belgium** said he agreed with the sentiments of the European Union. He added that when the work at hand involves drafting a legal document, consensus is indeed important.

79. The delegate from **Brazil** speaking on behalf of his own country stated that while he wished to advance discussions on a consensual basis, he would favour working on several issues raised in the Conference Documents which deserved attention i.e. xenophobia, racial

discrimination, education on tolerance, combating racism on the Internet and racial profiling. Once such consensus is identified he would be ready to start work on a concrete text.

80. The delegate from **Egypt** emphasized that the task of the Committee is to elaborate complementary international standards. He said that the best way of doing this would be to have delegations put their thoughts to paper and let the Committee decide on them based on a process of deliberations.

81. The delegate from **Belgium** emphasized the need for consensus and the fact that the ‘critical mass’ had to be reached to draw up a legal instrument in this regard. The delegate from **Turkey** emphasized the importance of reaching consensus within the Committee. She recalled that previously, within the framework of the Intergovernmental Working Group, consensus-building efforts had always been successful.

82. The delegate from **Azerbaijan** added that he supported the approach taken by both the African Group and the OIC. He added that the Committee should bear in mind that there exists a decision of the Human Rights Council on this matter and that it was now the responsibility of the Committee and the members to ensure that new complementary standards are developed. The delegate from **Pakistan** said that the Committee had a clear task ahead of it, and this was the development of complementary international standards. He urged the members to stop wasting further time and address this task. On consensus, he said that all efforts should be made to achieve it, but the Committee must recognize that its members have different views and that if the Committee waits until it has a consensus its work may not advance at all.

83. The delegate from **Switzerland** said that she wanted to address the question of consensus. She expressed support to delegations who upheld consensus. Even if it was difficult to achieve it, this should not be seen as a limiting factor or as a pre-condition to obtain an agreement in this area. The delegate from **Ghana** said that there was need to move on with the elaboration process, and urged all delegations to consider the sufferings to which victims of racial discrimination were suffering all over the world and help them by moving on with the issue of elaborating new standards. She added that delegations should line up to the mandate by adopting a victim-oriented approach in its future deliberations.



84. The delegate of **Egypt** reiterated that the approach to be used was that of putting the ideas into a document for consideration by the Committee. He added that the Ad Hoc Committee is open to suggestions from all members during its proceedings, and those comments would be welcome. He said that it was important that some concrete document be discussed and considered by the Ad Hoc Committee.

85. The **Chairperson-Rapporteur** intervened at this point, noting that there were major problems that had been identified this century, just as there had been similar major problems in the first part of the last century, and that there is need to confront these problems with the same resolve today, which could only be done by acknowledging that there was indeed a problem. He said that although Committee members acknowledged that the extent of the current problems in the area of racial-cum-religious discrimination, there were differences of opinion on how to tackle them. Some of the Committee members feel that the solution lies in the implementation of current standards while others feel that the development of new standards is what is needed to deal with the problems. Yet, others felt this was not the right forum. He added that what Committee members should have at the forefront of their mind the need to protect the victims. He said that this is not an issue over which people should disagree on the basis of ideology. He said that protection of victims was the core issue at stake, and added that he saw consensus as an outcome of our deliberations rather than as a precondition to consider the issues at hand. Noting that the best thing to do under the circumstances was to proceed on the basis of concrete proposals, he stated that consensus should be progress oriented and not one that reflects paralysis.

86. The delegate from **Pakistan** said that the Organization of the Islamic Conference had a document that they wished to circulate to the members to show where the organization stands on the issues that they had raised in the Committee, and asked that these documents form part of the proceedings of this meeting.

87. The delegate from **Belgium** urged the members to proceed on the basis of a rational approach, but added that this suggestion should not be viewed as an attempt to drag the work of the Committee in solving the very important issue of racial discrimination. He observed that some important themes had come up that needed a closer examination, for example the issue of multiple forms of discrimination, but said that it was important to have a critical mass of support in order to achieve the best results.

88. The delegate from **Switzerland** agreed on the need to move on in the right approach, in order to achieve the objectives of the Committee's work. The delegate from **Algeria** concurred with the views expressed earlier by the delegate of Egypt, adding that the Committee needs to have a document whether consensus is reached on it or not that reflects all proposals for complementary standards if it is to conform with its mandate and it should hold discussion thereon with a view to elaborating these complementary standards where needed. Such elaboration can be a progressive rather than instantaneous process.

#### **IV. CONCLUSIONS AND RECOMMENDATIONS OF THE FIRST PART**

89. The Ad Hoc Committee considered the conclusion reached by the five experts in the 'Report on the study by the five experts on the content and scope of substantive gaps in the existing international instruments to combat racism, racial discrimination, xenophobia and related intolerance' (A/HRC/4/WG.3/6), particularly regarding the existence of a normative gap in the area of human rights education as well as their recommendation that a convention on human rights education be adopted. In this regard the Ad Hoc Committee recalled that in its resolution 6/10, the Human Rights Council requested the Human Rights Council Advisory Committee to prepare a draft declaration on human rights education and training to be presented to the Human Rights Council for consideration.

90. The Ad Hoc Committee recommends to the Human Rights Council to refer back to the Committee on the Elimination of Racial Discrimination proposals regarding the elaboration of an optional protocol as contained in its study entitled 'Study of the Committee on the Elimination of Racial Discrimination on possible measures to strengthen implementation through optional recommendations or the update of its monitoring procedures' (A/HRC/4/WG.3/7).

91. The Ad Hoc Committee expressed its readiness to further review any position and/or clarification relating to these proposals included in the suggested protocol(s) as CERD remains the most competent body to make suggestions to the Ad Hoc Committee as regards the elaboration of measures for addressing the improvement of the effectiveness of its procedures. The Ad Hoc Committee however is the appropriate body to elaborate complementary standards on the substance of issues relating to racism, racial discrimination, xenophobia and all forms of discrimination.

92. The Ad-Hoc Committee agreed to hold the second part of its session in the course of 2008 at a date to be determined. While disagreements were not overcome on whether substantial protection gaps needed to be addressed through complementary standards, the expectation was that concrete proposals would be drawn up by interested parties and discussed informally with Member States during the interim period, with a view to achieving the broadest possible margin of agreement during the resumed meeting.

## V. PROCEEDINGS OF THE SECOND PART

### A. Introduction

93. The second part of the first session of the Ad Hoc Committee for the elaboration of complementary international standards resumed on 15 December 2008 and was opened by its the Chairperson-Rapporteur, Ambassador Idriss Jazaïry. The Chairperson thanked the members of the Committee for the commitment they had demonstrated in the work of the Committee and reiterated his own commitment to ensure that the work for which the Committee was created is accomplished, noting that for this to happen there was need for flexibility and commitment to purpose by all involved.

94. The Chairperson reminded the delegates that at the end of the first part of the session he had asked members to reflect over areas in which they thought complementary international standards were needed and then prepare concrete proposals for discussion during the second part of the session. He noted that no delegation had prepared any such proposals, which forced him to prepare a document, a non-paper<sup>2</sup>, whose objective was to facilitate and orient discussions at the resumed session of the Committee. He said the paper was meant to allow a comprehensive overview and reactions from delegations and added that this exercise was an important step in the search for consensus and to discharge the mandate entrusted to the Ad Hoc Committee of

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<sup>2</sup> The non-paper can be found on the OHCHR website (<http://www2.ohchr.org/english/issues/racism/DurbanReview/sessions.htm>) and on the extranet (<http://portal.ohchr.org/portal/page/portal/Durban%20Review%20Conference%20root> )

complementary international standards. He pointed out that the non-paper had been circulated to all the delegates prior to the meeting, together with an explanatory letter addressed to all delegations.

95. The Chairperson explained that some groups had expressed the desire to work at the present session on the basis of a draft protocol for negotiation pursuant to resolution 3/103 of the Human Rights Council. However, other groups objected to this approach. In a spirit of compromise the Chairperson indicated that he decided to put on hold the negotiation draft and instead, opted to present his non-paper which he said is based on European human rights jurisprudence, general comments by CERD and by the Human rights Committee and Human Rights Council resolutions.

96. The Chairperson then went ahead to introduce the non-paper which was subdivided into 2 main parts, one dealing with the purpose, scope and parameters and the other dealing with specific themes. Under the first part the Chairperson set out the case made for elaborating complementary international standards. Under the second part the Chairperson raised some specific themes which might warrant complementary standards. Themes included here are (i) enhancement of effectiveness of CERD, (ii) double or multiple discrimination, (iii) terrorism, racial discrimination and racial profiling, (iv) xenophobia, (v) incitement to racial, national and religious hatred, (vi) racism in modern information and communications technologies, (vii) impunity for acts of racism, racial discrimination, xenophobia and related intolerance and (viii) the right to a remedy and reparation for victims.

97. With regard to the programme of work for the resumed session of the Committee, the Chairperson proposed two options to the delegations: the first proposal was to have a 3-day meeting, ending on Wednesday 17 December 2008, and the second, to have a 4-day meeting, ending on 19 December 2008 (the 18 of December having been loaned to the Intergovernmental Working Group for the effective implementation of the Durban Declaration and Programme of Action (IGWG) in order to enable it to complete its sixth session). After a brief deliberation, the Ad Hoc committee members adopted an abridged version of the Programme of work proposed by the Chairperson. Nevertheless, some delegations expressed the need for flexibility, saying that the session should be allowed to continue to Friday if it was necessary to complete the work before it. (In the end the Ad Hoc Committee exercised this flexibility and met on Thursday

afternoon (18 December 2009) and Friday (19 December 2009), bringing the total number of meetings to nine).

98. After the completion of the introductions and the preliminary discussion regarding the programme of work, the resumed session of the Ad Hoc Committee deliberated in accordance with the adopted programme of work.

### **B. General comments on purpose, scope and parameters**

99. One issue raised at the beginning of the meeting was whether complementary international standards are needed, with one group saying that there was a divergence of views over the issue and that an evaluation needed to be carried out to assess the need for such standards. The view was expressed by some delegations that such standards should only be elaborated if there was real necessity and added value.

100. This view was opposed by other groups and delegations who pointed out that the need for the elaboration of international complementary standards was not to be questioned, as this had been clearly stipulated in paragraph 199 of the Durban Programme of Action which “recommends that the Commission on Human Rights prepare complementary international standards to strengthen and update international instruments against racism, racial discrimination, xenophobia and related intolerance in all their aspects”. It was pointed out that paragraph 199 of the Durban Programme of Action would not have existed if there had been no need for complementary international standards. It was further argued that the Ad Hoc Committee was set up by Human Rights Resolution 3/103 with the express mandate to develop “as a matter of urgency and necessity” international complementary standards.

101. On the issue of the legislative mandate of the Ad Hoc Committee, it was also pointed out that Human Rights Council, in its resolution 3/2 concerning the Durban Review Conference, in operational paragraph 5, states that the Review will be undertaken on the basis of and “with full respect for the Durban Declaration and Programme of Action” and that “there will be no renegotiation of the existing agreements contained therein”. Some members observed that the debate on the need for complementary standards was unnecessary since the instruction to elaborate such standards was issued by the Durban Conference in 2001 and should not therefore

be renegotiated, while some other members insisted on a debate on the need for complementary standards before any other step.

102. There was some discussion regarding the fact that the Human Rights Council resolutions 3/103 and 3/2 endorsing the work of the Ad Hoc Committee had not been adopted by consensus, with some intimating that they were not therefore as binding as consensus decisions. But this view was challenged, and it was pointed out that all decisions of United Nations bodies and mechanisms have equal status whether or not they had been adopted by consensus. It was pointed out that many important decisions had been adopted without consensus.

103. The argument was made that the implementation of existing standards, such as those contained in the ICERD, was more important than the elaboration of new standards. It was pointed out that many recommendations and concluding observations of the ICERD had not been fully implemented or complied with, and that this was the real challenge facing the global combat against racism, racial discrimination, xenophobia and related intolerance. In reply the point was made that the elaboration of complementary international standards was a process different from that of the ICERD and that the purpose of the elaboration of new standards was to complement or enhance the status of CERD general comments.

104. An issue was raised about the need to first identify the substantive gaps before beginning the process of elaborating new standards. In this context, it was observed that the Human Rights Council resolutions 3/103 and 6/21 make it clear that the process of elaboration of the complementary standards also encompassed the filling of existing gaps (Resolution 6/21 says that the Ad Hoc Committee has the mandate to “elaborate, as a matter of priority and necessity, complementary standards in the form of either a convention or additional protocol(s) to the ICERD, filling the existing gaps in the Convention and providing new normative standards aimed at combating all forms of contemporary racism, including incitement to racial and religious hatred”).

105. Regarding the methodology, objection was raised to having the non-paper prepared by the Chairperson as the basis of discussions during the session. It was argued that the paper had not been discussed ahead of time with the delegations and that it raised issues that in the opinion of some delegations went beyond what was required at the present time and even issues that were

definitely unacceptable for complementary standards to some delegations. Some groups and delegations asserted that they wanted to discuss a draft additional protocol but that they nevertheless would accept the non-paper as a basis of discussion although pointing out that it was not to be the only basis for discussion. They pointed out that the non-paper had been prepared by the Chairperson after it became clear that delegations had not come up with concrete proposals as had been agreed at the end of the first part of the session in February 2008. The Chairperson said that members of the Committee were free to trade proposals contained in the non-paper with their own, but that it was important to have some concrete proposals on the table to enable the work of the Committee to continue. He said that he would have no problem even if the proposals contained in his non-paper were rejected *in toto* provided there were other concrete proposals to counter or replace those he had included in the non-paper.

106. There was a discussion about the timing of the discussion on international complementary standards, with some arguing that there would be interference with the Durban Review Conference and that there were too many meetings and activities going on at the same time, such as the discussions within the Durban Review process, the ongoing Universal Periodic Review and the current session of the Forum on Minorities. However, other delegations did not find this an issue, saying that it was normal in the United Nations to have different meetings going on at the same time, and thus there was no justifiable reason to not continue with the Ad Hoc Committee session. It was pointed out that the Ad Hoc Committee would soon be required to update both the Human Rights Council and the Durban Review Conference on how it had carried out its mandate, and therefore it was imperative that the first session be completed in order to have a report on the basis of which to update these two bodies.

107. There was a discussion on the appropriateness of discussing specific issues during this particular session of the Ad Hoc Committee. Some said they were ready for general comments but that it was far too early to begin the discussion on specific issues such as the ones raised in the Chairperson's non-paper. Yet others pointed out that there were too many things going on and that they had not had the time to reflect over the specific issues. Others said they needed specific instructions and approval from their capitals. But this hesitation in discussing specific themes was objected to by those who argued that the elaboration of specific complementary standards constituted the sole mandate of the Ad Hoc Committee and as such all delegations should have prepared themselves to deal with specific issues under that mandate. It was also

pointed out that the issue of elaborating complementary international standards had been under discussions within the IGWG for many years. Those who now hesitated to discuss the issue were not showing sufficient commitment to the implementation of the DDPA. The latter argument was objected to by those delegations against which it was directed.

108. The argument was made that a process of norm-setting, such as the one the Ad Hoc Committee was created to undertake, requires consensus from Member States, in order to confer full legitimacy to any instrument that came out of such a process. As such, there was need for further reflection on the issue, and more broad-based consultations on the same. This was challenged in light of the assertion that other norms at the international level had been drawn without the issue of consensus being put as a precondition.

109. An issue regarding the institutional link between the work of the Ad Hoc Committee and that of the Durban Review Conference was discussed. Some argued that the issues being discussed in the Committee would prejudice the debate within the Durban Review Conference. Proponents of this view said that the Durban Review Process was very delicate and was already dealing with some of the issues proposed for discussion at the Committee, and that it would be advisable to let these issues be thrashed out within the Review process instead. They also questioned the haste and timing of the discussion on complementary international standards, saying that this discussion did not necessarily need to be rushed at this time when the priority for the members should be on the Review Conference. They observed that paragraph 199 of the Durban Programme of Action did not specify any deadline and that time for discussions was still required to ensure a consensus outcome. Others argued that confusion with regard to the elaboration of complementary standards with other thematic issues envisaged for the substantive outcome of the Durban Review Conference should be avoided and clearly delineated. Complementary standards were instructed by the Durban Conference in 2001 and can therefore not form part of its review process.

110. There was a discussion regarding the scope and nature of complementary standards to be elaborated by the Ad Hoc Committee. One regional group said that its objective was to have an additional protocol to the ICERD, but welcomed any other process that would be agreed upon provided the Ad Hoc Committee fulfilled its mandate of elaborating complementary international standards. This view was challenged by another regional group who said it was



unconvinced by the need for a protocol. There followed an inconclusive discussion, delegations expressing different positions regarding whether international reports and studies called for the need to elaborate new international instruments or not. Another view was expressed that the nature of complementary standards would only be considered and decided upon in the context of specific issues that it would proceed to address.

111. A group and delegations emphasized that any standard developed should have the aim of maximizing protection of victims, maximizing remedies for victims and zero intolerance for impunity. One delegation stressed that any new standard developed should aim at enhancing the protection of the human rights and fundamental freedoms of individuals.

112. Member States expressed their views regarding the proposed outcome of the first session of the Ad Hoc Committee, with some saying they did not wish to see a report with conclusions and recommendations, and others stating that they had no objection to a report that had such conclusions and recommendations provided they proceeded from discussions and agreements among the participants. But all agreed that there should be a report of the session which would be presented to the Human rights Council as required.

### **C. Comments on specific issues**

113. Some comments were made on specific issues. A group of countries stated that the subjects on which it wished to see complementary standards included defamation of religion, Islamophobia, as well as racial and religious profiling in the context of anti-terrorism.

114. Other specific themes identified on which it was felt there is need for complementary standards were the elimination of discrimination-related conditions that are obstructive to the realization of self determination, racial discrimination arising from foreign occupation, including the eradication of all the latter's racial manifestations and motivations, and other multiple forms of discrimination. It was also proposed that due regard should be given to the respect of territorial integrity.

115. It was emphasized that the dialogue on the need to elaborate complementary standards have been continuing for the past 6 (six) years and that ample opportunity to reflect on substantive gaps was given to delegations. Hence it could not be expected that further dialogue would take place in this context. It was observed that new norms to deal with contemporary

manifestations of racism should include xenophobia, islamophobia, anti-semitism, genocide, incitement to racial, ethnic and religious hatred, racial profiling and cybercrime, and in support of the mandate to elaborate new norms, definitions of concepts such as xenophobia in international human rights law were critical, including a call for the criminalization and punishment of conduct thus defined.

116. The contrary view was expressed to the effect that there was no need for any complementary standards in the above mentioned issues, the focus being on the implementation of existing provisions, including the possibility of encouraging States to reinforce prevention of discrimination and protection of victims and enabling international mechanisms to better monitor the effective implementation of the relevant instruments.

117. Furthermore the relevance of some issues under the mandate of the Ad Hoc Committee was questioned, such as the issues of migration and defamation of religion in the fight against terrorism, which, it was claimed, were already being discussed in other fora.

118. During the fourth meeting of the resumed session of the Ad Hoc Committee, one regional group presented concrete proposals in the form of a suggested roadmap and timetable for the elaboration of complementary international standards. The regional group recommended that the next session of the Ad Hoc Committee should negotiate the requisite legal document(s). The regional group then gave some specific proposals as follows: (a) that inputs towards the draft negotiating text should be received from all the delegations by 31 January 2009. These inputs, together with the elements already contained in the Chairperson's non-paper and individual delegations' statements of the present session should allow the Chairperson to elaborate a draft legal instrument. (b) that the draft text based on all inputs be finalized by 31 May 2009 and be circulated by this date in all UN languages to the delegations (c) that in the absence of an agreement on entrusting this responsibility to the Chairperson, the concerned group would be ready to present its own draft, and (d) that the Ad Hoc Committee should convene its second session for the duration of 11 to 12 working days during June 2009 and that the secretariat should identify appropriate dates to be confirmed, communicated and reflected in the annual calendar of the Human Rights Council.

119. In the above context, a non-exhaustive list of thematic issues such as xenophobia, islamophobia, anti-semitism, cybercrime, migration, the phenomenon of profiling, incitement to racial, ethnic and religious hatred, was placed on the records of the Ad Hoc Committee as a group's contribution to the proposed requisite legal instrument (s). Other regional groups were encouraged to make similar contributions as well as constructively assisting the Chair.

120. This list of issues was denied relevance by other delegations stressing that there could not be feasible agreements for complementary standards in most of those areas.

121. The presentation of the proposed "roadmap" by the regional group elicited multiple reactions. It was pointed out that the deadlines indicated in the proposal were too tight and needed to be made flexible. Some argued that there should not be any deadlines and that in any case further work on the issue should await the completion of the Durban review Conference which was a priority. Other members said that they needed to send the proposals to their capitals, a process that would take time. A few delegations supported the deadlines, saying that deadlines were important to move things along and to push action. Meanwhile, the group that presented the proposal gave indications that it would be flexible on the deadlines, so long as the members of the Committee showed real commitment to address the issues raised in the proposal. Some delegations requested that the proposal submitted by the group should be further elaborated by indicating how in its proposal it would suggest to address the specific issues raised.

122. There was an exchange of views regarding the issue of incitement to religious and racial hatred. In the discussion the link between articles 19 and 20 of the International Covenant on Civil and Political Rights was raised, with some saying that article 20 (incitement to racial hatred) placed some limitations on the exercise of freedom of expression guaranteed under article 19 and that therefore the two could not be looked at independent of each other. Another view held that article 20 was a stand-alone provision and obligation and had no link to article 19 in the context of the present exercise, since both the Human Rights Committee and the CERD had emphatically resolved the issue by stressing that the prohibition of incitement was fully compatible with the freedom of expression. It was further stressed that freedom of expression can contribute to the fight against racism, and it was pointed out that the Human Rights Committee maintained that article 20 (2) was protective of the right of minorities and of freedom of religion as an essential guarantee. This view also reiterated that a gap in standard, interpretation and application of article 20(2) of the ICCPR existed, including in relation to the

question of threshold. It also pointed out to the fact that all independent human rights mechanisms, including HRC and CERD, as well as regional systems, in particular the ECHR, pointed to a direction and developed jurisprudence and practice that needed to be codified urgently at the international level for better protection of victims. All independent monitoring bodies had presented evidence of the growing incidence and danger of incitement to racial and religious hatred.

123. Some other delegations did not agree at all on the need for international complementary standards on the above mentioned issue.

## **CONCLUSIONS AND RECOMMENDATIONS OF THE SECOND PART**

### **Concluding text agreed upon by Member States at the end of the first session**

At its last meeting, held on 19 December 2008, the Ad Hoc Committee on the elaboration of complementary international standards adopted the following concluding text by consensus:

“1. In pursuance of article 199 of the Durban Programme of Action, the following roadmap for the preparation of complementary international standards in the field of racism, racial discrimination, xenophobia and related intolerance is agreed:

The ultimate goal of the work of the Ad Hoc Committee on the elaboration of complementary standards is to prepare complementary international standards, in line with paragraph 199 of the Durban Programme of Action. The scope, form and nature of the complementary international standards could vary according to the gap to be filled.

Accordingly it is decided that the Chairperson of the Ad Hoc Committee on the elaboration of complementary international standards will proceed as follows:

a. He will solicit contributions from Member States which should be exclusively in the form of action points to be submitted no later than the end of the second week of May 2009

b. He will compile, integrate and structure all contributions received

c. He will then consult Member States on the outcome of (b) above

d. He will send this outcome no later than 15 June 2009 to OHCHR for translation, reproduction and circulation

e. He will ascertain that this outcome is submitted to Member States by 31 July 2009 as the basis for the work of the second session of the Ad Hoc Committee to be scheduled as early as possible in October 2009 for a period of 11 days.

The OHCHR is requested to provide the Chairperson of the Ad Hoc Committee with the assistance he may require to implement the foregoing”.

At its last meeting, held on 19 December 2008, the Ad Hoc Committee on the elaboration of complementary standards adopted the report of its first session *ad referendum*.

Following the adoption of the report *ad referendum*, France on behalf of the EU, Egypt on behalf of the African Group and Pakistan on behalf of the OIC issued interpretative declarations, which are reproduced as part of the annexes to this report. Other statements were made after the adoption of the report by Algeria, Cuba, Mexico and Palestine.

## ANNEXES

### Annex I

Non paper by the Chair

**Non paper on complementary international standards to strengthen and update international instruments against racism, racial discrimination, xenophobia and related intolerance in all their aspects**

**I- Purpose, scope and parameters:**

- Implementing paragraph 199 of the Programme of Action of the World Conference against racism, racial discrimination, xenophobia and related intolerance, in which the Conference “Recommends that the Commission on Human Rights prepare complementary international standards to strengthen and update international instruments against racism, racial discrimination, xenophobia and related intolerance in all their aspects”, as well as the relevant Human Rights Council resolutions, in particular decision 3/103 .
- The need to enhance efforts to counter contemporary and emerging forms of manifestations of racism, racial discrimination, xenophobia and related intolerance.
- The need to strengthen the monitoring procedures of the Committee on the Elimination of Racial Discrimination with a view to enable it to undertake the responsibilities entrusted to it in a more effective manner.
- The need to address double or multiple discrimination as a continuing source of concern, as it affects certain individuals and groups, in particular gender-related racial discrimination and double discrimination on the grounds of race and religion.
- The imperative to ensure that measures to combat terrorism respect the fundamental principles and the universally recognized standards of international law, international human rights law and international humanitarian Law.

- The urgency of addressing racial profiling and eliminating it as a pervasive form of discrimination.
- The need for uniform and consistent application of the law at the national and international levels to ensure the effectiveness of international efforts to counter racism and racial discrimination.
- The need to recognize that the prohibition of the dissemination of all ideas based upon racial superiority or hatred and the prohibition of incitement to national, racial or religious hatred are compatible with the freedom of opinion and expression.
- The principle of regarding provocative portrayals of objects of religious veneration as a malicious violation of the spirit of tolerance which must also be a feature of democratic society.
- The need to re-emphasize that the prohibition of publication of material with the aim of protecting the rights of others and against seriously or gratuitously offensive attacks on matters regarded as sacred by the followers of any religion is a legitimate State objective.
- The need for national and international law to provide adequate legal responses to propaganda of a racist and xenophobic nature committed through computer systems.
- The need to follow the growing trend in many States to include, in their criminal legislation, offences in which religious motives are an aggravating factor.

## **II - Specific Themes:**

### **1- Procedural innovations designed to enhance the effectiveness of CERD:**

- a- An enquiry procedure covering, inter alia, grave or systematic violations, and providing an opportunity to address structural causes of violations of ICERD.
- b- Follow-up visits by the CERD Coordinator on follow-up.

c- The obligation for States to establish, designate or maintain national mechanisms working towards the prevention of racial discrimination and the promotion of equality.

## **2- Double and multiple discrimination:**

Double and multiple discrimination, namely gender-related racial discrimination and double discrimination on the grounds of race and religion, taking into account the intersectionality of racial and religious discrimination, must be given due attention in the implementation of the ICERD and any complementary international standards thereto.

## **3- Terrorism, racial discrimination and racial profiling:**

a- A definition of racial profiling, prioritizing human rights protection, could be elaborated and agreed upon.

b- States must ensure that measures to combat terrorism do not discriminate, in purpose or effect, on grounds of race, colour, descent, or national or ethnic origin, as well as on religious grounds, bearing in mind in this context the intersectionality between racial and religious discrimination.

c- Profiling based on stereotypes founded on grounds of discrimination prohibited by international law, including on racial, ethnic and/or religious grounds must be prohibited by law.

## **4- Xenophobia:**

Xenophobia is a contemporary source and form of discrimination included in DDPA but not in ICERD. This protection gap should be addressed to allow xenophobia to be covered under the scope of ICERD.



**5- Incitement to racial, national and religious hatred:**

a- There is a need for further clarifying and reinforcing at the international level existing obligations on the eradication of all incitement to hatred and discrimination in any form and to prohibit by law, propaganda for war and advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.

b- In this context, complementary standards to be developed should observe the following parameters:

- Article 4 of ICERD shall be extended to the crime of incitement to racial hatred covering offences motivated by religious hatred against immigrant communities.
- The protection provided shall extend to all individuals and groups within the jurisdiction of the State Party.
- The prohibitions shall equally cover acts committed by any individual, group or organization, including political and media organizations as well as by national or local public authorities.
- The provisions shall apply to any act which, in purpose or effect, incites discrimination, hostility or violence.
- In order to achieve consistent and uniform application and maximise protection for actual or potential victims, any doubt as to the existence of a causal link between an act of incitement and the likelihood of a violation, or the threshold required for reaching such a determination, shall be interpreted in a consistent and coherent manner at the national and international levels so as to ensure appropriate protection of the concerned individuals or groups.

- Addressing acts constituting incitement shall apply whether such acts have aims which are internal or external to the State concerned.
- Requisite standards would explicitly not prohibit advocacy of the sovereign right to self-defence or the right of peoples to self-determination and independence in accordance with the Charter of the United Nations.
- Requisite complementary standards shall include the prohibition of publication of material that direct seriously offensive attacks on matters regarded by followers of any religion or belief as sacred or inherent to their dignity as human beings, with the aim of protecting them against such attacks.

c- In line with the above parameters, States' general obligations would include:

- Undertaking to promulgate, where they do not exist, a specific legislation prohibiting any propaganda for war and any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.
- Asserting, in the relevant specific legislation, that such propaganda and advocacy are contrary to public policy.
- Providing for appropriate sanction, including of a criminal nature, in case of violation.

## **6- Racism in modern Information and communication technologies:**

States would adopt legislative and other measures as may be necessary to criminalize the dissemination of racist and xenophobic material through computer systems, racist and xenophobic motivated threat, racist and xenophobic motivated insults and aiding and abetting any of these acts.

**7- Impunity for acts of racism, racial discrimination, xenophobia and related intolerance:**

a- States shall undertake to punish all violations of the provisions of ICERD and of any complementary standard thereto, and to address and combat impunity for such violations.

b- States are to include, in their criminal legislation, offences in which religious motives are an aggravating factor.

**8- Right to a remedy and reparation for victims of racism, racial discrimination, xenophobia and related intolerance:**

States shall guarantee the right of every victim of racism, racial discrimination, xenophobia and related intolerance to remedy and to just and adequate reparation for any material or moral damage suffered as a result of such discrimination.

## **Annex II**

### Interpretative Declarations

#### **Comité ad hoc sur l'élaboration de normes complémentaires**

**1<sup>ère</sup> session – seconde partie –15-19/12/08)**

#### **EXPLICATION DE POSITION / DÉCLARATION INTERPRÉTATIVE**

##### **de l'Union européenne**

**(19 décembre 2008)**

L'UE comprend la feuille de route («roadmap») agréée par le Comité Ad Hoc sur l'élaboration de normes complémentaires, le 19 décembre 2008, de la manière suivante:

- 1) L'UE considère que cette feuille de route ne saurait préjuger des résultats possibles de la Conférence d'examen de Durban qui se tiendra du 20 au 24 avril 2009, s'agissant en particulier de l'avenir des mécanismes internationaux de suivi de Durban et des autres mécanismes des Nations Unies traitant de la question du racisme, de la discrimination raciale, de la xénophobie et de l'intolérance qui y est associée.
  
- 2) L'UE considère que le paragraphe 199 du Programme d'Action de Durban reste le seul fondement consensuel de toute éventuelle élaboration de normes complémentaires, sans préjuger l'identification des besoins spécifiques pour d'éventuelles normes dans certains domaines, ni le format ou les méthodes des discussions en la matière, ni aucune échéance de temps pour la conclusion de ces discussions.
  
- 3) En ce sens, l'UE considère que les contributions sollicitées des Etats membres d'ici à la seconde semaine de mai 2009 doivent pouvoir porter non seulement sur des points de substance, reposant sur la démonstration empirique des besoins et de la valeur ajoutée des propositions formulées par rapport aux normes existantes, mais aussi porter sur des points relatifs au cadre et aux méthodes envisageables pour la poursuite des discussions. A cet égard, il est crucial que ce

processus se poursuive de manière ouverte et transparente, en créant toutes les conditions d'un consensus.

4) L'UE considère que la feuille de route ne préjuge en rien au stade actuel de ce qui pourra effectivement résulter du travail de compilation, de structure et d'intégration de toutes les contributions reçues par le Président, et par conséquent de ce qui pourra servir de base aux travaux de la seconde session du Comité Ad Hoc prévue en octobre 2009.

L'UE souhaite que la présente déclaration soit reflétée dans le rapport final de la 1<sup>ère</sup> session du Comité Ad Hoc.

**Intervention by the delegation of Egypt on behalf of the African Group in reaction to the  
European Union statement**

**Following the adoption of the report**

Thank you Chairperson,

The African Group would like to make the following short intervention following the statement just delivered by the European Union after the adoption of the report of the Ad Hoc Committee

The African Group remains concerned and dismayed at this intervention and the position just expressed by the EU. The African Group considers that the Agreed Roadmap, which has been adopted by the Committee a few minutes ago, is very clear and bears no re-interpretation as has just been witnessed from the EU.

Accordingly, the African Group reiterates what is already reflected in the agreement to the effect that contributions called for, shall be presented exclusively in the form of action points for the sole purpose of feeding into the proposed Outcome, namely, the draft Additional Protocol to the ICERD, in line with the Human Rights Council decision 3/103.

It follows that any contribution not submitted in the form of action points as agreed, for the purpose of having complementary standards are not warranted and therefore not faithful to the fulfillment of the mandate of this Committee and consequently should be excluded from this exercise. Further to that, contributions which seek to repeat the general debate on complementary standards, calling for the needs assessment or the identification of gaps, would not be in line with the mandate of this Committee.

I thank you.

**OIC Statement at the end of the Ad-hoc Committee Session**

The OIC considers the agreed roadmap by the Ad-hoc Committee as a good start for the future work of the Committee. It reflects the collective desire and importance attached by Member States to this important work in the field of racism, racial discrimination, xenophobia and related intolerance. The road map itself is a result of careful and detailed negotiations hence, is very clear and should not lead to any misinterpretation.

The OIC further believes that the basis of our work remains paragraph 199 of the DDPA, HRC Res. 3/2 and HRC decision 3/103 that mandates us to devise as a matter of urgency and necessity international complementary standards. These guiding resolutions make it clear that the process of elaboration of the complementary standards also encompass filling of the existing gaps. It could be in the form of either a convention or additional protocol(s) to the ICERD, filling the existing gaps in the Convention and providing new normative standards aimed at combating all forms of contemporary racism, including incitement to racial and religious hatred".

We, therefore, believe that member states while submitting their inputs to the Ad-hoc Committee should take into account this criterion and, as decided in the Roadmap, should present their contributions in the form of concrete action points for the desired outcome. Based on these inputs the Chairperson will compile, integrate and structure an outcome document that will become the basis of our work during future sessions of this Committee.

The OIC hopes that in fighting this universal scourge, we are united and with collective constructive endeavours can achieve the desired goal that is the ultimate protection of the victims of racism, racial discrimination, xenophobia and related intolerance.

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