

**74<sup>th</sup> session of the United Nations General Assembly**

**Agenda item 68(b): Progress Report**

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Chairperson-Rapporteur of the Ad Hoc Committee on the  
Elaboration of Complementary Standards**

**New York, 30 October 2019**

Your Excellency Vice President of the General Assembly,

Excellencies,

Distinguished delegations,

Ladies and Gentlemen,

Good morning,

I am honoured to be with you here today to deliver my second progress report on the work of the Ad Hoc Committee on the Elaboration of Complementary Standards to the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), as requested by the General Assembly in paragraph 7 of its resolution 73/262.

As you are all aware, the Ad Hoc Committee was established by the Human Rights Council in its decision 3/103 of 8 December 2006, “to elaborate, as a matter of priority and necessity, complementary 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, filling the existing gaps in the Convention and also providing new normative standards aimed at combating all forms of contemporary racism, including incitement to racial and religious hatred”.

Since then, the Ad Hoc Committee has struggled to fulfil its mandate due to differences among States on how to address the issue of contemporary forms and manifestations of racism and racial discrimination. Broadly speaking, two distinct positions have emerged. On the one hand, a group of States is not in favour of elaborating complementary standards on the grounds that the ICERD is an adequate and living instrument that can adapt to the contemporary reality. This group further argues that the only existing gap relates to the full implementation of the Convention. On the other hand, there is a group that is in favour of elaborating complementary standards to fill the substantive and procedural gaps that they believe exist in the Convention, as enunciated in the Human Rights Council decision 3/103 of 8 December 2006.

Over its ten sessions, the Committee has engaged with over sixty substantive experts from different disciplines - academia, civil society, national human rights institutions and intergovernmental organizations - from all regions of the world, discussing issues across the spectrum of racial discrimination. These experts and the topics presented by them have been a means to address the differing viewpoints

already alluded to. These sessions have served as an important exercise which has put at the disposal of the Committee a wealth of information to enable it to fulfil its mandate. Despite all these efforts, there was seemingly a lack of political will to move forward and work on fulfilling the mandate of the Committee.

In December 2016 and March 2017, the General Assembly in resolution 71/181 and the Human Rights Council in resolution 34/36 respectively, requested the Chair-Rapporteur of the Ad Hoc Committee, “to ensure the commencement of the negotiations on the draft additional protocol criminalizing acts of a racist and xenophobic nature”. The General Assembly has since adopted two further related resolutions, namely, 72/157 and 73/262 in December 2017 and December 2018, respectively. These resolutions pointed to a frustration that the Ad Hoc Committee was not making the expected progress, hence the push for it to deliver on its mandate.

Today, I am pleased to report that the Ad Hoc Committee worked hard and made some progress, during its tenth session last April. Perhaps heightened by the impetus of the stark realities of the world far removed from these august chambers or pushed along by the strong direction given by the Human Rights Council and the General Assembly, the Committee has taken some steps forward. A measure of political will – however imperfect – has also fostered the advancement in the work of the Committee.

On 24 September in Geneva, I introduced the report of the 10<sup>th</sup> session of the Ad Hoc Committee on the elaboration of complementary international standards (A/HRC/40/44) to the Human Rights Council, pursuant to Council decision 3/103 and resolutions 6/21 and 10/30.

At the end of its 42<sup>nd</sup> session, the Human Rights Council in paragraph 5 of resolution A/HRC/42/L.28/Rev1 “reaffirm[ed] the work of the Ad Hoc Committee on the Elaboration of Complementary Standards to the International Convention on the Elimination of All Forms of Racial Discrimination, which, at its tenth session, commenced discussions on the elaboration of a draft additional protocol to the Convention.”

Ladies and gentlemen,

The already alluded to 10<sup>th</sup> session of the Ad Hoc Committee on the elaboration of complementary international standards took place from 8 to 18 April 2019. Allow me now to report to you, in a succinct manner, on the session and its outcomes.

During the session, the Committee held general and topical discussions on the very timely and important topics concerning the protection of migrants against racist, discriminatory and xenophobic practices, racism in modern information and communication technologies (racial cybercrime) and comprehensive antidiscrimination legislation.

During these topical discussions, the Committee learnt a great deal from the vast experience, knowledge and views presented by invited experts on the issues of protecting migrants against racist, discriminatory and xenophobic practices, and especially with regard to the evolving and complex agenda topic of racism in modern information and communication technologies (racial cybercrime). In fact, the rapidly developing topic of racial cybercrime highlighted to the Committee the existence of protection gaps in this frontier area.

As a result of the cooperation and contributions of Committee members during the 10<sup>th</sup> session, the Committee was able to agree by consensus on “Conclusions and recommendations of the 10<sup>th</sup> session”.

After the general and topical discussions, the Committee spent a considerable amount of time on the initial negotiations on the elements that would constitute an additional protocol to the Convention as per General Assembly resolution 73/262 and Human Rights Council resolution 34/36. Consideration was made of national contexts and regional experiences. The Committee worked hard and was able to adopt by consensus a document by the final meeting entitled: “Summary of issues and possible elements discussed pertaining to the implementation of General Assembly resolution 73/262 and Human Rights Council resolution 34/36 on the commencement of the negotiations on the draft additional protocol to the Convention criminalizing acts of a racist and xenophobic nature.”

The issues/elements concern criminalising acts of a racist or xenophobic nature online as well as offline, including issues of hate speech, inciting, aiding and abetting, and dissemination. There was a strong focus on new information and communications technologies, including social media networks and internet platforms.

In addition, the issue of discrimination based on religion or belief continued to be a central issue for consideration of the Committee, with some disagreement over its inclusion as a matter of principle, reference to specific religions, and whether it should be the topic of a complementary international standard. The

issues/elements document also concerns preventive measures in education, racial profiling and discrimination of socio-economic rights.

I encourage you all to consider the report of the Ad Hoc Committee on its 10<sup>th</sup> session, including the two adopted outcomes in their entirety.

Ladies and gentlemen,

I am heartened that the Committee is working by consensus, albeit incrementally, to deliver on its mandate. In my view, we must continue on this path as we negotiate the draft additional protocol to the Convention criminalising acts of a racist and xenophobic nature, and I would submit that all future sessions of the Ad Hoc Committee be exclusively dedicated to this exercise. I would like to add here that, while criminalisation will be an important response to contemporary issues of racial discrimination, I would advocate for a parallel approach that addresses the tenacious and multi-layered features of racial discrimination and xenophobia today.

I hope that the Committee will continue to demonstrate the political will to move forward and work on fulfilling the mandate of the Committee.

Let me add that during the 10<sup>th</sup> session, I also proposed that in the intersessional period, that “the Ad Hoc Committee recommends to the Human Rights Council that it requests that the OHCHR hold a two-day expert intersessional consultation, comprised of two legal experts from each region in the relevant areas of law, as well as a member of the Committee on the Elimination of Racial Discrimination and the Special Rapporteur on Racism, Racial Discrimination, Xenophobia and Related Intolerance, in order to consider the draft elements for “the draft additional protocol to the Convention criminalizing acts of a racist and xenophobic nature” pursuant to General Assembly resolution 73/262 and Human Rights Council resolution 34/36 prepared by the 10<sup>th</sup> session of the Ad Hoc Committee and provide their expert advice/comments for the consideration of the Committee at its 11<sup>th</sup> session.”

This expert consultation will produce some views and perspectives to help the Committee refine its thinking and consider more adroitly substantive and practical challenges associated with the draft additional protocol to the Convention criminalising acts of a racist and xenophobic nature. It will then be for the Committee to consider this substantive input and use it – or not – to inform its critical drafting work going forward.

The 11<sup>th</sup> session of the Ad Hoc Committee on the Elaboration of Complementary International Standards is scheduled to take place from 20 April – 1 May 2020 in Geneva.

I am asking all delegations and all regional groups to continue to be constructive and to be pro-active and to prepare for the upcoming 11<sup>th</sup> session. I stand ready to meet with delegations whether here or in Geneva at any time to ensure the smooth preparations of the 11<sup>th</sup> session and address any issues or concerns so that we can all move together towards fulfilling the mandate of the Ad Hoc Committee.

As I come to a conclusion, let me say that it is my belief that the work of the Ad Hoc Committee on the Elaboration of Complementary Standards is not merely to agree on new standards, but ultimately to think of ways to strengthen the protection of all persons from the scourges of racism, racial discrimination, xenophobia and related intolerance, as was articulated in the Durban Programme of Action.

The Committee's work is more pertinent in view of the sad reality that many people around the world continue to be victims of racism, racial discrimination, xenophobia and related intolerance, including in particular their contemporary forms and manifestations, many of which are increasingly present or disseminated online, and some of which are of a violent nature.

The Committee must continue to assume its responsibility to strengthen the protection of the increasing numbers of victims of these scourges. Laws are needed to effectively fight discrimination, xenophobia and other related intolerance. And although criminalisation is the objective, I contend that the Committee should also remain open to continue considering preventive measures which would complement criminalisation.

I can do no better than end with the apt words of Ban Ki-moon, "Defeating racism, tribalism, intolerance and all forms of discrimination will liberate us all, victim and perpetrator alike."

I thank you.