



# International Convention on the Elimination of All Forms of Racial Discrimination

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## Committee on the Elimination of Racial Discrimination

### Eighty-first session

#### Summary record of the 2196th meeting

Held at the Palais des Nations, Geneva, on Tuesday, 28 August 2012, at 10 a.m.

*Chairperson:* Mr. Avtonomov

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*The meeting was called to order at 10.10 a.m.*

### Organizational and other matters

*Day of thematic discussion on racist hate speech*

**The Chairperson** welcomed all participants to the thematic discussion on racist hate speech, the aim of which was to stimulate reflection and enhance understanding of the causes and consequences of racist hate speech and how the resources of the International Convention on the Elimination of All Forms of Racial Discrimination could be harnessed to combat it. The day of discussion would focus on the following themes: the concept of racist hate speech and its evolution over time; combating racist hate speech: the work of the Committee; racist hate speech and freedom of opinion and expression; and racist hate speech in political life, and in the media including the Internet. The Committee would subsequently reflect upon the information emerging from the discussion and decide on any further action to be taken, including the possibility of preparing a general recommendation on the subject of racist hate speech based on the Committee's understanding of articles 4, 5 and 7 of the Convention.

**Ms. Crickley** (Moderator) noted that article 4 of the Convention required States parties to criminalize hate speech and incitement, that article 7 mandated measures to combat prejudices and promote a climate of tolerance, and that the Committee had already issued three general recommendations on hate speech and associated matters. Written statements submitted as contributions by human rights organizations to the thematic discussion had made the point that, while contemporary manifestations of racism might differ from the forms predominant at the time of adoption of the International Covenant on Civil and Political Rights, they continued to be clearly informed, at structural and individual levels, by the same underlying ideas regarding power and superiority and dominance, which echoed the definition in the Convention. One statement had observed that, while the practice of hate speech was old, its conceptualization was relatively new. Another point that had been made was that the discussion required calm, concrete and critical recognition of the full complexity of racism and racist hate speech, in both legal and societal terms. The discussion should also stress interdependence and intersectionality between rights, and recognize the associated tensions. As noted by the Committee in its general recommendation No. 15, the prohibition of the dissemination of all ideas based on racial superiority or hatred was compatible with the right to freedom of opinion and expression. The contributions that would be made by the participants would inform the Committee's discussions, conclusions and work in going forward.

**Mr. Diène** (Independent Expert on the situation of human rights in Côte d'Ivoire and former Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance) said that the Committee's organization of the day of thematic discussion on hate speech went to the very core of its mandate. The theme was key to the development of human rights, and was at the heart of most current conflicts.

The most directly observable indicator of the increase in racism, xenophobia and intolerance was the trivialization of racist, religious and national hate speech. Such trivialization was based on three main contextual factors. The first was the political exploitation and erosion of human rights by the rank-ordering of fundamental rights, which was explained away by the need to fight terrorism, curb illegal immigration and protect national security. The second was the ideological context marked by the rhetoric of the conflict of civilizations, based on the intellectual construct of the amalgamation of race, culture and religion. The third was the widespread identity crisis that arose from the contradiction in most societies between the historical rigidity of national identity constructs and the modern process of multiculturalism.

Incitement to racial, national or religious hatred was the tip of the racist iceberg, underlain by the "scientific" or intellectual justification of racism and xenophobia, the political exploitation of racism and xenophobia and its direct implementation in practice – by means of social and administrative policies and legislation that discriminated against ethnic, cultural or religious minorities, and ultimately by

physical violence. The current “scientific” or intellectual justification of racism and xenophobia was based on two intellectual constructs: the vision of an exclusive identity and the interpretation of racial, cultural and religious diversity as radical and antagonistic difference. Multiculturalism, which was a common characteristic of all contemporary societies, was consequently treated as a threat to national identity, which had been historically defined on the basis of exclusive ethnic, cultural and religious criteria. It was in that context that the recent announcement by certain heads of State that multiculturalism had failed revealed not only the political rejection of their societies’ diversity and multiculturalism but, above all, the stigmatization of their national, ethnic, cultural and religious minorities.

Political exploitation translated that intellectual justification into political and electoral platforms based on three ideological pillars: defending national identity and security; assigning an ethnic dimension to, and criminalizing, immigration; and, in the context of the economic crisis, the principle of “national” preference in the economic and social domains. The effectiveness, in electoral terms, of those political platforms was shown by three developments. The first was the trivialization of racist and xenophobic speech. The second was the democratic entryism whereby extreme right-wing political parties were able to join democratically elected government coalitions and thereby play an active role in running the country. That political context showed the need for urgent legal clarification by the Human Rights Committee and the Committee on the Elimination of Racial Discrimination of the universally recognized criteria and conditions for the protection of freedom of expression and its limitation by the prohibition of incitement to racial, national or religious hatred.

The third main development — which had been seen recently in Norway and would continue to be on the rise elsewhere — was the ultimate, logical implementation in practice of racism and xenophobia, which took two forms. The State political institutions introduced political and administrative measures that discriminated against foreign communities, particularly immigrant communities, and national minorities, identified by ethnic group, culture or religion. Citizens, who had swallowed whole the imaginary rhetoric of the “enemy within”, in turn became the active perpetrators of racism and carried out direct physical violence aimed at the elimination, destruction or invisibility of groups or individuals designated by the ideology bound up with national identity and security.

The ideological, cultural and political resistance to ethnic, cultural or religious multiculturalism was one of the underlying sources of the rise in racism and xenophobia and the hate speech that gave expression to it. The intellectual and cultural strategy to combat racism must be based on the acceptance and promotion of democratic, egalitarian and interactive multiculturalism. Multicultural societies were the result of long historical processes that had brought peoples, cultures and religions into contact. The mechanism for organization of those societies was, in general, based on recognition, closeness and unity: national identity. The correlation between the notions of identity and nation was expressed in the form of a political and legal concept, the nation State, which had structured most modern societies. The issue that lay at the heart of the matter in most modern societies was the profound contradiction between the nation State — the expression of an exclusive national identity — and the dynamic process of the multiculturalization of those societies. The construct of nationalism — the ideology of the nation State — which was fundamentally built around a mixture of ideas amalgamating race, culture and religion to varying degrees, was the source from which hate speech sprang.

That dimension, which was often ignored by politicians, showed the need to make sure that the legal strategy to combat racism was accompanied by an ethical and cultural strategy for identifying and combating the underlying sources of the old and new forms of racism and xenophobia. In order to combat racism, as well as racist hate speech, in a thorough and lasting manner, all multicultural societies were required to promote the link between the acknowledgement, protection and respect of ethnic, religious and cultural specificities and the promotion and acknowledgement of universal common values that resulted from interaction and cross-fertilization between those specificities in society. With a view to democratic, egalitarian and interactive multiculturalism, universality must be the ultimate expression of the interaction and cross-fertilization between the singular identities of the different communities that made up a multicultural society. The tension between identities, inherent in cultural diversity, thus became the driving principle of a national unity that integrated and preserved the diversity and vitality of its components. It was therefore necessary to rethink the notion of universality in terms of interaction and the meeting of identities.

Hate speech therefore revealed the three basic challenges for modern multicultural societies. The first was vigilance against attempts to hijack the principles and mechanisms of democracy in order to legitimize racist and xenophobic platforms and hate speech. The second was the complementary nature of fundamental human rights, in particular the link between the protection and promotion of freedom of speech, but ultimately the prohibition of hate speech. The third was the legal and cultural promotion of a form of multiculturalism that was democratic, egalitarian and interactive.

**Ms. Ghanea** (Lecturer, University of Oxford) said that David Brink had described hate speech as speech that used traditional symbols of derision to vilify on the basis of group membership, and that expressed contempt for its targets. Susan Benesch, in distinguishing between incitement and hate speech, had said that hate speech was speech that inspired one audience to harm another person or group. The Committee had already been very active in that field. For example, in its general recommendation No. 29 on descent, it had used the term “hate speech” and had insisted that measures should be taken against any dissemination of ideas of caste superiority and inferiority or which attempted to justify violence, hatred or discrimination against descent-based communities. The recommendation emphasized the need for raising awareness among media professionals of the need to reduce and address such discrimination.

The phenomenon of racism had become more complex over time, with the amalgamation of many different forms of hatred in recent years. In that regard, the methodology of intersectionality had been used in the past 10 years in the United Nations to describe multiple discrimination, compound discrimination, interlinking forms of discrimination, multiple burdens or double or triple discrimination. One example of its use was in the Committee’s general recommendation No. 25 on gender-related dimensions of racial discrimination, which stated that racial discrimination could affect victims in a different way, or to a different degree, in areas of both public and private life. That made them victims of intersectional discrimination. The recommendation also recognized that certain forms of racial discrimination might be directed towards women, specifically because of their gender. If the terms “women” and “gender” were interchanged with other forms of identity, such as “minority status” or “migrant status”, the Convention would convey the information that certain forms of racial discrimination might be directed towards minorities, specifically because of their minority

status. Intersectionality could lead to different kinds of discrimination, and to more targeting.

The methodology of intersectionality therefore appeared to be highly appropriate to the discussion about hate speech. After all, the increased complexity of hate speech in society had already been noted. It would seem that the challenge currently posed by racist hate-speech mongers was that they received very good legal advice on how to navigate the law. Intersectionality was rightly used by the Committee when, and only when, discrimination on the basis of race, colour, descent or national or ethnic origin also existed. Indeed, the Committee's general recommendation No. 32 on the meaning and scope of special measures in the Convention stated that intersectionality was utilized by the Committee to address situations of double or multiple discrimination — such as discrimination on grounds of gender or religion — when discrimination on such a ground appeared to exist in combination with a ground or grounds listed in article 1 of the Convention. The Convention did not extend to religious groups per se. In her view, intersectionality offered the Committee a great deal of flexibility. General recommendation No. 25 on gender-related dimensions of racial discrimination stated that certain forms of racial discrimination might be directed towards women specifically because of their gender. Similarly, migrants might be targeted for racial discrimination specifically because of their migrant status. The same applied to religious and other minorities.

The response to hate speech should be informed by the rights content of the issue at hand. She cautioned against adopting a “one size fits all” approach to different categories of discrimination. The strength of the intersectional approach lay in its ability to be context-specific. For example, the Human Rights Committee, in its general comment No. 34 on article 19 of the International Covenant on Civil and Political Rights concerning freedom of opinion and expression, stated that prohibitions of displays of lack of respect for a religion or other belief system, including blasphemy laws, were incompatible with the Covenant, except in the specific circumstances envisaged in article 20, paragraph 2, namely in cases of incitement. Such prohibitions should comply with the strict requirements set forth in a number of different articles. It would be impermissible, for example, for any such laws to discriminate in favour of or against certain religions or belief systems or their adherents, or to be used to prevent or punish criticism of religious leaders or commentary on religious doctrine and tenets of faith. A “pick and mix” approach could lead to perverse outcomes. For example, if the reference to race were replaced with a reference to religion in article 4 (a) of the Convention, the dissemination of ideas based on religious superiority or hatred would become an offence punishable by law.

That was why the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Special Rapporteur on freedom of religion or belief, and the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance had stated at a seminar in February 2011 that, while they concurred with the preamble to the Convention, according to which any doctrine of superiority based on racial differentiation was scientifically false, morally condemnable, socially unjust and dangerous, they noted that any invocation of a direct analogy between concepts of race or ethnicity, on the one hand, and religion or belief, on the other, could lead to problematic consequences. Religious adherence, membership or identity could be the result of personal choices associated with the right to freedom of religion or belief. Such freedom comprised the right to search for meaning by comparing different religions or belief systems, and to exchange views and express public criticism in that regard. The same did not apply, however, to exchanges of views and vigorous debate concerning racial superiority, or superiority vis-à-vis persons with disabilities, migrants, or persons of a different age or gender.

She urged the Committee to pursue intersectionality with the same sensitivity that it displayed in tackling issues related to gender, the Roma and descent.

An intersectional human rights approach called for the isolation of key “transferable factors” in article 4 of the Convention, which might include condemnation of propaganda that sought to justify and promote any kind of hatred, and ensuring that national or local public authorities or institutions were not permitted or encouraged to promote or incite discrimination and hatred.

Moreover, article 5 of the Convention emphasized that action against discrimination should go hand in hand with measures to ensure, inter alia, equality before the law, security of person, civil, political, economic, social and cultural rights, freedom of movement and residence, the right to marriage and choice of spouse, the right to inherit, the right to freedom of religion and belief, and the right to peaceful assembly and association. Any response to hate speech should be situated within the wider spectrum of enjoyment of human rights.

She encouraged the Committee to continue to display the same sensitivity in its application of the intersectional approach.

**Mr. Lattimer** (Minority Rights Group International) said that from time immemorial Governments had sought to control speech and to penalize those who spoke out against authority or questioned dominant beliefs. Such action should be distinguished from the more recent practice, encouraged by human rights treaty bodies, of controlling speech directed against vulnerable groups, which could constitute hate speech or incitement to hatred, discrimination or violence. However, hate-speech provisions could also be used for the more traditional purpose of stifling dissent.

Article 4 of the Convention relied heavily on criminal penalties to control hate speech. Leading cases under international criminal law involved incitement to crimes against humanity and genocide. They ranged from the prosecution of Julius Streicher, the editor of the anti-Semitic newspaper *Der Stürmer*, before the International Military Tribunal at Nuremberg to the prosecution of Rwandan leaders and media representatives for incitement to genocide before the International Criminal Tribunal for Rwanda.

One of the world's leading scholars on the issue of genocide, Professor William Schabas, had expressed regret that the Convention on the Prevention and Punishment of the Crime of Genocide failed to penalize the hate speech that preceded incitement to genocide. The omission had been remedied, however, by article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination. It was important to identify hate speech as the precursor to some of the most serious crimes under international law and to gross human rights violations.

There had been a marked increase in the number of prosecutions for hate speech in recent years, especially in Europe. In some States there were several dozen prosecutions each year, although it could be difficult to distinguish between incitement offences,

general hate-speech offences, public-order offences and offences involving the questioning of public authority or dominant belief systems. In some cases, hate-speech provisions had been used against members of minorities and political dissidents. He referred in that connection to the recent prosecution in the Russian Federation of three members of the Pussy Riot group, officially for incitement to religious hatred but clearly also for criticism of the Government. The genocide ideology laws promulgated by the current Rwandan Government had been used extensively before the most recent presidential election to silence opposition politicians and journalists.

Denial crimes were hate-speech offences committed by persons who denied or trivialized the Holocaust or other crimes against international law. They had been on the statutes of Germany, Austria, Switzerland and other countries for many years under a European Council framework decision. Member States of the European Union were required to enact such legislation and they were an important means of suppressing hate speech that did not amount to direct incitement to violence. In other States, however, the practice of commemorating atrocities had led to proposals for the enactment of hate-speech provisions, for example the attempt by the Israeli Parliament, the Knesset, to prohibit the commemoration of the *Nakba*, i.e. the expulsion of the Palestinians from their homeland on the creation of the State of Israel. It followed that although criminal penalties were a vital element in the fight against hate speech, they also gave rise to a number of problems. In addition to being used to penalize minorities or political dissidents, they led to conflicts with freedom of expression and enabled practitioners of hate speech to claim that they were being silenced or oppressed.

With regard to incitement offences, it should be borne in mind that the conduct to which a person or group was being incited might not be criminal. In common-law countries, where incitement was known as an inchoate offence, it was conceptually difficult to imagine how incitement could be criminalized. According to article 4 of the Convention, for example, incitement to racial discrimination should be treated as an offence. However, it was not necessarily an offence in most countries. For instance, sanctions might be applicable to a company that refused to hire a person because of his or her ethnicity, but they would not be penal sanctions. The Rome Statute of the International Criminal Court also adopted quite a conservative approach to inchoate offences. Thus, incitement to crimes against humanity or war crimes and inchoate conspiracy offences were not criminalized.

The phenomenon of globalized communications via the Internet or mobile telephony also rendered prosecution difficult for cross-border hate speech and made the establishment of criminal intent more complex.

Criminal prosecutions against the most pernicious forms of hate speech, namely by holders of positions of authority or by members of Governments, were highly unlikely in practice. The human rights community should therefore pay more attention, in his view, to article 4 (c) of the Convention, which prohibited public authorities from promoting hate speech. His organization had been actively campaigning for many years in southern Asia to eliminate damaging statements against members of minorities in school textbooks. Although they could not be held to constitute direct or public incitement to violence under any criminal justice system, their effect could be even more pernicious. The proper implementation of article 4 (c) of the Convention called, *inter alia*, for measures to ensure that ordinary human rights claims were actionable both nationally and internationally before courts and monitoring bodies.

**Mr. Diaconu** said that the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression had stated in 2008 (A/HRC/7/14) that the dissemination of intolerant and discriminatory opinions promoted discord and conflict. He underlined that although international instruments imposed restrictions on the exercise of the right to freedom of opinion and expression in order to prevent war propaganda and incitement to national, racial or religious hatred, such restrictions were intended to protect individuals against direct violations of their rights and not to preclude the expression of critical views, controversial opinions or politically incorrect statements.

States parties undertook, under article 4 of the Convention, to adopt immediate and positive measures to eradicate all incitement to or acts of racial discrimination and, with due regard to the right to freedom of expression, to declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination or incitement to acts of violence against any race or group of persons of another colour or ethnic origin, as well as any assistance to racist activities.

In 1985 the Committee had adopted general recommendation No. 7 concerning the implementation of article 4. It requested States parties to satisfy the mandatory requirements of the article by enacting legislation to prevent racism and racial discrimination. General recommendation No. 15 adopted in 1993 again stressed the importance of implementing article 4. Analysing its provisions in the context of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, the Committee expressed the opinion that the prohibition of the dissemination of all ideas based on racial superiority or hatred was compatible with the right to freedom of opinion and expression. In its general comment No. 11 on article 20 of the Covenant, the Human Rights Committee also stated that the obligation to prohibit by law any advocacy of national, racial or religious hatred that constituted incitement to discrimination or violence was fully compatible with the exercise of freedom of expression, which carried with it special duties and responsibilities.

In its general recommendations concerning discrimination against vulnerable groups, such as the Roma, members of castes and analogous systems of inherited status, Afro-descendants and non-citizens, the Committee requested States parties to take appropriate action to eliminate ideas based on racial or ethnic superiority and racial hatred as well as incitement to discrimination and violence against such groups.

In its concluding observations, the Committee repeatedly stressed the need for specific legislation to give effect to article 4 as a whole, and for the amendment, where necessary, of existing legislation, while underlining that article 4 could not be directly applied by the criminal courts, even where the Convention prevailed over domestic laws. In many cases, the Committee expressed concern about the continuous dissemination of ideas of racial superiority and the existence of publications promoting racist ideas, noted the persistence of manifestations of incitement to racial hatred and discrimination and the absence of data on prosecutions, and asked the States parties concerned to review the situation and to take appropriate measures.

The Committee had expressed concern about the dissemination of ideas of racial superiority by political parties, statements of a discriminatory nature by high-level public officials or activities by political parties that targeted immigrants. It had also noted that in some cases the authorities were reluctant to take the racial content of such speeches into account. The Committee had recommended

to States parties that they take more vigorous action to prevent and combat xenophobia and racial prejudice among politicians, public officials and the general public, and give due attention to such manifestations. The Committee had also requested States parties to monitor trends that could give rise to racist and xenophobic attitudes, and to counter them in time to prevent their negative consequences. The 2001 World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance had also expressed in its Declaration concern about attempts by contemporary forms and manifestations of racism and xenophobia to regain political, moral and even legal recognition, including through the platforms of some political parties and organizations. The Conference had underlined the key role that political leaders and political parties could and should play in combating racism and racial discrimination and encouraged them to take concrete steps to that effect.

The Committee had noted that the media and the Internet were sometimes used to disseminate racist discourse, ideas of racial superiority, intolerance and incitement to racial violence. It had expressed concern and requested States parties to adopt a firmer position against racist propaganda and prejudice on the Internet. States parties had also been urged to encourage the media to develop codes of conduct to prevent their use for racist messages.

Most States parties had adopted legislation of relevance to article 4, but they sometimes used different concepts or added qualifications. Some claimed to apply general criminal legislation and to recognize aggravating circumstances in the case of racially motivated crimes. Most national laws, especially in Europe, criminalized racist and hate speech, but the terminology used and the scope of the provisions differed considerably. There was a lack of clarity and consistency in the interpretation of article 4 and in the application of national legislation. Many States parties had entered reservations to article 4 in the 1960s and 1970s with a view to protecting freedom of expression. Since then, however, most of them had adopted legislation to implement its provisions and their reservations had become irrelevant. Indeed, some had begun to withdraw their reservations, a development that was welcomed by the Committee.

Ideas and words were powerful and could be used for positive or negative purposes. They could undermine freedom, equal rights, democracy and stability. Expressions of hatred could isolate and marginalize people on account of their ethnicity, race or religion, and undermine the dignity of vulnerable groups, such as indigenous peoples, members of minorities and migrants. The Committee was required by its mandate to take action to protect them and shared its experience with States parties during the ongoing dialogue.

**Mr. de Gouttes** said that 54 States parties had made the declaration under article 14 of the Convention recognizing the Committee's competence to receive and consider communications from individuals or groups. The procedure could be used by victims of violations of the Convention once domestic remedies had been exhausted. Of the 51 complaints referred to the Committee to date, at least 9 had concerned cases of racist or xenophobic hate speech. They had all been submitted by non-nationals with the assistance of associations or lawyers and had been largely directed against four States parties: Denmark, Norway, the Russian Federation and Germany.

The complaints against Denmark had concerned xenophobic or hate speech by leaders of political parties or parliamentarians against Muslims or Somalis. The hate speech against Muslims had invariably occurred in a context of opposition to multiculturalism and immigration and had involved, in the case of the politicians and according to a quotation reported to the Committee, the depiction of Muslims as a threat to the country because they allegedly refused to accept Danish principles, and perpetrated acts of violence, sexual assault and rape against Danish girls, whom they perceived as women of easy virtue who could be assaulted without shame, although Muslim boys would be prepared to kill their own sister if they breached the family's cultural code. The Committee had declared one complaint inadmissible on procedural grounds, but it had nonetheless alerted the Danish Government in a general statement to the duties and responsibilities that accompanied the right to freedom of expression.

The hate speech against Somalis had been published in a Danish newspaper by a parliamentarian, who had reproached the Minister of Justice for having consulted a Somali association about the legislation prohibiting female genital mutilation. According to the parliamentarian, such consultations were comparable to asking an association of paedophiles whether it had any objection to the enactment of a law prohibiting sexual relations with children, or asking rapists whether they supported a harsher penalty for rape. The Committee had concluded that the refusal by the Danish prosecution service to prosecute the parliamentarian constituted a violation by the State party of articles 2, 4 and 6 of the Convention. Moreover, the fact that the statement formed part of a political debate did not exempt the State party from its obligation to conduct a full and effective investigation.

The complaint against Norway concerned anti-Semitic hate speech by the leader of a neo-Nazi group known as the Boot Boys during a public rally. The Committee had found violations of articles 4 and 6 of the Convention, since the hate speech could not be protected by the right to freedom of expression.

The complaint against the Russian Federation concerned leaflets inciting hatred against the Roma. The complaint had been declared inadmissible because the two persons against whom it was directed were not the authors of the leaflets.

A pending complaint against Germany concerned discriminatory language and hate speech against persons of Turkish origin.

He stressed that even in cases where the Committee declared a complaint inadmissible, sometimes on procedural grounds, it usually made general recommendations to the State party concerned, urging it to strike a balance between respect for the right to freedom of expression and the provisions of article 4 of the Convention, which required ideas based on racial superiority or hatred to be punishable by law. The Committee also stressed the special responsibility of political figures and parties, whose statements had a major impact on the population, and urged the Government to step up awareness-raising measures concerning interracial understanding and tolerance. The Committee's recommendations in that regard had been bolstered by the recent creation of a follow-up procedure whereby the Committee effectively monitored States parties' implementation of its decisions on individual complaints.

The Committee thus scrupulously sought to reconcile the prohibition of racist hate speech with the principle of freedom of expression, bearing in mind that restrictions on that principle were permissible only if they were necessary, legitimate and proportionate. Although its decisions were not binding, they were published in the Committee's annual report to the General Assembly and the Human Rights

Council was in a position to take note of them. Their dissuasive impact was thereby enhanced. The Committee's recommendations were forwarded by States parties to the relevant national judicial and administrative authorities, which were urged to undertake effective investigations and prosecutions.

According to Amnesty International, hate speech should be neutralized by an increase in counteractive forms of discourse that supported tolerance. He added that victims, especially those belonging to particularly vulnerable groups, should be provided with the means to take legal action so that they were not left to suffer alone.

**Mr. Bielefeldt** (Special Rapporteur on freedom of religion or belief) said that intersectionality was an important starting point, as many people faced multiple forms of discrimination and on multiple grounds. Racist hate speech and other aggressive manifestations of racism were often motivated by contempt, fear and paranoia; in other words, by a feeling of being both superior and under threat.

However, intersectionality should not simply mean amalgamating the various human rights laws. For example, it was important to take into account the full scope of freedom of religion when devising strategies and policies to tackle hate speech. That freedom, in accordance with article 18 of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, included not only the right to adopt a belief but also the right to change one's belief and to encourage others in a peaceful and non-coercive manner to reconsider their beliefs. Too often, religious converts and those attempting to convert others suffered violations of their rights in that regard.

**Mr. Thiaw** (Senegal) said that Senegal welcomed the thematic discussion as a follow-up to the tenth anniversary of the Durban Declaration and Programme of Action and the International Year for People of African Descent, both in 2011, and in light of the proposed Decade for People of African Descent, 2013–2023.

It was important to ensure complementarity between the Committee on the Elimination of Racial Discrimination and other anti-racism mechanisms. In that light, he regretted the absence of the chairperson of the Ad Hoc Committee on the Elaboration of Complementary Standards, whose input would have been highly useful, particularly with regard to xenophobia, which was not mentioned in the International Convention on the Elimination of All Forms of Racial Discrimination.

He thanked Mr. Diène for mentioning racist hate speech in the context of counter-terrorism, measures to combat illegal immigration and the portrayal of multiculturalism as a threat to national identity. The fact that the Human Rights Council had been obliged to adopt by vote its resolution establishing a panel on multiculturalism betrayed a lack of recognition of the importance of multiculturalism in the fight against racism.

As Mr. Lattimer had demonstrated, racial discrimination was a far-reaching phenomenon. The international community needed to step up its efforts to fight racism in all sectors of society and to consider the link between racist hate speech and freedom of expression.

He requested clarification on the link between racist hate speech and xenophobia. In addition, he asked what impact the efforts to combat racist hate speech could have on the global fight against terrorism.

**Ms. Hivonnet** (European Union) said that the discussion had helped to clarify subtle distinctions between concepts such as discriminatory speech, hate speech and incitement, and underlined the need to use precise terminology when devising legal measures to address those practices. She welcomed Ms. Ghanea's reference to intersectionality, to which the European Union attached great importance.

In clarification of Mr. Lattimer's remarks concerning the European Union's Framework Decision on combating certain forms and expressions of racism and xenophobia by means of criminal law, she said that the aim was to harmonize criminal law across the European Union with regard to sanctioning acts of racism and xenophobia, ensuring that effective, proportionate and dissuasive penalties were provided for natural and legal persons responsible for such offences. The following conducts constituted offences, when directed against a group of persons or member of a group on account of race, colour, religion, descent or national or ethnic origin: publicly inciting to violence or hatred, including via the public dissemination or distribution of tracts, pictures or other material; and publicly condoning, denying or grossly trivializing Nazi crimes, crimes of genocide, crimes against humanity and war crimes in a manner likely to incite violence or hatred against a particular group or members of a group. Member States had a legal obligation to integrate that framework decision into their domestic legislation and the European Commission was responsible for ensuring it was correctly implemented at the national level.

Among other measures taken by the European Union to combat racial discrimination, she drew particular attention to the Council Directive implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, which stated that an instruction to discriminate against persons on grounds of racial or ethnic origin was also deemed to be discrimination.

**Mr. Kashaev** (Russian Federation) said that it was necessary to strike a balance between freedom of speech and preventing racist and xenophobic speech. Freedom of opinion was fundamental to self-expression and constituted a basic human right; nevertheless, it was not an absolute or inalienable right and should never be used as a pretext to encourage the spread of, or to legitimize, racist dialogue. In any society, people had to balance their own freedoms with the interests of others. Despite the limitations to freedom of speech provided for in international human rights treaties, the phenomenon of racist hate speech was growing.

He asked the panellists three questions: (1) whether, in their opinion, existing international norms were sufficient to combat racist hate speech; (2) what their views were concerning certain States parties' reservations to article 4 of the Convention, and whether those had directly led to an increase in racist hate speech; and (3) why certain States parties had not withdrawn their reservations to article 4 despite enacting legislation that rendered them irrelevant, disregarding recommendations made to them in that regard within the universal periodic review process.

**Mr. Franco** (Amnesty International) said that research conducted by his organization had highlighted both the link between prejudicial discourse and racial discrimination, and the damage caused by violations of the right to freedom of expression.

Freedom of expression was violated not only by the criminalization of protected speech but also by a lack of clarity in legislation regarding the distinction between protected and prohibited speech, which often led to self-censorship.

The Committee had noted many instances in which overly broad hate-speech laws had intentionally or unintentionally restricted freedom of expression and undermined the fight against discrimination. For example, if perceived as affording unequal protection to different groups of people, such a law could lead to interracial resentment. In addition, there was the risk of subjective interpretations of the law creating “martyrs” of those who would incite discrimination but claim to have been censored by the State; alternatively, individuals declared by the courts not to have contravened the law might claim that the State had vindicated their offensive statements. In both cases, racist speech received more public attention than it deserved.

To prevent such harmful outcomes, the Committee could clarify the extent of obligations under article 4 (a) and the role of hate-speech laws, among other measures stipulated in the Convention, in the fight against racist discourse and discrimination.

With regard to the scope of article 4 (a), it could be specified that the “due regard” clause required the prohibition of racist hate speech only in intentional cases, and that prohibition be necessary and proportionate to a lawful aim, such as the prevention of discrimination, incitement to discrimination or advocacy of hatred. Such an approach would also allow for the application of a range of civil and administrative penalties, beyond criminal punishment. Defining the scope in that way would be consistent with other international human rights treaties, in particular the obligations under articles 2, 19 and 20 of the International Covenant on Civil and Political Rights.

States parties should use the full range of approaches to combating racist speech provided for in the Convention, in particular education, culture and information pursuant to article 7, rather than relying solely on the restriction of freedom of expression. In addition, political leaders should condemn racism and racist discourse.

Those measures and approaches would support the goal of the Convention to eliminate racial discrimination while simultaneously protecting freedom of expression and other human rights.

**Mr. Shirane** (International Movement against All Forms of Discrimination and Racism), indicating the difficulty of defining racist hate speech, requested clarification of the concept from the panellists. He drew attention to cases documented by his organization where affirmative action, or “special measures”, were referred to in hate speech to direct hatred and discrimination towards particular groups of people, such as the black community or resident Koreans in Japan. It was important to adopt a holistic approach when combating hate speech, and racial discrimination in general, including raising awareness and increasing literacy rates among the general public and target audiences of hate speech, in line with article 7 of the Convention.

**Mr. Diène** (Independent Expert on the situation of human rights in Côte d’Ivoire and former Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance), stressing the gravity of the issue at hand, urged participants to avoid repeating the same points that had been raised repeatedly over the previous 10 years, which confined the discussion to consideration of legal distinctions between freedom of speech and prohibition of incitement.

It was extremely important to contextualize the issue. In Rwanda, for example, it should be taken into account that the ethnicization of a particular group had resulted in its elimination. In Norway, the motivation for Anders Breivik’s actions should be ascertained. The increasing ethnicization of immigration and the rise of hate-based political parties in democratic institutions also required attention. It was cause for concern that the structures and principles of democracy were being instrumentalized to reject diversity and divide society. Certain groups of people were being stigmatized, undermining their intellectual legitimacy, political participation and capacity to act.

The discussion should therefore move beyond legal definitions to contextualize the issue and encourage the Committee on the Elimination of Racial Discrimination and the Human Rights Committee to integrate those threats to democracy into their legal responses.

**Ms. Crickley**, agreeing with Mr. Diène, expressed the hope that the current meeting would provide the opportunity to move discussions forward on the issue.

**Mr. Diaconu**, responding to the question posed by the delegation of Senegal, said that there was a direct link between racial discrimination and xenophobia. The Committee had recently discussed the issue of xenophobia and come to the conclusion that it was an attitude, which might or might not be expressed and might or might not lead to racist speech and incitement to violence. It should be tackled through education and awareness-raising.

He agreed that efforts to combat hate speech had, and should have, an impact on the global fight against terrorism. Indeed, that was one of the reasons for holding such a thematic discussion.

Possible reasons why certain States parties had not withdrawn reservations to article 4 despite having adopted legislation in accordance with that provision were that they had forgotten about the reservation, did not think it was useful to withdraw it, or were discouraged by the long and complex legal procedure required for its withdrawal.

In his view, such reservations did not lead to an increase in racist hate speech. The few States parties that still invoked a reservation did not use it as an excuse for a lack of legislation or for practices that did not conform with article 4. On the contrary, the majority of States parties engaged constructively with the Committee and tried to follow its recommendations in that regard.

**Ms. Ghanea** (Lecturer, University of Oxford), responding to a question by the Russian Federation delegation, said that in her view

existing norms were sufficient to combat racist hate speech if applied in a creative, holistic and determined manner. It was important to take account of the interplay between ethnicity and other determinants of discrimination, such as gender, as the Committee had done in general recommendation No. 25 on gender-related dimensions of racial discrimination.

**Mr. Lattimer** (Minority Rights Group International) said that much time and effort had been spent discussing both the need for additional standards and a better definition of hate speech, notably at the 2001 World Conference against Racism and the 2009 Durban Review Conference. However, the problem was often the individual context in which hate speech took place, rather than how it was defined or what standards were in place. Once statements were published on the Internet, their immediate context was lost and they quickly became saturated with different connotations around the world. It was then extremely difficult to make an accurate evaluation of the criminal intent of such a statement with sufficient certainty for the purposes of a prosecution. Any definition of hate speech involving criminal penalties was particularly complex, since greater certainty was required in criminal law than in civil law. It was therefore more useful to invest time and resources considering not private individuals around the world who posted statements on the Internet, but rather government- or publicly sanctioned hate speech. Local authorities in Eastern and Southern Europe who made inflammatory statements about Roma communities and politicians in other parts of the world who used tribalism as a way to gain power by denigrating other ethnic groups were far more dangerous than private individuals.

**Mr. Kocharian** (Armenia) said that racist hate speech was often one of the first practical manifestations of racism, xenophobia and intolerance. Global economic and technological progress had provided new means with which to spread the seeds of racist hatred throughout the world. The goals of those who disseminated hatred had always been the same: to create an enemy, mislead their own population and avoid responsibility for their own failures and mistakes in domestic and foreign policy. Unfortunately, far from implementing the provision in article 4 (c) of the Convention that States parties should not permit public authorities or public institutions, national or local, to promote or incite racial discrimination, some heads of State themselves promoted or incited racial discrimination. He asked the Committee how it, or the international community, could address such cases.

**Mr. Barnes** (Indigenous Peoples and Nations Coalition) suggested that the Committee should undertake a study of all reservations and declarations made by States parties in respect of the Convention. To that end, it could simply submit a request to the General Assembly. Some States parties entered reservations to article 4 in the name of freedom of speech and freedom of expression, but then used those freedoms to deny victims of racist hate speech a voice. When victims were denied access to legal procedures, they were effectively silenced, which itself constituted a form of hate speech and promoted the right to impunity. That was currently the fate of many of the world's indigenous peoples, who found it impossible to register their complaints against governments and corporations.

**Mr. Kemal** asked whether there was a lack of global consensus on what constituted hate speech and whether a statement that one group considered hate speech might be considered patriotism or an example of freedom of speech by another group. Globalization had changed the dimensions and impact of hate speech; whereas previous cases had often gone unnoticed, that was no longer the case. Repercussions could be swift, violent and destructive.

**Mr. Diène** (Independent Expert on the situation of human rights in Côte d'Ivoire and former Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance) said that there was indeed a lack of consensus. There was no longer agreement on the most comprehensive United Nations document on racism, racial discrimination and xenophobia, the Durban Declaration and Programme of Action. Since 11 September 2001, the entire field of human rights had been subjected to ideological interpretation. There was a real contradiction between the tendency to place debates on racism and racial discrimination within a purely legal context and the current dynamic of societies. There was a clear need to bring the debate back to the need for complementary standards. No legal instrument should be set in stone, and the Convention should be adapted to reflect current realities. Moreover, it was impossible to consider the issue of racist hate speech without recognizing that it was just the tip of the iceberg, beneath which entire religious, ethnic and cultural groups were stigmatized by so-called intellectuals. Indeed, as recently as 2007, James D. Watson, Nobel Laureate, had suggested that black people were less intelligent than white people. It was necessary to consider how such stigmatization was politically manipulated in order to gain power in different societies.

**Mr. de Gouttes** said that it was also important to focus on education and awareness-raising in order to promote inter-ethnic and interracial understanding. That was partly the responsibility of States, which should provide relevant training to law enforcement officers, for example. However, civil-society organizations such as national human rights institutions, non-governmental organizations and religious bodies also had an important role to play in disseminating information on inter-ethnic understanding.

**Mr. Lattimer** (Minority Rights Group International) said that it was necessary to recognize that the worst manifestations of racist discourse were already on the Internet. People were now beginning to consider how to obtain reliable information from the Internet, including ways of authorizing, legitimating or editing the information that could be found there. It was therefore necessary to consider how the processes of legitimization or authorization of hate speech on the Internet took place. That debate was less concerned with the actions of private individuals than with how societies formulated attitudes to groups, how leadership could be shown to encourage responsible speech while promoting diversity, and practical ways to combat hate speech. He drew attention to the fact that vulnerable groups were often less outraged by single examples of hate speech than by being denied the chance to speak out and be heard in their efforts to counter statements they considered to constitute hate speech.

**Ms. Ghanea** (Lecturer, University of Oxford) said that, while she agreed with Mr. Kemal that repercussions could be swift and destructive, that was the case only when governments allowed it to be so. Governments sometimes manipulated and cynically used examples of racist hate speech from other parts of the world in order to deflect the attention of their population from their real grievances, often because the political control in the country did not allow the real grievances to be voiced. Such camouflaging was allowed to take place because of political opportunism, corruption and racial hatred by government officials. While racist hate speech should be taken seriously, globalization presented the opportunity to examine the abuse that often took place when an editor in one part of the world published a statement and it resulted in a mass rally elsewhere. Between the two events, many people, including government authorities, condoned and manipulated the statement and allowed it to become the vent for many people's frustrations.



**Mr. Diaconu** summarized the morning's debate in five points. First, there was a need to adopt complementary standards and adapt existing standards to current realities in order to be able to respond to new forms of racism and xenophobia. Second, there was intersectionality between discrimination on different grounds. Third, there was a need to focus on the actions of governments, authorities and political parties when addressing the issue of racist hate speech. Fourth, efforts were needed to ensure that regulations prohibiting racist hate speech did not affect the right of vulnerable groups to defend their own rights and submit complaints to governments. Fifth, criminal legislation was not the only means to combat racist hate speech; other means should be used whenever they were available and appropriate.

**Mr. Diène** (Independent Expert on the situation of human rights in Côte d'Ivoire and former Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance) agreed with Mr. de Gouttes that there was a need to adopt a more holistic approach to racist hate speech. That approach should encompass the multiplicity of complex political, cultural and social processes that were ultimately expressed in legislation. Racist hate speech was becoming a threat to democracy because those who made such statements manipulated democratic principles in order to express their views, gain support and accede to power.

**The Chairperson** recalled that article 4 of the Convention required States parties to adopt all manner of measures, not only legislation, in order to eradicate all incitement to, or acts of, racial discrimination. While it was impossible to prohibit hatred, a holistic approach was indeed necessary in order to implement measures that tackled the roots of racism and encouraged people to take responsibility for their actions.

*The meeting rose at 1 p.m.*