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REPORT OF THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS AND REPORTS OF THE OFFICE OF THE HIGH COMMISSIONER AND THE SECRETARY-GENERAL

PREVENTION OF GENOCIDE

Report of the United Nations High Commissioner for Human Rights*

Summary

The present report contains the views of States and other relevant human rights entities on the reports of the Secretary-General (E/CN.4/2006/84 and A/HRC/7/37) on the implementation of the Five-Point Action Plan; and the activities of the Special Adviser of the Secretary-General on the Prevention of Genocide, including on possible warning signs that might lead to genocide (E/CN.4/2006/84). It is submitted to the Human Rights Council pursuant to Council resolution 7/25.

* Late submission.

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I. INTRODUCTION

1. In its resolution 7/25, the Human Rights Council requested the United Nations High Commissioner for Human Rights to circulate the reports of the Secretary-General on the prevention of genocide submitted to the Council in order to obtain the views of States, relevant United Nations agencies, treaty bodies and special procedures on those reports, including on possible warning signs that might lead to genocide (E/CN.4/2006/84), and to report to the Council at its tenth session. The present report contains the views received.

2. In response to a note verbal dated 30 May 2008, views were received from the Governments of Armenia, Bosnia and Herzegovina, Finland, the Russian Federation and Turkey.[1] Communications were also sent to United Nations agencies, human rights treaty bodies and special procedures of the Human Rights Council.

II. VIEWS RECEIVED FROM STATES

A. Armenia

3. The Government of Armenia stated that due attention to the warning signs which might lead to genocide is essential to prevent genocide. The possible warning signs compiled by the Special Adviser to the Secretary-General cannot be overestimated. Taken separately, each of the warning signs may be considered an egregious violation of human rights and of serious concern, but not necessarily indicative of a situation of genocide. The predictive value of these elements is most exhaustive and criteria for clustering the signs may need further consideration and clarification (for instance, some additional warning signs, such as forced relocation, segregation, isolation or concentration of a group, listed in paragraph 3 could be referred to as violations of human rights as listed in paragraphs 1 or 2). Those signs may vary in their depth, scope and scale, sometimes resulting in causal correlation (such as hate speech or incitement to hatred or violence, which may result in armed conflict with disproportionate targeting of a specific group).

4. There is a need to review criteria for grouping the warning signs and to identify additional indicators of genocidal behaviour. For this purpose, it would be advisable to use the classification based on the definition provided by the Convention on the Prevention and Punishment of the Crime of Genocide. These points could be considered within different sets of rights, including political, social, economic and cultural.

5. The Government of Armenia believes that identification and stigmatization of a specific group of people aimed at their absolute extermination is implemented through the violation of a particular type or types of rights. Such methodology can provide for a more structured framework for the classification of the warning signs. Meanwhile, it is important to stress the interrelated nature of these rights and, therefore, of the warning signs. In this regard, there are several proposals to be taken into account. As the nation that suffered the first genocide of the twentieth century, with about 1.5 million lives lost and still evident consequences, Armenia had

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[1] The full texts of the views of States are available for consultation at the Office of the United Nations High Commissioner for Human Rights.

long before experienced discrimination at all levels of public life, including political, social-economic and cultural, having had to endure taxes and second-class citizenship, resettlement, political, social and cultural isolation and other special hardships and even massacres.

6. The Government of Armenia believes that genocides are often thoroughly planned. Prior to undertaking genocidal action, its instigators propagate intolerance and hatred, thereby setting the ground for violence; parts of the population are identified as terrorists, secessionists, criminals and traitors. These practices are still being employed today by political establishments: they include hate speech, humiliation of a group in the media, vilification of people belonging to specific groups, and denial of past genocides and atrocities constituting the ideological part of the State exclusionary policy, usually accompanied by the violation of political rights of a specific group (such as lack of freedom of speech, press, assembly and political marginalization). Thus, these warning signs, though not exhaustive, may constitute a certain set of signs at the political level.

7. Under the same logic, the Government of Armenia also believes that expropriation, the destruction of property, man-made famine and the denial of food, water or medical services, as described by the Special Adviser, constitute a set of warning signs at the social and economic levels. Accordingly, the destruction of cultural property and religious sites and the suppression of cultural identity will be listed under the warning signs at the cultural level. However, all these violations need to be of a systematic nature and frequently occurring to be regarded as warning signs of a genocidal situation.

B. Bosnia and Herzegovina

8. The Government of Bosnia and Herzegovina, as a State member of the United Nations organization and party to the International Convention on the Elimination of All Forms of Racial Discrimination, successfully presented its initial report to the competent Committee on the Elimination of Racial Discrimination on 22 and 23 February 2005.

9. According to the Government of Bosnia and Herzegovina, racial discrimination, like other forms of discrimination, is directly prohibited by the Constitutions of Bosnia and Herzegovina and its two Entities and is incriminated through several characteristics of crimes within the criminal legislation of Bosnia and Herzegovina, its two Entities and District Brcko. This clearly reflects the determination of the authorities of Bosnia and Herzegovina to “respect the human rights of all citizens, of aliens living in Bosnia and Herzegovina on a permanent basis and of aliens with temporary residence.

10. The Committee on the Elimination of Racial Discrimination considered and adopted the report submitted by Bosnia and Herzegovina at its session held on 22 and 23 February 2005. The Committee submitted its detailed recommendations with concluding remarks to the authorities of Bosnia and Herzegovina. The latter are obliged to respond to the recommendations in the second periodic report on the implementation of the Convention, by July 2008.

11. When it adopted in 2003 its new State Criminal Code, Bosnia and Herzegovina introduced provisions of the International Convention on the Elimination of All Forms of Racial Discrimination to the Code, stipulating criminal sanctions for these offences, establishing

legislative mechanisms for the protection of human rights and fundamental freedoms for all, regardless of their race, sex, language, and religion. The articles of the criminal code establishes the criminal acts including articles 171 (Genocide), 172 (Crimes against humanity), 173 (War crimes against civilians), 174 (War crimes against the wounded and sick), 175 (War crimes against prisoners of war), 177 (Unlawful killing or wounding of the enemy), 178 (Pillaging the dead and wounded on the battlefield) and 179 (Violating the laws and practices of warfare).

12. According to article 180 on individual criminal responsibility, a person who plans, instigates, orders, perpetrates or otherwise aids and abets in the planning, preparation or execution of a criminal offence referred to in articles 171 to 175 and 177 to 179 of the Code shall be personally responsible for the criminal offence. The official position of any accused person, whether as Head of State or Government or as a responsible Government official person, shall not relieve such person of their criminal responsibility nor mitigate the punishment. The fact that any of the criminal offences referred to in articles 171 to 175 and 177 to 179 of the Code was perpetrated by a subordinate does not relieve the superior of criminal responsibility if that person knew or had reason to know that the subordinate was about to commit such acts or had done so and the superior failed to take necessary and reasonable measures to prevent such acts or to punish the perpetrators. Also, the fact that a person acted pursuant to an order of a Government or of a superior does not relieve him or her of criminal responsibility, but may be considered in mitigation of punishment if the court determines that justice so requires.

13. The Law on the Courts of Bosnia and Herzegovina established the Section for War Crimes, dealing with the prosecution of criminal acts relating to war crimes, and criminal acts which under its contents partly relates to definition of racial discrimination determined by the Committee on the Elimination of Racial Discrimination.

14. For prosecution of these criminal acts perpetrated in the tragic war of 1992 to 1995, the international community established the International Criminal Tribunal for the former Yugoslavia, (also known as the Hague Tribunal), to prosecute these cases. The courts in Bosnia and Herzegovina have already started processes relating to this period; however prosecution of most cases is monitored by the Hague Tribunal. The cases are extremely complex for presentation of the situation in Bosnia and Herzegovina; hence they will not be analysed in the present information.

15. As already mentioned, Bosnia and Herzegovina has reformed the legal framework, which includes prohibition, prevention of racial discrimination, described more specifically by definitions of certain criminal acts. Genocide as a criminal act is defined by article 171 of the criminal code and is identical to the definition provided in the Genocide Convention. Article 172 provides a definition of “crimes against humanity”.

16. According to article 176 of the Criminal Code:

> 1. Whoever organizes a group of people for the purpose of perpetrating criminal offence referred to in articles 171 (Genocide), 172 (Crimes against humanity), 173 (War crimes against civilians), 174 (War crimes against the wounded and sick) or 175 (War crimes against prisoners of war) of the present Code shall be punished by imprisonment for a term not less than 10 years or long-term imprisonment;

2. Whoever becomes a member of a group of people referred to in paragraph 1 of the present article shall be punished by imprisonment for a term between 1 and 10 years;

3. Any member of a group of people referred to in paragraph 1 of the present article who exposes the group before he has perpetrated a criminal offence in its ranks or on its account shall be punished by a fine or imprisonment for a term not exceeding 3 years, but may also be released from punishment;

4. Whoever calls on or instigates the perpetration of criminal offence referred to in articles 171 to 175 of the present Code shall be punished by imprisonment for a term between 1 and 10 years.

17. The Criminal Code of Bosnia and Herzegovina also prohibits authorities or public institutions, State and local ones, and official persons from promoting or instigating racial discrimination. The Code stipulates the said as a criminal act of discriminatory action by an official or responsible person inciting racial discrimination. Article 145 on Infringement of the equality of individuals and citizens reads:

1. Any official or responsible person in the institutions of Bosnia and Herzegovina who, on the grounds of differences in race, skin colour, national or ethnic background, religion, political or other belief, sex, sexual orientation, language, education or social status or social origins, denies or restricts the civil rights as provided by the Constitution of Bosnia and Herzegovina, ratified international agreement, law of Bosnia and Herzegovina, any other regulation of Bosnia and Herzegovina or general act of Bosnia and Herzegovina or, whoever on the ground of these differences or background or other status grants unjustified privileges or does unjustified favours to individuals, shall be punishable by imprisonment for a term between 6 months and 5 years;

2. Any official or responsible person in the institutions of Bosnia and Herzegovina who, in contravention of the regulations of Bosnia and Herzegovina on the equal use of languages and alphabets of the constituent peoples and others living on the territory of Bosnia and Herzegovina, restricts or denies a citizen to use his or her language or alphabet while addressing bodies or institutions of Bosnia and Herzegovina, business enterprises or other legal persons in order to exercise his or her rights shall be punishable by a fine or imprisonment for a term not exceeding 1 year;

3. Any official or responsible person in the institutions of Bosnia and Herzegovina who denies or limits the right of citizens to be freely employed within the entire territory of Bosnia and Herzegovina and under the same prescribed terms shall be punishable by imprisonment for a term between 6 months and 5 years.

18. Article 183 on the destruction of cultural, historic and religious monuments states that:

1. Whoever, in violation of the rules of international law at the time of war or armed conflict, destroys cultural, historic or religious monuments, buildings or establishments devoted to science, art, education, humanitarian or religious purposes shall be punishable by imprisonment for a term between 1 and 10 years;

> 2. If a clearly distinguishable object, which has been under special protection of the international law as people's cultural and spiritual heritage, has been destroyed by the criminal offence referred to in paragraph 1 of the present Code, the perpetrator shall be punishable by imprisonment for a term not less than 5 years.

Entity Criminal Codes also contain provisions punishing racial discrimination.

19. The Criminal Code of the Federation of Bosnia and Herzegovina also stipulates a criminal act of genocide (art. 153). According to article 157 (on organizing a group and instigating the commission of genocide and war crimes):

> 1. Whoever organizes a group of people for the purpose of perpetrating a criminal offence referred to in articles 153 (Criminal acts of genocide) to 156 (War crimes against prisoners of war) of the present Code shall be punishable by imprisonment for a term not less than 5 years;
>
> 2. Whoever becomes a member of a group referred to under paragraph 1 of the present article shall be punishable by imprisonment for a term not less than 1 year;
>
> 3. Any member of a group referred to in paragraph 1 of the present article who discloses the group before he has perpetrated a criminal act in its ranks or on its account shall be punishable by a term of imprisonment not exceeding 3 years, but may also be released from punishment;
>
> 4. Whoever calls on or instigates the perpetration of a criminal act referred to in articles 153 to 156 of the present Code shall be punishable by imprisonment for a term between 1 year and 10 years.

The Criminal Code of the Republic Srpska also stipulates acts of genocide and prescribed punishment.

20. The European Convention on Human Rights and Fundamental Freedoms is directly applied in the legal system of Bosnia and Herzegovina through its Constitution, listing by name the human rights and fundamental freedoms protected by the Convention. Since it has been incorporated into the Constitution, all State and Entity laws and other regulations have to be harmonized with it, contributing in this way to the development of democratic institutions and civil society.

C. Finland

21. The Government of Finland stated that, by adopting the Genocide Convention of 1948, States undertook to prevent the crime of genocide and to punish for it. Despite this pledge, the international community has often been unable to prevent atrocities. Until recently, the culture of impunity has also prevailed for the most serious crimes of international concern. The establishment of the two United Nations ad hoc tribunals for the former Yugoslavia and for Rwanda in the early 1990s and the sentences passed by these tribunals also for genocide represent landmarks in the fight against impunity. In addition to the ad hoc tribunals, the crime of genocide falls within the jurisdiction of the International Criminal Court, which is about to embark upon its judicial activities.

22. The fight against impunity is one of the priority areas of the State's foreign policy. Over the years, Finland has in many ways supported the ad hoc tribunals and the International Criminal Court and continues to do so. With respect to the International Criminal Court, Finland has taken action both individually and through the European Union and its action plan to follow-up on the European Union common position on the International Criminal Court.

23. Finland has always supported the establishment and effective functioning of the International Criminal Court as well as of the universality, integrity and full implementation of the Rome Statute. It ratified the Rome Statute on 29 December 2000, and the Statute entered into force for Finland on 1 July 2002, the day it entered into force internationally. Together with the Statute, legislation implementing the application of the Statute, including provisions on legal assistance to the Court and the enforcement of penalties ordered by the Court, as well as certain amendments of the Penal Code, were also adopted. No major amendments were introduced to the Finnish Penal Code when the Statute was ratified. It was acknowledged, however, that this was necessary for national courts to be fully able to exercise jurisdiction over crimes within the Court's jurisdiction. A Government bill on certain amendments with regard to, for example, the definition of genocide and some other criminalizations in chapter 11 of the Penal Code as well as on introducing specific provisions implementing articles 28 and 33 of the Rome Statute was submitted to Parliament on 13 September 2007. The amendments concerned were adopted on 11 April 2008 and entered into force on 1 May 2008.

24. Full cooperation by States with the ad hoc tribunals and the International Criminal Court is needed for them to be able to fulfil their mandates. To this end, Finland has concluded separate agreements with the International Criminal Tribunal for the former Yugoslavia and the International Criminal Court. In addition, the Ministry of Foreign Affairs of Finland has a grant for providing voluntary financial assistance to projects related to the fight against impunity, and has used this grant to sponsor various projects specifically related to the ad hoc tribunals and the International Criminal Court, such as the Outreach Project of the International Criminal Tribunal for Rwanda, the Legal Tools Project, and the Internship and Visiting Professionals Programme of the International Criminal Court. Contributions have also been allocated to the Trust Fund for Victims and a trust fund for the participation of least developed countries and other developing states in the assembly of States parties. Finland has also supported international and local human rights and other organizations as well as human rights defenders contributing to the fight against impunity.

25. The Government of Finland believes that peace, justice, human rights and development are interlinked and mutually reinforcing. The International Criminal Court and the ad hoc tribunals have an important role in upholding the rule of law, which Finland strongly supports. In addition to punishing the crime of genocide, their establishment and the increase in relevant case law on both the international and national levels as well as the ensuing deterrent effect may also be seen as partial responses to the commitment to prevent the crime of genocide. This alone is not sufficient, however. Large-scale violations of rules protecting civilian populations are typical in failed State situations and in internal conflicts. Therefore, the underlying causes for political disorder should be addressed in the preventive manner through a variety of means.

26. The Government of Finland also mentioned that, in 2005, the General Assembly, in the World Summit Outcome (resolution 60/1), endorsed the concept of "responsibility to protect", acknowledging that the primary responsibility for the protection of populations, whether citizens

or not, lies with the State itself. The international community should, as appropriate, encourage and help States to exercise this responsibility and support the United Nations in establishing an early warning capability. The international community, through the United Nations, also has the residual responsibility to help to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity. At the World Summit in 2005, the Assembly also stressed the need for the Assembly to continue consideration of the concept and its implications, bearing in mind the principles of the Charter of the United Nations and international law. Finland looks forward to the report of the Secretary-General in 2009 on the proposed approach to the concept of responsibility to protect.

D. Turkey

27. The Government of Turkey is of the view that the definition of genocide must form the general framework of the possible warning signs referred to in the annex to the report of the Secretary-General (E/CN.4/2006/84). The objective (*actus reus*) and the subjective elements (*mens rea*) of the crime of genocide are laid down in the Convention on the Prevention and Punishment of the Crimes of Genocide. It is imperative that the elements of this crime lay the foundation of any possible indicator of genocide. Therefore, the linkages between these elements and warning signs should be clearly articulated.

28. The possible warning signs set forth in the above-mentioned report lack consistent linkages between the elements of genocide as established in the Genocide Convention. For instance, they fail to explain the subjective element ("the intent to destroy, in whole or in part, a … group as such") when referring to discrimination against national, ethnical, racial or religious groups. This genocidal intent is totally omitted in the sub-indicators. Without such a link, the warning signs may be misleading.

29. The Government of Turkey believes that all discriminatory practices against national, ethnical, racial or religious groups may carry the risk of genocide. Therefore, the warning signs and indicators must have a sound threshold. In this regard, reference to discrimination should be qualified as "systematic patterns of massive and serious discrimination". If such a qualification is not made explicitly, then any individual instance of discrimination, which might not always carry the intent of genocide, may be placed under scrutiny and thus occupy the work of United Nations monitoring mechanisms. Both the Special Adviser to the Secretary-General on the Prevention of Genocide and the Committee on the Elimination of Racial Discrimination, in its decision of 2005, emphasized that, when identifying situations of risk, systematic, serious and massive discrimination should not be taken as a basis.

30. Turkey is also of the view that the criteria and requirements for consideration, as well as application of possible warning signs should be clarified in the report. Furthermore, the internal relationship between the possible signs should be clearly explained in detail. It is not clear whether the signs should be applied separately, together or in conjunction with each other in a given situation. Therefore, further study needs to be conducted to address this issue carefully and in a comprehensive manner.

31. The possible signs and indicators should be based on general and objective factors that are commensurate with the gravity of the crime and indicative of the serious, systematic and massive nature of the violations. In this regard, specific situations or special conditions that do not reflect

the gravity of violations would be misleading. Therefore, such references should be avoided when articulating any possible warning signs that might lead to genocide. For instance, in paragraph 3 (d), “perceived or real external support to groups that could become targets due to being seen as collaborators” is set out as an additional warning sign. This depicts a very specific situation that is not indicative or reflective of any serious, systematic and massive violation. This paragraph has no relevance with either the objective elements or the subjective element of the crime of genocide as established in the Genocide Convention.

32. Commenting on possible warning signs, the Government of Turkey stated that paragraph 1 (c) on the existence of a national, ethnic, racial or religious groups(s) at risk reads “specific identification of groups and their association with a specific political identity or opinion (including possible compulsory identification or registering of groups membership in a way that could potentially lead to the group being targeted in the future)”. The groups referred to in the definition of genocide in the Genocide Convention are limited to national, ethnical, racial or religious groups. Political groups are not within the scope of this definition. However, the indicator referred to in paragraph 1 (c) includes “groups with a political identity or opinion”. This element does not fall within the scope of the definition as laid down in the Genocide Convention. Therefore, 1 (c) must be rephrased as “specific identification of national, ethnical, racial or religious groups”, in order to maintain consistency with the Genocide Convention.

33. In the same vein, the Government of Turkey believes that it would be appropriate to exclude “armed conflict between political groups” in the warning sign laid down in paragraph 2 (a) on violations of human rights and humanitarian law, which may become massive or serious. Such an exclusion should be clearly included in paragraph 2 (a), in line with the Genocide Convention. In paragraph 2, it should be clearly stated that the violations of human rights law and humanitarian law referred to therein are targeted at national, ethnical, racial and religious groups, in accordance with the Genocide Convention. In this regard, these groups should be distinctively stated either in the chapeau of paragraph 2 or under each subparagraph, replacing the word “a specific group”. Such an amendment would make the necessary linkage between paragraphs 1 and 2.

34. The title of paragraph 2 and the subparagraphs therein should reflect the “massive and serious” nature of the violations. If this threshold is lowered, then any violation of human rights law and humanitarian law against national, ethnical, racial and religious groups would need to be regarded as a warning sign of genocide. For this reason, the threshold of massive and serious violations should be reflected as clearly and possible, covering all subparagraphs, as is the case with paragraph 2 (c). In paragraph 2 (b), expropriation is given as an example of violations of civil and political rights. In some domestic systems, expropriation may be permissible in a state of emergency, war or under other special circumstances, whereby compensation or other remedies may be available to those affected. Furthermore, such expropriation processes carried out by State authorities may affect a specific group living in a certain area. These lawful acts may not necessarily carry the intent of genocide. Therefore, the content of the sign in 2 (b) should be further clarified.

35. The term “instances of discrimination” referred to in paragraph 2 (d) is premature and too vague to qualify as a possible sign. No country is immune from instances of discrimination, sometimes despite a functioning and effective anti-discriminatory legal framework in place. To assume that each and every instance of discrimination against the specified groups (national,

ethnical, racial and religious groups) might lead to genocide or is the result of such an intention may be misleading or false. Such an indicator is not commensurate with the gravity of the crime of genocide. Therefore, further elaboration is required on paragraph 2 (d).

36. Furthermore, the links between the warning signs laid down in paragraphs 1 (a) and 2 (d) are not clear. In paragraph 1 (a), the warning sign is described as “pattern of discrimination with the purpose or effect of impairing the enjoyment of certain human rights”, whereas in paragraph 2 (d) there is no qualification with respect to the gravity of the “instances of discrimination”. This consistency must be rectified by making necessary linkages and adjustments between the two warning signs.

37. Expressing views on additional warning signs, the Government of Turkey stated that the term “forced relocation” in paragraph 3 (g) should be further qualified. For instance, in cases of natural disasters, states of emergency or war, relocation may be inevitable for reasons of public security or safety. In such situations, relocations may affect a national, ethnical, racial or religious group living in the area. Therefore, the warning sign in 3 (g) should explicitly exclude legitimate relocation that may be necessary on a temporary basis.

38. The Government of Turkey believes that there are complexities in articulating a warning sign such as “a history of genocide or discrimination”. Genocide is a grave international crime. Like other crimes, determining whether genocide has been committed or not in a given situation rests solely with the competent court. In the absence of such an international court decision, it would be legally incorrect to assume the existence of genocide. Therefore, Turkey is of the view that without a reference to a court decision as such in paragraph 4 (c), the warning sign referred to as “denial of past genocides and atrocities” may be exploited with one-sided allegations. In this vein, reference to a competent court decision must be inserted in paragraph 4 (c).

E. Russian Federation

39. The Russian Federation believes that the reports of the Secretary-General on the implementation of the Five-Point Action Plan and on the work of his Special Adviser on the Prevention of Genocide (E/CN.4/2006/84 and A/HRC/7/37) display a manifest bias towards the idea of “humanitarian intervention” and “duty to protect”, to the detriment of the principles of non-interference and State sovereignty.

40. While it is well known that any use of force for the prevention of genocide must be approved by the Security Council, there is no clear indication of this in the reports; this absence is particularly conspicuous in paragraphs 39 and 40 of the report of the Secretary-General (E/CN.4/2006/84).

41. The Russian Federation also noted that, although the reports refer to the need to develop guidelines or criteria to define genocide, they fail to conclude that, without such guidelines, efforts to prevent genocide cannot be considered to be structured, or based on the definition of genocide (article II of the Convention on the Prevention and Punishment of the Crime of Genocide).

42. While the activities of the Special Adviser of the Secretary-General on the Prevention of Genocide are, on the whole, positive, there does not appear to be much purpose in following the recommendation by the Advisory Committee on the Prevention of Genocide to raise the rank of the Special Adviser to that of Under-Secretary-General (A/HRC/7/37, para. 15). The rank of Assistant Secretary-General is perfectly adequate for the fulfilment of his responsibilities.

43. The Russian Federation also stated that the systemization of information on genocide or serious human rights violations, as mentioned in the report of the Secretary-General (A/HRC/7/37, para. 21) also deserves specific attention. The Special Adviser should work continuously to check and recheck the reliability of the information and evidence he receives from different sources, in order to avoid making accusations against any State on the basis of facts or reports that might turn out to be unfounded, disproved or severely exaggerated.

III. SPECIAL PROCEDURES OF THE HUMAN RIGHTS COUNCIL

44. Special procedures mandate-holders have a number of characteristics within their mandates that make their work on the prevention of genocide relevant. In particular, by their independence, field activities and access to Governments and civil society, they are able to collate and impartially analyse in-depth information on serious, massive and systematic violations of human rights. Mandate-holders can also provide an independent and holistic assessment of the situation and make recommendations on the steps to be taken by concerned Governments and the international community at large to defuse tensions at an early stage.

45. Mandate-holders are also able, through the communications regularly sent to Governments, to draw attention to emerging problems, including patterns of human rights violations, such as extrajudicial executions, torture, mass arbitrary arrests and detention or disappearances and sexual violence, as well as serious violations of economic, social and cultural rights, which could forebode a potentially genocidal situation. By reporting to the Human Rights Council and the General Assembly, they also contribute to a better understanding of, and provide early warnings on, complex situations, for example involving systemic anathematization, exclusion and discrimination that might lead to crimes against humanity, genocide and other mass atrocities.

46. Mandate-holders have recalled that historically, situations of escalating tensions and polarization along ethnic, racial, religious or national lines, aggravated by State inaction or complicity, have often degenerated into mass atrocities, including crimes against humanity and genocide. Particular groups within society, for example minorities, indigenous peoples and women, may be particularly vulnerable when violence breaks out. While it is true that not all situations of tension and polarization along ethnic, racial, religious or national lines lead to genocide or crimes against humanity, it is nonetheless essential that early warning signs be constantly monitored, and indicators employed, so that timely responses can be devised, including of a diplomatic or political nature.

47. To illustrate the potential role of the special procedures as an early warning tool, reference is made to the situation leading to the genocide in Rwanda in 1994. A year before the outbreak of violence, the Special Rapporteur on extrajudicial, arbitrary or summary executions visited Rwanda and concluded that the cases of intercommunal violence brought to his attention indicated very clearly that the victims of the attacks, Tutsis in their overwhelming majority of cases, had been targeted solely because of their membership of a certain ethnic group

(E/CN.4/1994/7/Add.1, para. 79). He added that the Convention on the Prevention and Punishment of the Crime of Genocide might therefore be considered to apply to those cases. Five weeks before the genocide, the Special Rapporteur presented his country report to the Commission on Human Rights and flagged that the situation in that country had worsened.

48. While massive violations of civil and political rights have most often been associated with early warning signs of possible escalation to mass atrocities, crimes against humanity and even genocide, it is important to acknowledge that patterns of gross violations of economic, social and cultural rights can also be an early warning of situations that can potentially lead to genocide. Mandate-holders have noted that severe and unjustified restrictions on humanitarian assistance (including the delivery of food aid) to certain groups, including in conflict situations, can constitute, or lead to, mass atrocities or crimes against humanity. For example, the Special Rapporteur on the right to food noted that deliberate policies and action resulting in mass starvation of specific groups have in some cases been a feature of crises that led to genocide or came perilously close to it.

49. Special procedures mandate-holders have noted that, subsequent to the shortcomings in earlier attempts to prevent genocide, the appointment of the Special Adviser to the Secretary-General on the Prevention of Genocide in 2004, the convening of the 2005 World Summit and the emergence of the “responsibility to protect” doctrine rightly put emphasis on strategies for prompt action in response to early warning signs.

50. With regard to the prevention of genocide the mandate-holders recommend that:

(a) Effective channels of communication between different parts of the United Nations system be consolidated. In order to strengthen the collective response in preventing genocide, it is essential to ensure that early warning signals reach the political and conflict-prevention bodies of the Organization, such as the Security Council, the Department of Peacekeeping Operations and the Department of Political Affairs, including its Mediation Support Unit. This would allow decision-makers at the highest levels to take action with full knowledge of the facts on the ground. In this regard, one of the communication channels that special procedures could use more systemically is the Office of the Special Adviser on the Prevention of Genocide, particularly in view of his mandate and regular interaction with the Secretary-General and the Security Council;

(b) Member States have the main responsibility to facilitate the work of, and cooperate with, special procedures in order to prevent crimes against humanity and genocide. As such, Member States should ensure that mandate-holders have unfettered access to regions and countries affected by ongoing tensions that could result in widespread crimes against humanity or genocide. When devising specific ad hoc mandates to address crisis situations, Member States should ensure that the terms of reference of the mandates are comprehensive and adequate and that requests for visits by mandate-holders are satisfied. For instance, in several cases, special procedures have been provided with mandates restricted to assisting specific countries in order to identify technical cooperation needs in the area of human rights rather than with a full-fledged monitoring and reporting mandate. While technical cooperation is without a doubt of crucial

importance to the respect for human rights, particularly in the long term, it is certainly an insufficient tool where crimes against humanity are already being perpetrated. Finally, but importantly, special procedures should be provided with sufficient resources to carry out their activities, including fact-finding missions.

51. Relevant stakeholders could also benefit more from specific recommendations of special procedures in the aftermath of large-scale violence in order to address the root causes of such violence and prevent its recurrence. For example, in addition to criminal justice proceedings, national commissions of inquiry could play an important role in identifying root causes of major incidents of racial, ethnic or religious violence and in making recommendations to address underlying tensions and thus prevent them from reigniting into genocidal violence. Special procedures have provided both general and thematic advice on ensuring the effectiveness of national commissions of inquiry (see A/HRC/8/3) and have reported on the progress of specific inquiries, including detecting when the efforts of such commissions might be floundering. Increased use could be made of special procedures to ensure more continuous and coherent engagement by the international community in the work of national commissions of inquiry.

IV. HUMAN RIGHTS TREATY BODIES

52. The reports of the Secretary-General on the implementation of the Five-Point Action Plan (E/CN.4/2006/84) and the activities of the Special Adviser to the Secretary-General on the Prevention of Genocide (A/HRC/7/37) are of major relevance to the treaty body system, given that a number of treaty bodies work on issues related to ethnically-based patterns of discrimination and exclusion that may lead to hatred and violence and, in some instances, risk degenerating into threats of genocide.

53. While the Convention on the Prevention and Punishment of the Crime of Genocide itself does not provide for the establishment of a monitoring body, a number of monitoring bodies established under human rights treaties subsequently adopted, including the International Convention on the Elimination of All Forms of Racial Discrimination, the International Covenant on Civil and Political Rights, the International Convention on Economic, Social and Cultural Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, address issues of discrimination, exclusion and abuse that may be considered to fall among the root causes of genocide.

54. By way of example, while the Genocide Convention defines as international crimes a number of acts committed with the intention to destroy a national, ethnic, racial or religious group, the International Convention on the Elimination of All Forms of Racial Discrimination defines as racial discrimination distinctions and exclusions on the grounds of race, colour, descent or national or ethnic origin that have the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise of human rights and fundamental freedoms. It could be said, therefore, that genocide constitutes the most heinous form of racial discrimination, with the purpose of nullifying all human rights, including the right to life itself. As all efforts to address and overcome racial discrimination are therefore by implication also aimed at countering and pre-empting tendencies that may have the potential to escalate into threats of genocide, the Committee on the Elimination of Racial Discrimination, together with the Human Rights Committee and other treaty bodies, have an important role to play in the monitoring, detection and prevention of risks of genocide.

55. Among the aspects covered in the reports of the Secretary-General, the focus on (a) early warning, (b) prevention by addressing the root causes of hatred and violence, and (c) system-wide collaboration are of particular relevance to the treaty body system. The comments below will therefore focus on these aspects.

A. Detection of risks and early warning

56. Among the principal tasks identified in the Five-Point Action Plan is early and clear warning of situations that could potentially degenerate into genocide and the development of a United Nations capacity to analyse and manage information. The role of the treaty bodies in this area is recognized in the reports of the Secretary-General, who notes that the treaty bodies, together with other parts of the United Nations human rights system, are "well placed to sound the alarm" (E/CN.4/2006/84, para. 22).

57. Treaty bodies may indeed play an important role in detecting early warning signs, bearing in mind that they are charged with monitoring, at periodic intervals, compliance by States parties to international human rights treaties with their respective treaty obligations. Such monitoring is conducted with full respect for the sovereignty of States, as they agree to cooperate with relevant monitoring procedures envisaged in international instruments when becoming a party to them.

58. While several human rights treaties are nearing universal ratification, gaps in monitoring often result from non-compliance by some States parties with their reporting obligations. Treaty bodies have aimed to address such gaps, including through follow-up procedures and the review of country situations in the absence of a report, on the basis of information from other sources, in the case of States parties whose reports are seriously overdue. In addition, the Committee on the Elimination of Racial Discrimination has developed an early warning and urgent action procedure for the prevention of gross violations brought to its attention.[2] In a study submitted to the Intergovernmental Working Group on the effective implementation of the Durban Programme and Plan of Action (A/HRC/4/WG.37), the Committee also outlined proposals for an inquiry procedure which would be in line with similar procedures under other international instruments relating to discrimination.

B. Systematic prevention and awareness-raising

59. In his reports, the Secretary-General emphasizes the need to address the root causes of violence and genocide, namely hatred, intolerance, racism, tyranny and the dehumanizing public discourse that denies whole groups of people their dignity and rights. In a similar vein, he stresses the importance of raising awareness and highlights the role of the treaty bodies in, inter alia, the area of prevention.[3] Prevention and awareness-raising form is indeed a significant part of the work of treaty bodies, as they engage with States on a regular basis through dialogue, recommendations and follow-up. Treaty bodies regularly urge and encourage States to adopt

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[2] *Official Records of the General Assembly, Sixty-second Session, Supplement No. 18* (A/62/18), annex III.

[3] A/HRC/7/37, paras. 18, 20 and 23.

measures aimed at overcoming patterns of racial and ethnic discrimination and intolerance that may lead to hatred, violence and exclusion. State parties are asked to demonstrate and explain the preventive strategies that they have in place and the institutions that they have established to protect against risks and overcome discrimination and exclusion.

60. In addition to their ongoing dialogue with individual Governments and civil society organizations within the framework of the periodic State reporting process, the treaty bodies contribute to awareness-raising through the holding of thematic debates and the elaboration of general recommendations, which are aimed at giving guidance to all States on specific subjects. In 2005, the Committee on the Elimination of Racial Discrimination held a thematic discussion on the prevention of genocide and adopted a declaration thereon.[4] The debate was preceded by a meeting with concerned Governments, non-governmental organizations and United Nations human rights mechanisms and entities. In the same year, the Committee adopted a decision identifying a set of indicators of systematic and massive patterns of racial discrimination, known to be important components of situations leading to conflict and genocide.[5]

C. Collaboration and exchange of information

61. As noted by the Secretary-General in his reports, the responsibilities of the Special Adviser on the Prevention of Genocide include the collection of information, in particular from within the United Nations system, on the massive and serious violations of human rights and international humanitarian law of ethnic and racial discrimination that, if not prevented or halted, might lead to genocide. The Secretary-General stresses the importance of collaboration in prevention and draws attention to the need to bring existing information together in a focused way, so as to better understand complex situations and warning signs, and thus be in a position to suggest appropriate action. In this regard, he also notes that the Special Adviser maintains close contact and exchanges information with relevant special procedures and human rights treaty bodies. Such contacts have included the Special Adviser's participation in a thematic debate on the prevention of genocide of the Committee on the Elimination of Racial Discrimination in 2005, and a meeting of the Special Adviser with the bureau of the Human Rights Committee in the same year, at its eighty-third session, after which the Committee designated a focal point to liaise with the Special Adviser and exchange relevant information. While these meetings and exchanges have been fruitful, enhanced contacts and consultation might help to strengthen early warning capacities as well as prevention efforts. Such collaboration would appear to be particularly important in efforts aimed at addressing deficits outlined by the Secretary-General in his reports with regard to the systematic processing, management and evaluation of information received, with a view to bringing significant information to the prompt attention of relevant Secretariat entities and United Nations decision-making bodies.[6]

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[4] *Official Records of the General Assembly, Sixtieth Session, Supplement No. 18* `` (A/60/18), chap. viii.

[5] Ibid., chap. ii.

[6] For example, see E/CN.4/2006/84, paras. 20-38, and A/HRC/7/37, para 21.