

ANNEX III
Prevention of racial discrimination, including early warning and urgent procedures:
working paper adopted by the
Committee on the Elimination of Racial Discrimination

A. The need for preventive measures

1. At its summit meeting held on 31 January 1992, the Security Council observed that:

"The absence of war and military conflicts amongst States does not, in itself, ensure international peace and security. The non-military sources of instability in the economic, social, humanitarian and ecological fields have become threats to peace and security. The United Nations membership as a whole, working through the appropriate bodies needs to give the highest priority to the solution of these matters." ^a

2. In his report entitled "An agenda for peace",^b the Secretary-General noted that one of the aims of the United Nations in the changed international context must be to identify at the earliest possible stage situations that could produce conflict. The Secretary-General also noted that the stability of States would be enhanced by the commitment to human rights with a special sensitivity to the rights of minorities and by the increasingly effective machinery of the United Nations dealing with human rights. Early warning based on information gathering and informal or formal fact-finding was needed to prevent disputes from arising between parties, to prevent existing disputes from escalating into conflicts and to limit the spread of the latter when they occurred.

3. The Secretary-General, in his report to the General Assembly at its forty-seventh session on the work of the Organization,^c emphasized the primary importance of preventing human rights violations before they occur. In this regard, the United Nations must be able to identify situations which could degenerate into violations and to take preventive measures. In situations of tension related to minorities, for example, intervention based on widely accepted standards could dissipate misunderstandings and help build a framework for living together. In view of the impressive quantity of information on human rights already available within the United Nations system, the challenge is to bring this information together in a focused way so as to better understand complex situations and thus be in a position to suggest appropriate action.

4. The report of the Secretary-General also identified "the need to consider ways to empower the Secretary-General and the expert human rights bodies to bring massive violations of human rights to the attention of the Security Council together with recommendations for action". The chairpersons of human rights treaty bodies, at their fourth meeting, expressed their full support for that statement of the Secretary-General and urged the treaty bodies to take all appropriate measures in response to such situations.^d In regard to the definition of the term "massive", the chairpersons noted that it would be for each treaty body to decide which situation required forwarding to the Security Council.

5. The General Assembly, in its resolution 47/120 of 18 December 1992 entitled "An agenda for peace: preventive diplomacy and related matters", emphasized the need for all organs and bodies of the United Nations, as appropriate, to intensify their efforts to strengthen the Organization's role in preventive diplomacy, peacemaking, peace-keeping and peace building and to continue the discussion of the Secretary-General's report with a view to adequate action being taken.

6. The fourth meeting of persons chairing the human rights treaty bodies considered a suggestion by a member of the Committee on the Elimination of Racial Discrimination and a member of the Committee against Torture that they examine the possibility of undertaking preventive action against human rights violations, within the scope of the activities of the human rights treaty bodies. As a result of their consideration of this issue, the meeting concluded that:

"... the treaty bodies have an important role in seeking to prevent as well as to respond to human rights violations. It is thus appropriate for each treaty body to undertake an urgent examination of all possible measures that it might take, within its competence, both to prevent human rights violations from occurring and to monitor more closely emergency situations of all kinds arising within the jurisdiction of States parties. Where procedural innovations are required for this purpose, they should be considered as soon as possible." d/

B. Procedural innovations and other measures which the Committee on the Elimination of Racial Discrimination could decide to take with a view to the prevention of racial discrimination

7. The Committee on the Elimination of Racial Discrimination bears in mind the innovative procedures that have been adopted by other treaty bodies with a view to early warning and urgent response. Such procedures have been adopted by the Human Rights Committee, the Committee on Economic, Social and Cultural Rights and the Committee on the Rights of the Child.

8. Efforts to prevent serious violations of the International Convention on the Elimination of All Forms of Racial Discrimination would include the following sets of functions:

(a) Early warning measures to address existing structural problems from escalating into conflicts. These could also include confidence-building measures to identify and support structures to strengthen racial tolerance and solidify peace in order to prevent a relapse into conflict in situations where it has occurred;

(b) Urgent procedures to respond to problems requiring immediate attention to prevent or limit the scale or number of serious violations of the Convention.

9. Criteria should be developed as far as possible in order to guide the use of preventive measures, particularly in regard to triggering the mechanism and progressing towards increasingly active stages of the procedure.

(a) Possible criteria for initiating an urgent procedure could include the presence of a serious, massive or persistent pattern of racial discrimination; or (similar to that adopted by the Committee on the Rights of the Child) that

the situation is serious and there is a risk of further racial discrimination.

(b) Early warning concerns could include some of the following criteria:

- (i) The lack of an adequate legislative basis for defining and criminalizing all forms of racial discrimination, as provided for in the Convention;
- (ii) Inadequate implementation or enforcement mechanisms, including the lack of recourse procedures;
- (iii) The presence of a pattern of escalating racial hatred and violence, or racist propaganda or appeals to racial intolerance by persons, groups or organizations, notably by elected or other officials;
- (iv) A significant pattern of racial discrimination evidenced in social and economic indicators;
- (v) Significant flows of refugees or displaced persons resulting from a pattern of racial discrimination or encroachment on the lands of minority communities.

10. Possible procedural innovations and other measures which the Committee could consider taking with a view to preventing human rights violations include the following:

Early warning measures

- (a) The Committee could establish a follow-up mechanism to the suggestions and recommendations contained in its concluding observations, particularly in those cases where such action was deemed especially important;
- (b) The Committee could offer to send to States parties one or more of its members in order to facilitate the implementation of certain international standards or to help deal with specific problems. Efforts to establish a human rights institutional infrastructure, including, for example, the creation of national bodies for the promotion and protection of the human rights of racial minorities, could significantly profit from the technical advice and assistance provided by such a visit;
- (c) In its concluding observations, the Committee could include, as appropriate, specific recommendations to States parties to avail themselves of the advisory services and technical assistance programme of the Centre for Human Rights concerning, for example, possible technical assistance in the drafting of legislation or the training of officials in international human rights norms;
- (d) The Committee could submit information to the Secretary-General as a contribution to the early-warning mechanism to be established pursuant to General Assembly resolution 47/120, section II (1);

(e) Committee members could be drawn upon as a resource in the relevant activities of the Centre for Human Rights. It should be noted that the Commission on Human Rights, in its resolution 1993/24 of 5 March 1993 entitled "Rights of persons belonging to national or ethnic, religious and linguistic minorities", called upon the Secretary-General to make available, at the request of Governments, as part of the programme of advisory services and technical assistance, qualified experts familiar with minority issues, as well as the prevention, resolution and/or management of disputes, to assist in existing or potential situations involving minorities (para. 4);

(f) Greater cooperation could be developed with regional arrangements for the promotion and protection of human rights. In this regard, it should be noted that the Commission on Human Rights in its resolution 1993/57 of 9 March 1993, entitled "Regional arrangements for the promotion and protection of human rights", invited the treaty bodies of the major international human rights instruments to explore ways to increase the exchange of information and cooperation with regional human rights mechanisms (para. 13). Such cooperation would enhance the Committee's information base and facilitate follow-up of the Committee's recommendations;

(g) The Committee could take a more active approach in encouraging international assistance for the promotion and protection of human rights relating to racial discrimination;

Urgent procedures

(h) The Committee could establish an urgent procedure to request, in accordance with article 9, paragraph 1, of the Convention, the urgent submission of a special report concerning measures taken to prevent a serious, massive or persistent pattern of racial discrimination. Such a procedure could be modelled on recent innovations adopted by other treaty bodies;

(i) The Committee could designate a special rapporteur to act as a focal point for monitoring critical situations, consult with the Chairman of the Committee to initiate the urgent action procedure and to follow up when decisions have been taken;

(j) The Committee could address an expression of its concern, along with recommendations for action, to:

(i) The State party concerned;

(ii) The Special Rapporteur established under Commission on Human Rights resolution 1993/20;

(iii) The Secretary-General for the attention of the early-warning mechanism

to be established pursuant to General Assembly resolution 47/120, section II (1);

(iv) All other human rights bodies dealing with the question concerned;

(v) The Secretary-General, along with a recommendation that the matter be brought to the attention of the Security Council.

C. Other measures which could be taken within the framework of prevention of racial discrimination

11. The Committee could try to arrange short informal meetings at the regional and national levels, with the support of United Nations agencies and organs. The purpose of these meetings would be to promote greater awareness of international human rights standards and facilitate a deeper understanding of the work of the treaty body system. Direct contact with officials, human rights organizations and agencies at the regional or national levels would more effectively sensitize the Committee members themselves regarding the actual human rights conditions prevailing in the regions. This could be accomplished in the context of informal meetings not requiring full conference services but organized through the Centre for Human Rights and supported, in part, by appropriate United Nations agencies and organs. Additionally, seminars could be organized as contained in the recommended programme of action for a third decade to combat racism and racial discrimination (see Commission on Human Rights resolution 1993/11, annex). In particular, such seminars could focus on: the relationship between violence and racism; the involvement of youth in contemporary forms of racism; measures to eliminate racist propaganda; and problems relating to refugee flows arising from ethnic conflicts and political change.

D. Conclusion

12. The Committee adopts this paper on preventive action, including early warning and urgent procedures, to guide it in its future work. The Committee requests the Secretariat to submit draft procedures in this regard to the Committee for consideration at its forty-third session.

Notes

^a S/23500, p. 3.

^b A/47/277-S/24111, paras. 15, 18, 20 and 23.

^c Official Records of the General Assembly, Forty-seventh Session, Supplement No. 1 (A/47/1).

^d A/47/628.