



**Economic and Social
Council**

Distr.
GENERAL

E/CN.4/2005/46
10 December 2004

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Sixty-first session
Item 17 of the provisional agenda

PROMOTION AND PROTECTION OF HUMAN RIGHTS

**Views of States parties to the Convention on the Prevention and Punishment
of the Crime of Genocide on the Secretary-General's proposal that they
consider setting up a committee on the prevention of genocide**

Note by the Secretariat

Summary

On 4 March 2004, the Secretariat sent notes verbales to States parties to the Convention on the Prevention and Punishment of the Crime of Genocide requesting their views on a proposal made by the Secretary-General to establish a committee on the prevention of genocide. As of 26 November 2004, 11 responses had been received from States parties; the European Union also sent a contribution. The majority of replies indicated support, in principle, for the proposed initiative but stopped short of providing detailed explanations for their positions. Two States parties expressed opposition to the proposal. Several others raised concerns about the following elements:

- The lack of clarity about the type of mechanism that could be envisaged to monitor the Genocide Convention;
- The possible duplication of the mandates of the proposed committee vis-à-vis other existing bodies, such as special rapporteurs, the Special Adviser to the Secretary-General on the Prevention of Genocide or the International Criminal Court;
- The challenges that would be faced in making such a committee an effective tool in the prevention of genocide.

The views of the Special Adviser to the Secretary-General on the Prevention of Genocide were also sought and received.

The limited number of replies does not provide a sufficiently large basis upon which final conclusions on the matter may be reached and concrete recommendations made to the Commission on Human Rights. Accordingly, it is suggested that further views be sought from Member States, non-governmental organizations and other interested partners with a view to enabling the Secretariat to collect a sufficiently wide variety of opinions and report in a comprehensive and analytical manner to the Commission on Human Rights at its sixty-second session.

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Introduction

1. On 26 January 2004, in his keynote speech to the Stockholm International Forum: Preventing Genocide; Threats and Responsibilities, the Secretary-General suggested that “the States parties to the Genocide Convention should consider setting up a committee on the prevention of genocide, which would meet periodically to review reports and make recommendations for action”. He suggested that “we should also consider establishing a special rapporteur on the prevention of genocide, who would be supported by the High Commissioner for Human Rights but would report directly to the Security Council - making clear the link ... between massive and systematic violations of human rights and threats to international peace and security”.
2. On 7 April 2004, in an address to the Commission on Human Rights in Geneva on the occasion of the International Day of Reflection on the 1994 Genocide in Rwanda (see E/CN.4/2004/SR.40), the Secretary-General announced his wish to launch an Action Plan to Prevent Genocide that would involve the whole United Nations system, and his decision to create a new post of Special Adviser on the Prevention of Genocide.
3. As a follow-up to the Secretary-General’s initiative, on 4 March 2004, the Office of the High Commissioner for Human Rights (OHCHR) sent notes verbales to the States parties to the Convention on the Prevention and Punishment of the Crime of Genocide, seeking their views on the Secretary-General’s proposals concerning a committee on the prevention of genocide.
4. As of 26 November 2004, 11 responses had been received from States parties and the European Union. The majority of these replies indicated support, in principle, for the proposed initiative but stopped short of providing detailed explanations for their positions. Two States parties expressed their opposition to the proposal. Several others raised concerns about the following elements:
 - The lack of clarity about the type of mechanism that could be envisaged to monitor the Genocide Convention;
 - The possible duplication of the mandate of the committee vis-à-vis other existing bodies, such as special rapporteurs, the Special Adviser on the Prevention of Genocide or the International Criminal Court;
 - The challenges that would be faced in making such a committee an effective tool in the prevention of genocide.
5. The replies received from States parties, as well as the opinion of the Special Adviser on the Prevention of Genocide, are summarized below. The full texts of the replies are available in the files of the Secretariat.

I. VIEWS RECEIVED FROM STATES PARTIES TO THE GENOCIDE CONVENTION

Argentina

[30 June 2004]

[Original: Spanish]

General overview

1. Argentina supports all the initiatives taken by the Secretary-General to prevent violations of human rights.
2. Argentina also considers that the international community should ensure the development of strategies as well as the political will for the prevention of genocide.
3. Argentina emphasizes that adequate monitoring plays a key role in the early warning of genocide. In this regard, it suggests that “hot spots” with a potential risk of genocide be identified and targeted.
4. The prevention of discrimination, in particular violence against minorities, is, for Argentina, a means of preventing genocide.
5. As most of the conflicts of the twentieth century were based on ethnic or religious tensions, Argentina suggests that particular attention be paid to States where such issues have been noted.
6. Argentina also emphasizes the importance of controlling the progression or the intensification of measures undertaken by Governments in States where there is a potential risk of genocide.
7. In States where genocide has been committed, the political will of Governments in either halting such crimes or refusing to implement the recommendations or resolutions of the United Nations should be taken into consideration.
8. Cases of massive and systematic violations of human rights should be referred to the Security Council, which can then mandate OHCHR to report on the issue through the Commission on Human Rights and its relevant special mechanisms.

Argentina’s views concerning initiatives taken by the Secretary-General on this issue

9. Argentina welcomes the initiative taken by the Secretary-General to determine “hot spots” to prevent genocidal crimes.
10. Argentina insists on the effective implementation of the Convention, which was ratified by Argentina in 1956 and followed by a constitutional reform in 1994.

11. Argentina welcomes the setting up of a committee to reinforce the prevention of genocide through the effective implementation of the convention. Should the committee be incapable of preventing genocide, the international community, through the Security Council, should take all necessary measures to halt violations of human rights.

12. Argentina also underlines the importance of the International Criminal Court and invites all the Governments to support its activities.

Canada

[30 June 2004]

[Original: English and French]

1. Canada supports the idea of the Secretary-General to set up a committee on the prevention of genocide, but questions whether its creation would not have the effect of weakening the language and intent of the Convention itself.

2. Canada requests further information on the mandate of the committee, the legal and procedural basis for its creation and the source of funding.

3. Canada also requests further information on the committee with regard to its relationship with other United Nations bodies, including the new Special Adviser on the Prevention of Genocide.

4. Canada suggests that other functions of the committee could be considered, including: investigation and fact-finding; assisting States with education and training; early warning, including providing information to the Security Council as needed; preventive diplomacy and mediation; compliance monitoring and administering a trust fund to assist with compliance.

5. Regarding the mandate of the committee, Canada suggests that some models be taken into account, such as the International Fact-Finding Commission created pursuant to article 90 of Additional Protocol I to the Geneva Conventions of 12 August 1949; the Office of the High Commissioner on National Minorities of the Organization for Security and Cooperation in Europe; the Committee on Economic, Social and Cultural Rights created under the Economic and Social Council and the Implementation Committee created pursuant to the Montreal Protocol on Substances that Deplete the Ozone Layer.

6. Canada suggests three routes that might be considered in the creation of such a committee: (i) under article VIII of the Convention, a State party could call upon the competent organ of the United Nations to create a committee - which might be accomplished through a resolution of the General Assembly or the Security Council; (ii) the Genocide Convention could be amended, as per article XVI; or (iii) an optional protocol to the Genocide Convention could be negotiated. Canada considers the provisions of article VIII of the Convention to be sufficient legal basis to allow for the creation of a committee.

7. Canada underlines the importance of ensuring that the mandate of the committee does not duplicate those of other mechanisms such as the International Criminal Court, the International Criminal Police Organization (Interpol), or other relevant United Nations bodies.

8. Canada also suggests that the advice of the Special Adviser on the Prevention of Genocide be sought on the usefulness of a committee.
9. To ensure a viable and effective committee in the long term, Canada suggests that States be encouraged to assess the financial obligations of such a committee at the outset.
10. Canada recommends that the Secretariat or the treaty bodies provide the committee with support.

Kenya

[27 July 2004]

[Original: English]

Kenya supports the proposal of the Secretary-General for a committee on the prevention of genocide and underlines that it is only with a monitoring body that the “nascent signs of the development of tendencies towards this heinous crime can be nipped in the bud”.

Lebanon

[14 July 2004]

[Original: English]

The Ministry of Interior Affairs and Municipalities in Lebanon supports the establishment of a committee on the prevention of genocide, which could meet periodically to review reports and make recommendations for action, as well as take all the relevant steps that contribute to the protection of human rights.

Norway

[5 July 2004]

[Original: English]

1. Norway welcomes the decision of the Secretary-General to appoint a Special Adviser on the Prevention of Genocide and to report, through him, to the Security Council.
2. Concerning the setting up of a committee, Norway expresses concerns about its effectiveness.
3. Norway suggests that some modalities regarding the functions of the committee would need further elaboration, in particular on its monitoring and warning capacity, its procedural rules for referring situations of serious concern to the States parties, its relationship with the Special Adviser and the resources needed.
4. Norway supports all measures to improve mechanisms aimed at ensuring that the international community lives up to its obligation to prevent genocide. Norway also expresses its appreciation for the Secretary-General's initiative.

Russian Federation

[18 June 2004]

[Original: Russian]

1. The Russian Federation notes with appreciation the creation of a post of Special Adviser on the Prevention of Genocide, as well as its broad mandate which covers not only genocide but also large-scale human rights violations. The Russian Federation also welcomes the close cooperation of the Special Adviser with the Office of the High Commissioner for Human Rights and that he can recommend to the Security Council actions to be taken to prevent or halt genocide.
2. The Russian Federation notes that the mechanisms for combating genocide established by the Convention, the creation of a post of Special Adviser, and the broadening of the jurisdiction of the International Criminal Court are sufficient to effectively combat the crime of genocide or the threat thereof. Thus, the proposal to set up, in addition, a committee on the prevention of genocide is considered by the Russian Federation to be a duplication of the efforts of the Special Adviser and of the other universal special human rights mechanisms which cover this issue. Furthermore, the establishment of a committee will require, in the view of the Russian Federation, amendments to and an extension of the regular budget of the United Nations. The Russian Federation suggests instead a moratorium on the creation of new universal mandates in the area of human rights with a view to optimizing the work of the existing ones and eliminating needless duplication among them.
3. In conclusion, the Russian Federation considers it inappropriate to establish a committee on the prevention of genocide.

Switzerland

[7 July 2004]

[Original: French]

1. Switzerland recognizes the importance of setting up a committee on the prevention of genocide, but requests further explanations on its functions.

Concerning the setting up of a committee

2. Switzerland expresses doubts about the possible effectiveness of a committee that would only meet three times a year.
3. It questions whether the Convention should be revised and, if so, what would be the conditions for the adoption of such revision. It also questions whether it would be appropriate to adopt an optional protocol to the Convention.
4. Switzerland welcomes all measures to prevent genocide, but also insists on its repression by States parties, as contained in the Convention.

Switzerland finds inappropriate the duplication of mandates

5. Switzerland supports the establishment of a committee, but expresses concern about possible duplication with the mandates of other bodies, such as the International Criminal Court.
6. Concerning the creation of a new mandate of Special Rapporteur, as well as the appointment by the Secretary-General of a Special Adviser on the Prevention of Genocide, Switzerland suggests that there should be a clear distinction between the two mandates and cites resolution 2004/37 on the special procedures, in which the Commission “acknowledges the importance of relevant special procedures of the Commission ... in their key role as early warning mechanisms in preventing the crime of genocide and crimes against humanity, and encourages the relevant special procedures, within their mandates, to cooperate towards this end” (para. 3).
7. Finally, Switzerland supports the idea of setting up a committee within the limits of the reservations expressed above.

Turkey

[9 July 2004]

[Original: English]

Turkey affirms the significance of the Convention as an effective international instrument for the prevention and punishment of the crime of genocide in the future. Therefore, it welcomes the steps to be taken by the international community to warn against and prevent genocide.

Ukraine

[24 May 2004]

[Original: English]

Ukraine supports the idea of the Secretary-General to set up a committee on the prevention of genocide in order to prevent any attempt of perpetration of genocide.

United States of America

[23 August 2004]

[Original: English]

1. The United States of America welcomes the Secretary-General's proposal to create the mandate of Special Rapporteur on the prevention of genocide, who would be supported by the High Commissioner for Human Rights and who would report to the Security Council. It also welcomes the appointment by the Secretary-General of Mr. Juan Méndez of Argentina as Special Adviser on the Prevention of Genocide.
2. Regarding a committee on the prevention of genocide, the United States believes that it would be “redundant” and would cause “some confusion” about its role vis-à-vis the mandate of the Special Adviser. The United States believes that the international community should focus on lending full support to the efforts of the Special Adviser.

II. VIEWS RECEIVED FROM THE EUROPEAN UNION

[19 July 2004]

[Original: English]

1. The EU warmly welcomes the decision to appoint a Special Adviser on the Prevention of Genocide. It believes that the Special Adviser should have prime responsibility for issuing early warnings regarding situations he considers as a special risk. In particular, he should make recommendations to the Security Council on actions to be taken to prevent or halt genocide.
2. The EU appreciates the fact that the Special Adviser will work with the High Commissioner to collect information, including through the special procedures, on potential or existing situations or threats of genocide, and their links to international peace and security.

III. VIEWS OF THE SPECIAL ADVISER ON THE PREVENTION OF GENOCIDE

1. On 24 September 2004, a letter was sent by the Secretariat to the Special Adviser to the Secretary-General on the Prevention of Genocide to seek his views on the establishment of such a committee. An analysis, as well as an overview, of the replies from States parties was attached to the letter.
2. Mr. Méndez, newly appointed Special Adviser, underlined that his mandate is to collect information on massive and serious violations of human rights and international humanitarian law of ethnic and racial origin that, if not prevented or halted, might lead to genocide. He also underlined that the Special Adviser should act as a mechanism of early warning to the Secretary-General and, through him, to the Security Council. He highlighted that he is not specifically limited to the scope of the Convention on the Prevention and Punishment of the Crime of Genocide and will attend, in particular, to the development of early warning and preventive action.
3. According to the Special Adviser, the main mandate of the committee, if established, should focus on inquiries and investigations on the application of the Convention. He also shared the concern expressed in some of the States parties' replies that a new mechanism might be duplicative or redundant vis-à-vis existing mechanisms and procedures.

IV. CONCLUSION

All replies received by States parties expressed concerns about the roots of violence and genocide. As far as a possible mechanism for the monitoring of the Genocide Convention was concerned, a number of comments or concerns were expressed. The limited number of replies does not provide a sufficiently large basis upon which final conclusions on the matter may be reached and concrete recommendations made to the Commission on Human Rights. Accordingly, it is suggested that further views be sought from Member States, non-governmental organizations and other interested partners with a view to enabling the Secretariat to collect a sufficiently wide variety of opinions and report in a comprehensive and analytical manner to the Commission on Human Rights at its sixty-second session.

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