



**Economic and Social
Council**

Distr.
GENERAL

E/CN.4/2006/84
9 March 2006

Original: ENGLISH

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

PROMOTION AND PROTECTION OF HUMAN RIGHTS

**Report of the Secretary-General on the implementation of the
Five Point Action Plan and the activities of the Special Adviser
on the Prevention of Genocide**

Summary

This report is submitted in accordance with Commission on Human Rights resolution 2005/62. It provides information on the implementation of the Secretary-General's Five Point Action Plan to prevent genocide and on the activities of the Special Adviser to the Secretary-General on the Prevention of Genocide since his appointment on 1 August 2004.

CONTENTS

	<i>Paragraphs</i>	<i>Page</i>
Introduction	1 - 2	3
Five Point Action Plan	3 - 4	3
Mandate of the Special Adviser on the Prevention of Genocide	5 - 9	3
Preventing armed conflict	10 - 12	4
Protection of civilians in armed conflict	13 - 15	5
Ending impunity	16 - 19	5
Early and clear warning	20 - 38	6
Swift and decisive action	39 - 41	10
Observations	42	10
Annex		11

Introduction

1. In paragraph 9 of its resolution 2005/62 the Commission on Human Rights requested the Secretary-General to make available to the Commission at its sixty-second session a report on the implementation of the Five Point Action Plan and on the activities of the Special Adviser on the Prevention of Genocide.
2. The present report outlines the contribution of the Special Adviser in all five areas of the Action Plan.

Five Point Action Plan

3. On 7 April 2004, in his address to the Commission on Human Rights on the occasion of a special meeting to observe the International Day of Reflection on the 1994 Genocide in Rwanda, the Secretary-General outlined a Five Point Action Plan to prevent genocide, which included the following: (a) preventing armed conflict, which usually provides the context for genocide; (b) protection of civilians in armed conflict including a mandate for United Nations peacekeepers to protect civilians; (c) ending impunity through judicial action in both national and international courts; (d) early and clear warning of situations that could potentially degenerate into genocide and the development of a United Nation's capacity to analyse and manage information; and (e) swift and decisive action along a continuum of steps, including military action.
4. With regard to the development of a capacity within the United Nations system for early and clear warning of potential genocide, the Secretary-General announced his decision to create a new post of Special Adviser on the Prevention of Genocide, reporting through him to the Security Council.

Mandate of the Special Adviser on the Prevention of Genocide

5. Through its resolution 1366 (2001) on the prevention of armed conflict, the Security Council invited the Secretary-General to refer to the Council information and analyses from within the United Nations system on cases of serious violations of international law, including international humanitarian law and human rights law. Partly as a means to respond to this request, the Secretary-General proposed the appointment of a Special Adviser on the Prevention of Genocide to ensure that the Security Council is fully informed in a timely manner of situations of massive violations of human rights and international humanitarian law which, if left unchecked, could result in genocide.
6. In his letter of 12 July 2004 (S/2004/567), the Secretary-General informed the President of the Security Council of his decision to appoint Juan Méndez as his Special Adviser on the Prevention of Genocide and attached an outline of the mandate of the Special Adviser. In his reply of 13 July 2004 (S/2004/568), the President of the Security Council informed the Secretary-General that the Council had taken note of the Secretary-General's decision. The appointment of the Special Adviser became effective 1 August 2004.
7. The mandate of the Special Adviser was specifically endorsed in the Outcome document adopted by the High-level Plenary Meeting of the sixtieth session of the General Assembly (resolution 60/1). Under the heading of the "Responsibility to protect populations from

genocide, war crimes, ethnic cleansing and crimes against humanity”, the Heads of State and Government of United Nations Member States call on the international community to “support the United Nations in establishing an early warning capability” and “fully support the mission of the Special Adviser of the Secretary-General on the Prevention of Genocide” (ibid., paras. 138-140).

8. The responsibilities of the Special Adviser, as outlined in his mandate are to: (a) collect existing information, in particular from within the United Nations system, 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; (b) act as an early warning mechanism to the Secretary-General, and, through the Secretary-General to the Security Council, by bringing to the latter’s attention potential situations that could result in genocide; (c) make recommendations to the Security Council, through the Secretary-General, on actions to prevent or halt genocide; (d) liaise with the United Nations system on activities for the prevention of genocide and work to enhance the United Nations capacity to analyse and manage information relating to genocide or related crimes.

9. During his first year in office, the Special Adviser has found that both in the short and long term, the prevention of genocide seems predicated on acting comprehensively in four interrelated areas: (a) the protection of populations at risk against serious or massive violations of human rights or humanitarian law; (b) the establishment of accountability for violations of human rights and humanitarian law; (c) the provision of humanitarian relief and access to basic economic, social and cultural rights; and (d) the initiation and support of steps to address underlying causes of conflict through peace agreements and transitional processes.

Preventing armed conflict

10. The Five Point Action Plan refers to the activities of the United Nations in the field of preventing armed conflict. These efforts are addressed and expanded in the report of the Secretary-General on Prevention of Armed Conflict to the fifty-fifth session of the General Assembly (A/55/985-S/2001/574), which was endorsed by both the Security Council and the General Assembly. On 12 September 2003, the Secretary-General presented an interim report (A/58/365-S/2003/888) on the prevention of armed conflict to the fifty-eighth session of the General Assembly. A forthcoming comprehensive report, which shall include guidance on the steps needed to continue making conflict prevention a key function of the United Nations, will be presented to the Security Council and the General Assembly during the Assembly’s current session.

11. In his address to the Commission on Human Rights at its sixtieth session, the Secretary-General suggested that we must use a variety of means to attack the roots of violence and genocide: hatred, intolerance, racism, tyranny, and the dehumanizing public discourse that denies whole groups of people their dignity and their rights.

12. It is important to note the growing involvement of civil society in conflict prevention activities. The cooperation between international organizations and civil society was underscored by the holding of a forum on Global Partnership for the Prevention of Armed Conflict, which was held in New York during July 2005.

Protection of civilians in armed conflict

13. In the Action Plan, the Secretary-General noted that wherever we fail to prevent conflict, one of our highest priorities must be to protect civilians. The parties to conflict - not only States but also non-State actors - need to be constantly reminded of their obligation, under international humanitarian law, to protect civilians from violence.

14. With regard to the prevention of massive and serious violations of human rights and humanitarian law, humanitarian relief and access to basic economic, social and cultural rights are important to prevent loss of life from continuing after the initial killings have ceased, and also to avoid placing populations at risk under conditions of life designed to bring about their extinction. In addition, by their very presence, international civilian monitors and relief workers can provide a basic measure of protection to the population they serve.

15. While there have been significant improvements in the protection afforded to civilians since the Security Council first adopted resolution 1296 (2000), important challenges remain. The Secretary-General outlined the general trends with regard to the protection of civilians in armed conflict in his latest report to the Security Council on the protection of civilians in armed conflict (S/2005/740), which also includes recommendations on how to enhance protection.

Ending impunity

16. The Action Plan called for a review of the work of the International Criminal Tribunal for Rwanda and others, both national and international, in punishing and suppressing genocide, in order to draw lessons for the future. Furthermore, the Action Plan called for special attention to countries that have experienced conflict or are at risk from it. In addition, it called for greater efforts to achieve wide ratification of the Rome Statute of the International Criminal Court, so that the new International Criminal Court may deal effectively with crimes against humanity, whenever national courts are unable or unwilling to do so.

17. The Special Adviser has emphasized repeatedly that accountability in the form of punishment for genocide, crimes against humanity and war crimes is crucial to the prevention of similar acts in the future. The sense of impunity for the crimes already committed breeds insecurity among populations at risk and creates a permissive environment for repeated offences by perpetrators. The creation of a permanent International Criminal Court is a crucial element to help break the cycle of impunity.

18. The needs of justice, however, go beyond the handful of cases that international tribunals or the International Criminal Court can handle. It is therefore essential to press domestic judicial authorities to assume their responsibilities, and for civil society to contribute efforts towards a comprehensive set of policy prescriptions that will meet everybody's expectations of justice and do so with respect for international standards of fair trial and due process.

19. The Secretary-General has examined in detail the Organization's activities in support of the rule of law in post-conflict societies in his report on the rule of law and transitional justice in conflict and post-conflict societies (S/2004/616). As that report describes, the United Nations

has established a foundation of norms and standards to help advance the rule of law. With regard to genocide, the Organization cannot endorse agreements offering amnesties for genocide, war crimes, crimes against humanity or gross human rights violations.

Early and clear warning

20. The Action Plan states that if we are serious about preventing or stopping genocide, delays caused by legalistic arguments about whether or not a particular atrocity meets the definition of genocide, be avoided. If the international community is to act preventively, we must recognize the signs of approaching or possible genocide, so that we can take measures in time to avert it.

21. Civil society groups have a vital role to play in this effort. Often it is their reports that first draw attention to an impending catastrophe - and far too often, they are ignored.

22. The United Nations human rights system, too, has a special responsibility. The special procedures, as well as the treaty bodies and the Office of the United Nations High Commissioner for Human Rights (OHCHR), are well placed to sound the alarm. The challenge is 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.

23. Since his appointment in August 2004, the Special Adviser has established a small office, with two Professional and one General Service staff, and created a system of information exchange to provide early warning of situations of massive violations of human rights and international humanitarian law with an ethnic, racial, religious or national character, that could lead to genocide.

24. Early warning requires organized information. Numerous governmental agencies, non-governmental organizations (NGOs) and academic institutions provide indicators and a methodology for early warning on massive violations of human rights and humanitarian law. Most conflict and genocide prediction models, when applied, seem to identify roughly similar lists of situations most at risk or with a potential risk of massive violence based on national, ethnic, racial or religious grounds. The use of quantitative indicators seems to be broadly based on the assumption that certain models can be used in a way that would allow automatic detection of critical developments in particular situations.

25. Quantitative early warning methods using causal factors generally require ongoing analysis and evaluation of a critical amount of information. They also demand the development of a tracking system for such information. Very often, risk analyses review the general socio-political situation, rather than applying specific indicators. Most of the internal United Nations early warning mechanisms rely on the analysis and expertise of staff on the ground and at Headquarters to evaluate situations on a case-by-case basis, rather than on quantitative data. Given the limited resources available to the office of the Special Adviser, the office has decided to act as a focal point for early warning information coming from sources inside and outside the United Nations system, rather than developing its own database on conflicts with potential genocidal effects.

26. With regard to the mandate of the Special Adviser to provide information to the Secretary-General and the Security Council on situations of massive violations, he has chosen to decide on country situations on a case-by-case basis and drawing on the various sources of information available to him. In choosing to examine a specific situation, the starting point for an analysis is the legal definition of the crime of genocide and other punishable acts according to articles II and III of the Convention on the Prevention and Punishment of the Crime of Genocide. Therefore, the information needs to point towards the existence of a national, ethnic, racial or religious group at risk. Violations of human rights or humanitarian law, which may become massive or serious, must be taking place or be foreseeably imminent. Additional factors derive from the developing international case law on genocide and the findings of academic research. An important criterion is a history of acts of genocide. Situations matching most criteria in these categories are closely followed by the Special Adviser. Additional precipitating or external factors can serve to determine those situations in which immediate involvement is warranted. One precipitating factor to look for is the prevalence of expressions of hate speech targeting populations at risk, especially if they are uttered in the context of an actual or potential outbreak of violence (a preliminary list of key warning signs that could indicate a worsening situation is attached, as an annex to the present report).

27. Prevention requires both early warning and early action. Although from a methodological point of view, early warning should be clearly distinguished from early action, politically, early warning can sometimes constitute a form of early action in itself, helping to prevent a deteriorating situation. The Special Adviser perceives early warning as an activity that should always be accompanied by practical proposals and recommendations that enable the international community to act preventively in a timely fashion.

28. The International Commission on Intervention and State Sovereignty indicated that the responsibility of States to protect their citizens involves an accompanying “responsibility to prevent”, i.e., to address the root and direct causes of internal conflict and other man-made crises that put populations at risk. With regard to prevention, the Commission found that, most often, the basic data were not what appeared to be lacking, but rather an analysis of the data and their translation into policy prescriptions, as well as the will to act.

29. The High-level Panel on Threats, Challenges and Change established by the Secretary-General to assess threats to international peace and security and to recommend ways of strengthening the United Nations to provide collective security, endorsed the notion that there is a collective international responsibility to protect, to be exercised by the Security Council including the authorization of military intervention as a last resort, in the events of genocide and other large-scale killing, ethnic cleansing or serious violations of international humanitarian law. In its report to the Secretary-General the Panel also recommended deterring parties to a conflict from committing crimes against humanity, war crimes or genocide by the Security Council referring cases to the International Criminal Court at an early stage (A/59/565, para. 90). Specifically with regard to genocide, the Panel opined that the principle of non-intervention in internal affairs could not be used to protect genocidal acts or other atrocities, such as large-scale violations of international humanitarian law or large-scale ethnic cleansing, which can properly be considered a threat to international security and as such provoke action by the

Security Council (ibid., para. 200). In his follow-up report to the outcome of the Millennium Summit, in larger freedom: towards development, security and human rights for all, the Secretary-General agreed with the Panel's approach and called on the international community to embrace the responsibility to protect and, when necessary, act upon it (A/59/2005, para. 135).

30. The Outcome document of the High-level Plenary Meeting of the sixtieth session of the General Assembly, commemorating the Organization's sixtieth anniversary recognized that "each individual State has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity" (General Assembly resolution 60/1, para. 138). It further stated that "the international community, through the United Nations, also has the responsibility to use appropriate diplomatic, humanitarian and other peaceful means, in accordance with Chapters VI and VIII of the Charter, to help to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity" (ibid., para. 139). In this context, the international community indicated its will "to take collective action, in a timely and decisive manner, through the Security Council, in accordance with the Charter, including Chapter VII, on a case-by-case basis and in cooperation with relevant regional organizations as appropriate, should peaceful means be inadequate and national authorities are manifestly failing to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity ...". The Outcome document further expressed full "support [of] the mission of the Special Adviser of the Secretary-General on the Prevention of Genocide" (ibid., para. 140).

31. The Special Adviser has argued that, as regards genocide, there is a *de jure* responsibility to protect contained in the legal obligation to prevent and punish genocide in accordance with the Convention on the Prevention and Punishment of the Crime of Genocide. The obligation to prevent and punish the crime of genocide is considered part of international customary law and a norm of *jus cogens*. The International Court of Justice has found that the Convention confirms pre-existing principles recognized by civilized nations as binding even without any conventional obligation (*Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide*, Advisory Opinion of 28 May 1951, I.C.J. Reports 1951). Thus, preventing genocide is a principle of international law so fundamental that no nation may ignore it. Governments are obliged to take all measures within their power to prevent the commission of the crime of genocide, even before a competent court determines that the Convention actually applies to a case at hand.

32. Since his appointment, the Special Adviser has written confidential notes to the Secretary-General on various situations of concern within the context of his mandate. A number of these included recommendations that the Secretary-General share the notes with Security Council members. The office has also been following a number of other situations of concern. In addition, the office has provided various United Nations offices with guidance on issues related to the prevention of genocide, such as guidelines on hate speech and public incitement to violence for the Department of Public Information and peacekeeping missions.

33. The Special Adviser maintained close contact and exchanges of information with relevant procedures of the Commission on Human Rights and human rights treaty bodies. He participated in the twelfth Annual Meeting of Special Rapporteurs, Representatives, Independent Experts and Chairpersons of Working Groups of the special procedures of the Commission on Human Rights and of the Advisory Services. The Special Adviser was invited to attend the thematic discussion on the prevention of genocide at the sixty-sixth session of the Committee on

the Elimination of Racial Discrimination (CERD) (see CERD/C/SR.1683 and 1684). The Special Adviser had already addressed CERD during its sixty-fifth session with a view to the Committee's early warning measures and urgent procedures. In March 2005, following a meeting of the Special Adviser with the bureau at the eighty-third session of the Human Rights Committee, the Committee designated a focal point to liaise with the Special Adviser. In its resolution 2005/62, the Commission on Human Rights requested that the Secretary-General make available to the Commission a report on the implementation of his Five Point Action Plan against genocide and on the activities of the Special Adviser; it also invited the Special Adviser to address the Commission.

34. During 2005, and with the goal of enhancing United Nations capacity for genocide prevention, the Special Adviser became a member of the Executive Committee on Peace and Security and the Interdepartmental Framework for Coordination on Early Warning and Preventive Action (Framework Team), providing guidance on genocide prevention and establishing information gathering conduits. He also participated in a number of interdepartmental task forces relating to peace operations, such as those on Cote d'Ivoire and the Sudan. The Special Adviser maintained close contact with the Secretary-General's special representatives in a number of peacekeeping missions and provided input to the Secretary-General for his briefings to the Security Council on a number of peacekeeping operations. In addition, he has collaborated closely with the Department of Political Affairs, the Office for the Coordination of Humanitarian Affairs, and OHCHR. The Special Adviser has also built ties with regional organizations such as the African Union and the European Union.

35. The office of the Special Adviser has liaised with the Joint African Union/United Nations secretariat of the International Conference on the Great Lakes Region, having been represented at the second and third meeting of the Conference's Technical Thematic Task Forces, which discussed a regional protocol and project on the prevention of war crimes, crimes against humanity and genocide, including the fight against impunity.

36. The Special Adviser participated in public forums, international and academic events. He and his office maintained contact with civil society organizations and non-governmental groups involved in early warning activities. With the assistance of the United Nations Association of the United States of America, consultations were held with States Members of the United Nations, civil society organizations and regional organizations on cooperation in genocide prevention. The Special Adviser also was involved in public outreach activities.

37. During 2005, the Special Adviser and his office set the groundwork for the establishment of an Advisory Panel to the Special Adviser, which will integrate, among others, important partners such as genocide scholars and academics, conflict prevention organizations, human rights NGOs and regional organizations.

38. The following consultancy projects have been initiated by the office: (a) an analysis of the jurisprudence concerning hate speech and incitement to violence with the goal of establishing practical guidelines for peacekeeping and other United Nations field presences; (b) a study of conflict and the issues of ethnicity, religion, citizenship, and nationality in the region of West Africa; and (c) an independent review of the work of the office of the Special Adviser. These projects are designed to assist the office in fulfilling the goals of increased understanding of situations that could lead to genocide and improving cooperation on preventive measures.

Swift and decisive action

39. By “action” to prevent genocide, the Secretary-General meant a continuum of steps, which may include military action. But the latter should always remain a measure of last resort, to be used only in extreme cases. There is a need for guidelines on how to identify such extreme cases and how to react to them. Such guidelines would ensure that a real danger of genocide is not ignored when it does arise. They would also provide greater clarity, and thus help to reduce the suspicion that allegations of genocide might be used as a pretext for aggression. A serious attempt to provide such guidelines was made by the International Commission on Intervention and State Sovereignty referred to in paragraph 28 above. Beyond the recognition of an existing responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity, the Outcome document of the High-level Plenary Meeting of the sixtieth session of the General Assembly stressed the need for the General Assembly to continue consideration of this responsibility to protect.

40. For his part, the Special Adviser on the Prevention of Genocide has noted repeatedly that the protection of populations at risk of massive or serious violations of human rights and humanitarian law will sometimes require deployment of international forces, both military and police forces. Occasionally the only way to prevent a humanitarian catastrophe will be to order such deployment regardless of the consent of the local authorities. We must be ready to take that ultimate step, but we must also act with a sense of responsibility not to make matters worse; recent examples of non-consensual use of force do not give any sense of comfort that such actions will always help and never hurt the innocent. For the most part, however, it is possible to deploy international protective forces with the consent of the Government involved, and if that possibility is available it will always be preferable.

41. In all cases, it is important to pursue the resolution of conflicts that can deteriorate into genocide. Peace offers the ultimate prevention of genocide, but in order to have that effect it must be a lasting peace, one that achieves a significant reconciliation and that is more than a mere cessation of hostilities. Most importantly, it must be a peace that addresses the danger of spoilers in the peace process, while not rewarding them with impunity. The resolution must address open wounds in societies that could erupt in future conflict down the road. In other words, what we must strive for is peace with justice.

Observations

42. The prevention of genocide presents the international community with the challenge of identifying the warning signs of a deteriorating situation and mobilizing the necessary support for action. The United Nations Secretariat is committed to overcoming the deficiencies that in the past have led to failures to act in the face of signs of impending danger. The recognition by States Members expressed in the Outcome document of the High-level Plenary Meeting of the sixtieth session of the General Assembly (General Assembly resolution 60/1), of the responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity represents an important step in advancing our common determination to prevent genocide. The General Assembly’s consideration of the responsibility to protect and its implications will be important to help translate this responsibility into practice.

Annex

POSSIBLE WARNING SIGNS THAT MIGHT LEAD TO GENOCIDE

The following preliminary list contains possible warning signs that could indicate situations that, if not prevented or halted, might lead to genocide:

1. The existence of a national, ethnic, racial or religious group(s) at risk

Warning signs could include: (a) a pattern of discrimination with the purpose or effect of impairing the enjoyment of certain human rights; (b) exclusionary ideologies that purport to justify discrimination; (c) specific identification of groups and their association with a specific political identity or opinion (including possible compulsory identification or registering of group membership in a way that could potentially lead to the group being targeted in the future); and (d) demonization of groups in political or social discourse.

2. Violations of human rights and humanitarian law, which may become massive or serious

These include: (a) armed conflict in which violations of international humanitarian law disproportionately affect a specific group (e.g. intentional massacre of unarmed civilians, civilian targeting during military campaigns, one-sided physical brutality); (b) violations of civil and political rights affecting a specific group (e.g. murder - particularly directed against community leaders - torture, mutilation, rape and sexual violence, abduction, population movement/ethnic cleansing, expropriation, destruction of property, looting, lack of freedom of speech, press, assembly or religion); (c) serious or massive violations of economic, social and cultural rights (e.g. destruction of subsistence food supply, denial of water or medical attention, man-made famine, redirection of aid supplies); (d) instances of discrimination (e.g. access to work and resources, political marginalization, restricted movement, education); and (e) a climate of impunity in which these events unfold.

3. Additional warning signs

Warning signs also include: (a) lack of institutional framework for individuals within the territory and subject to the jurisdiction of a Member State to seek justice, redress and demand accountability; (b) concentration of power (economic/political) in one or few groups to the detriment of others; (c) existence of and support to militias that could carry out attacks against groups by proxy; (d) perceived or real external support to groups that could become targets due to being seen as "collaborators" with external enemies; (e) withdrawal of rights associated with citizenship from specific groups; (f) hate speech, incitement to violence, or humiliation of a group in the media; and (g) forced relocations, segregation, isolation, or concentration of a group.

4. A history of genocide or discrimination

A history of violence against a group may presage renewed episodes of repression or counter-movements against prior oppressors. Important elements that may indicate the weight of past experience are: (a) a history of vilification or dehumanization of a group; (b) the use of symbols, flags or markings to conjure previous abuse; (c) denial of past genocides and atrocities; and (d) celebration of instances of perceived or actual abuse of a group.
