Submission to the UN High-Level Panel On Threats, Challenges and Change
Conflict prevention and the protection of minorities

A. Introduction

1. The International Day of Reflection on the Genocide in Rwanda, 7 April 2004 marked 10 years since the international community failed to prevent what has been called ‘the preventable genocide’. It was preventable not least because it had been foreseen, in particular by the UN Commission on Human Rights’ Special Rapporteur on Summary, Arbitrary or Extrajudicial Executions in August 1993. It was also preventable because international standards existed which, if applied, may have met many of the concerns held by both majority and minority. Indeed, less than 16 months before, the UN General Assembly had adopted the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (UN Declaration on Minorities) which adds to and bolsters the main body of relevant international human rights law. At least from these perspectives, the genocide in Rwanda was not rooted in or precipitated by either a lack of international standards or of early warning of disaster. However, evidently, the absence of implementation of the standards in Rwanda and the failure of the international community, lacking the political will, to scrutinize or heed the available warning combined to render both standards and warning ineffective. If genocide, and indeed any violent conflict involving minorities, are to be prevented in the future, it seems imperative to rectify this situation. In view of this, the appointment by the Secretary-General of a Special Adviser on the Prevention of Genocide is to be welcomed.

2. The Secretary-General’s call to move the United Nations from a culture of reaction to a culture of prevention is also a necessary and welcome development. More recent calls from the Secretary-General for consideration of the establishment of new mechanisms demonstrate his appreciation of the fact that such a cultural transformation requires institutional development and new operational arrangements and practices. Indeed, the creation of modest but well-tailored mechanisms, supported by appropriate Secretariat arrangements, may well deliver substantial gains in effective outputs with limited additional resource expenditures.

3. Important among the Secretary-General’s initiatives has been his appointment in November 2003 of a distinguished High-Level Panel tasked to recommend clear and practical measures to ensure effective collective action to challenges ahead in the field of peace and security. The Panel is mandated to make a broad analysis of this field and to extend its analysis and recommendations to other issues and institutions insofar as they have a direct bearing on future threats to peace and security.

4. This paper aims to provide the High-Level Panel with some concrete ideas that would enhance the United Nations capacity to address effectively the interconnected dimensions of the protection of minorities and the prevention of violent conflict. In concurrence with the recent suggestions of the Secretary-General, it is asserted that: 1) new mechanisms must be created, and 2) existing capacities must be enhanced.

5. Specifically, the new Special Adviser on the Prevention of Genocide must have a broad mandate to address situations of tension early, before they manifest any element of an actual genocide, and the post should be provided with adequate funds and support staff. An independent expert committee to supervise compliance with the UN Convention on the Prevention and Punishment of the Crime of Genocide (Genocide Convention) should be created. The Office of
6. Genocides do not just happen. They are preceded by social developments and structures that divide societies deeply and seed violence. By definition, they are the result of dehumanizing politics aimed at defined groups. If genocide is to be prevented, then such dehumanizing politics, whatever its origin, must be rejected and counter-acted. At a minimum, vulnerable groups must be protected, and this is the precondition for the prevention not just of genocide, but of any kind of violent conflict involving minorities. In the light of the end of the Second World War, it was broadly understood that universal respect for human rights was the minimum requirement of such protection. But sustainable prevention requires the development of practical and dynamic ways for groups to live together – at least peacefully to co-exist and in time to integrate on the basis of shared values and interests. Essentially, this implies entrenchment of the rule of law based on the full and equal respect for human rights, including the rights of persons belonging to minorities, and governance for the good of the whole population.

7. Put the other way, the roots of future conflict are inherent in systemic and systemic discrimination and policies of exclusion, disregard and humiliation, if not repression or oppression. As the Minorities at Risk Project of the Center for International Development and Conflict Management, University of Maryland, has demonstrated, grievance has a tendency, in time, to mobilize, often violently. Indeed, the correlation of violations of human rights, especially the rights of minorities, with violent conflict, is too obvious and widespread to be ignored. This is true both within and, increasingly, between States as the effects of internal conflicts spill across borders in various ways, ranging from refugee flows to illicit trafficking, and even to conflagration, as neighboring territories and peoples become engaged. Of course, this is to say no more than is stated in the Preamble and Article 1 of the Charter of the United Nations where the link between respect for human rights and threats to peace and security are expressed in the determination to “save succeeding generations from the scourge of war”.

8. The need to address the roots of violent conflict involving minorities requires examination of various contested cultural, economic, political and social relations. Questions of identity, such as the use of language and the enjoyment of culture, are central among these. Identity is at the heart of human dignity and embodies rights that should be enjoyed on an equal footing by all human beings. The principles of non-discrimination and effective participation in public life (especially with regard to matters affecting oneself) both protect minority groups and ensure that their voices will be heard in public decision-making. In this respect, many good practices have been developed by States around the world, contributing to good governance, stability and prosperity. Increased efforts should be directed also to ensure the economic participation of marginalized groups by means of addressing their lack of equal economic opportunities and inequities in the distribution of resources.

9. Unfortunately, some governments remain reluctant or even hostile towards these ideas. There are perceptions, commonly based on fear, that implementing the rights of persons belonging to minorities may fuel conflicts and that the best way to maintain unity is to suppress minority identities, limit their participation and hope that their voices will fade as they are absorbed or overwhelmed by the majority. There may be fears of upsetting majority communities, especially in situations of tension. However, the costs and risks of such policies are many and manifest, including, in the extreme case, genocide. It is, therefore, crucial for governments to find ways to overcome the fears which lay at the base of such policies, and the United Nations has a role to play in working with them in this regard, for example through its Technical Cooperation Programmes.

10. That the systematic or systemic violation of human rights, especially the rights of persons belonging to minorities, is at the root of violent conflict involving minorities, is not merely a theoretical or scholarly proposition. There exists substantial evidence that the effective implementation of the rights of persons belonging to minorities contributes to the political and social stability of the States in which they live. As the Minorities at Risk Project...
The international concern about preventive inter-ethnic violent conflict has been articulated as comprising a “responsibility to protect”. In particular, Kofi Annan welcomed this clarification by which, in his words, “we now understand that the issue is not one of a right to intervention, but rather of a responsibility – in the first instance, a responsibility of all States to protect their own populations, but ultimately a responsibility of the whole human race, to protect our fellow human beings from extreme abuse wherever and when ever it occurs”. 11 Unfortunately, the initial discussion around the “responsibility to protect” has mistakenly focused on armed intervention, skipping over the range of available diplomatic and co-operative approaches that the UN Charter commends. It seems both logical and obvious that greater efforts should be directed toward non-coercive and preventive mechanisms that are likely to be more effective and have fewer negative repercussions. Amongst others, the OSCE High Commissioner on National Minorities, Rolf Ekeus, has argued that there is also a “responsibility to prevent.”

C. The protection of minorities as a means to prevent violent conflict and genocide

12. It is axiomatic that the prohibition of genocide entails respect for the right of national, ethnic, linguistic and religious groups to exist. As such, the duty of States to protect the existence of such groups and their identities (and to encourage conditions for the promotion of their identities), as prescribed in Article 1.1 of the UN Declaration on Minorities, is a corollary to the duty of States to give effect to the Genocide Convention, as prescribed by Article 5 thereof. Indeed, the Declaration on Minorities captures the spirit of the Genocide Convention in that it emphasizes that mere physical existence is not enough. Rather, the imperative of equal lives with dignity entails respect of and support for the further rights of minorities to use their own languages, enjoy their cultures, profess and practice their religions and participate effectively in public life. Following this logic, the UN Secretary-General has stated that “We must protect especially the rights of minorities, since they are genocide’s most frequent targets”.

13. It is important in this context to underline that the rights of persons belonging to minorities form an integral part of the corpus of international human rights law. They are not privileges, but rights that aim to overcome discrimination and achieve for persons belonging to minorities equality in law and in fact. It is also evident that certain human rights to be enjoyed by all persons are particularly important for persons belonging to minorities. Not least among these are the rights not to be discriminated against, to be equal before the law, and to enjoy fully the freedoms of expression, association and assembly. In pluri-lingual, pluri-cultural and pluri-religious environments, it is often disputes over the effective enjoyment of such rights and freedoms that constitute the core of conflict. More generally, disputes often centre on claims for equal opportunities in both the public and private spheres of life. These are complex matters, which require examination in the contexts of specific cases.

14. While each situation is unique, and the position of minorities may never be presumed in terms of identification of their own needs and desires, it seems apparent that there needs to be greater international attention given to the protection of minorities in general. Notwithstanding broad recognition of this need, there has (until the recent establishment of a Special Adviser) been no dedicated mechanism within the United Nations relating to minorities or genocide prevention which has a mandate to follow up on communications pointing to violations of minority rights. At the regional level, particularly in Europe, mechanisms have been developed to act from both perspectives, i.e. to provide a general regime in support of the effective implementation of minority rights in the context of, notably, the Council of Europe’s Framework Convention for the Protection of National Minorities, and to act in cases of threats to peace and security specifically in the work of the High Commissioner on National Minorities (HCMN) of the Organization for Security and Cooperation in Europe (OSCE).

Other significant and complemen-
Another issue that has arisen within MRG’s work is that national and international development processes often fail to consider the concerns and rights of minorities; for example, an education programme may ignore the need to provide education in the minority language, or a minority community may be forcibly removed from land earmarked for development projects. Where tensions between communities already exist, these issues may exacerbate them and increase the risk of violent conflict. MRG is calling on governments, development agencies and international financial institutions to work to ensure that development processes adequately address the concerns of minorities, and benefit all communities. This means ensuring that minority communities can participate effectively in the design, implementation and evaluation of development programmes affecting them. MRG supports the Secretary-General’s recommendation that: ‘the best way to prevent [conflict] is to promote healthy and balanced economic development, combined with human rights, minority rights and political arrangements in which all groups are fairly represented.’

D. Lessons from inter-ethnic conflict prevention elsewhere: the example of the OSCE High Commissioner on National Minorities

16. As the High-Level Panel is asked to base its suggestions following a thorough assessment of existing approaches, instruments and mechanisms, it is important to take full note of the innovative approach and highly successful experience of the High Commissioner on National Minorities (HCNM) of the OSCE in preventing inter-ethnic conflict at the earliest possible stage. Five years ago, at the 1999 OSCE Summit held in Istanbul, the United Nations Secretary-General commended the HCNM for his work and called upon other inter-governmental organizations to consider establishing a similar institution. The HCNM’s problem-solving, human rights-informed approach combines preventive diplomacy, policy advice and technical (often legal) assistance, including norm clarification, in addressing various situations where the practical consequences of leaving problems non-addressed or unresolved may well lead to violent conflict. While this is a particular experience in a specific European context, the Secretary-General was right that it is an example well worth considering by others, including the United Nations.

17. Among the valuable lessons to be learned from the example of the HCNM is the effectiveness of such a co-operative mechanism, acting through quiet diplomacy, and directed by a person of integrity and skill. The HCNM also demonstrates the value of broad and direct contacts, including at the highest level of authority, which is the basis of the confidence needed to advance useful advice and suggestions. Similarly, the effective gathering and expert analysis of reliable information informs the processes of dialogue, advice and counsel. By providing timely and sensitive assistance to governments, the problem-solver must have legitimacy and be respected by all actors involved, including in particular the policy- and lawmakers, providing them the political space to find and adopt appropriate and sustainable solutions. The idea also relies upon having a highly respected and credible High Commissioner with proven experience of international relations and an understanding of governmental responsibilities, burdens and challenges.

18. The HCNM was mandated to provide early warning and, as appropriate, to take early action under the guidance of the OSCE Chairmanship. Over time, the institution of the HCNM has accumulated knowledge and expertise, which constitute an institutional memory and asset of unique value not only for the OSCE but also for other European organizations, such as the Council of Europe and the European Union and its Commission, as well as for all member States individually. As such, the Office of the HCNM is now widely viewed as a useful source of practical assistance in constructively addressing various issues relating to the management of diversity and, more specifically, to the root causes of inter-ethnic tension and conflict.

19. The experience of the HCNM is clearly one of advanced international co-operation both in terms of its mandate and its practical functioning. It is fully compatible with the international co-operation set out in the Charter of the United
Nations. Indeed, the UN Sub-Commission on the Promotion and Protection of Human Rights has in recent years endorsed the recommendations of its Working Group on Minorities that consideration be given by the United Nations to the appointment of a similar mechanism, and that regional organizations explore the possibility of establishing institutions similar to the HCNM. 19

E. Building effective conflict prevention capacity within the UN

20. At present, the only UN body addressing minority issues directly is the Working Group on Minorities (WGM), a sub-body of the UN Sub-Commission on the Promotion and Protection of Human Rights, which was established in 1995. The WGM has played a role in fostering dialogue between minorities and governments, including through the development of regional workshops and a recent praxis of conducting in-country visits upon invitation. Importantly, the WGM has further provided a useful interpretation, clarification and development of standards pertaining to minorities through a commentary to the UN Declaration on Minorities.20 However, the WGM is severely under-resourced with only five meeting days per year, and the support of two staff members in the Office of the High Commissioner for Human Rights (OHCHR). A fund to support the participation of NGO representatives in the WGM was only created this year, and it is as yet unclear which States will contribute to it and how much. It is clearly not equipped to perform conflict prevention work in a systematic and timely manner. Beyond the WGM, there has been no central location in the UN system for the collection and systematization of available information, not to mention its careful analysis. This is a missed opportunity for effective early warning and action. Notably, the UN system as currently organized does not make effective use of information from its many human rights mechanisms and field presences to provide early warning for security mechanisms. This compartmentalization of human rights from security concerns was partly responsible for the failure in the case of Rwanda to transform early warning into early action by the Security Council and the Secretariat.

21. Although the United Nations and its specialized agencies already possess considerable capacity to prevent violent conflict involving minorities, it is so far less than effectively employed. To achieve effective conflict prevention requires steps to be taken with regard to the handling and analysis of already available information and the creation of effective mechanisms for action. This requires coordination and expertise.

22. As a global organization with offices and contacts throughout the world, the United Nations receives and collects an enormous quantity of information on a daily basis. Information comes to the United Nations from third parties, but it is also collected by United Nations staff, in the conduct of their professional activities. Certainly, there is a tremendous range of specificity, and the breadth in information sources implies varying degrees of veracity. In relation to the position of minorities and inter-community relations, information is available to (and sometimes produced by) specialized agencies responsible for development, health, refugees, etc., including information specifically concerning violations of the rights of persons belonging to minorities as submitted to supervisory bodies (i.e. human rights treaty bodies and special procedures) or the Office of the High Commissioner for Human Rights.

23. No doubt there remains room for improvement in the collection of information relating to minorities, especially its disaggregation, including in terms of gender. However, on the assumption that the already available information could be sorted and compiled with a view to producing a fair picture of the situation of minorities and inter-community relations in much of the world, it requires a higher level of analysis to assess the risks of conflict and to pinpoint its causes. While one could imagine, and MRG would welcome, an annual report of the United Nations on the State of Minorities in the World, risk assessment is not only more complex but also more sensitive. Not least, it requires political awareness and expert knowledge of context, which enables one to judge whether technically, determined facts (such as with regard to political representation) are salient in the particular situation, never mind that they may (or may not) be a potential cause of conflict. This is specialized work of great importance. It requires specific expertise with skills to process information quickly while distilling predictive elements and suggesting appropriate steps to counter-act threats in the short, medium and long terms.

24. To move from a culture of reaction to a culture of prevention fundamentally requires to become action-oriented at an early stage. As such, information gathering, systematization, analysis and even reporting (both publicly and confidentially)
are not enough. Ultimately, the United Nations needs a mechanism that can act, independently and impartially, at least to warn and, better, to offer services to address tensions and sources of conflict before they become violent. Thus, an effective conflict prevention capacity must have several institutional and operational elements, fitting in the relevant parts of the Organisation.

25. The full potential of the UN to prevent violent conflict involving minorities and similar communities will be developed over time in the course of work and the accumulation of experience. Certainly, more activities in the field, which build regional and local capacity, including institution building, need support. There is also a need to examine successful experiences elsewhere, notably within the OSCE, with a view to drawing precise lessons about the transferability of that experience or elements thereof. The creation of new mechanisms and focused functions within the UN would no doubt contribute also to these developments.

26. The key principles put forward in this paper are early preventive action and cooperative engagement. As the current situation in Darfur shows, by the time violence breaks out, the conflict has developed its own remorseless dynamic, diplomatic engagement with the government typically proves futile, and the international community is often left with only one option (military intervention. Thus, action must come much earlier, and to be effective, such action requires considerable co-operation. The cooperative approach actually enhances, rather than threatens, the role of the state as an effective actor in addressing non-traditional security threats.

Recommendations

The High-Level Panel should consider forwarding the following recommendations to the Secretary-General:

1. The Special Adviser on the Prevention of Genocide should be equipped with a broad mandate, as suggested by the Secretary-General when announcing the creation of the post, enabling him/her to address a broad range of situations where minorities are discriminated against and excluded. The mandate should allow for the Adviser to bring situations to the attention of the Secretary-General and the Security Council and make concrete recommendations for action, including diplomatic engagement with the government concerned. This should happen at a very early stage, when tensions are developing and have the potential to lead to violent conflict, even if the crisis stage seems to be some way off.

2. The effectiveness of the Special Adviser on the Prevention of Genocide should be evaluated after two or three years, with a view to the possible creation of a complementary mandate to include a focused preventive diplomacy element (for example a Special Representative of the Secretary-General), along the lines of the OSCE HCNM. The mandate would draw from the information gathering and public reporting of other bodies, and receive credible information from a variety of sources pointing to violations of the human rights of minority individuals and groups. It would coordinate the efforts of the relevant UN bodies, in particular the OHCHR and the UN secretariat in New York, and offer reliable, timely information to the Secretary-General and the Security Council with regard to possible or developing crises. Where necessary he/she would engage in preventive diplomatic activities through visits with the aim of establishing a structured dialogue between the different parties in a particular situation, and proposing solutions to tensions in line with international human rights standards. Importantly, with a Special Representative engaged on a full-time professional basis and located at UN Headquarters in New York, the Secretary-General would have more time to focus his attention on specific, targeted diplomatic conflict prevention activities.

3. In his address to the conference “Preventing Genocide: Threats and Responsibilities” in Stockholm, on 26 January 2004, the UN Secretary-General suggested the innovative idea of establishing a Committee on the Prevention of Genocide among States Parties to the Genocide Convention. Consistent with the practice under other human rights treaties, such a body composed of independent experts elected by the Parties could review periodic reports from States and make recommendations for action. This suggestion seems hardly to be contestable. However, to maximize its effectiveness, a concerted effort needs also to be made to achieve universal ratification of the Genocide Convention, which, remarkably, remains ratified by only 133 of the 192 Member States of the United Nations. To make the Convention even more effective, a prospective Optional Protocol (as would be necessary to establish a supervisory Committee) should also include a procedure for the Committee to receive and consider communications and petitions from alleged victims (individuals or groups) or their representatives. Such a treaty-monitoring body with an individual and collective
complaints procedure would provide valuable authoritative decisions and develop a soft-law jurisprudence further defining and clarifying, for example, which specific acts constitute genocide and under which circumstances there is a duty upon States to take action, including prosecution of perpetrators involved in genocide either directly or indirectly.

4. The Office of the High Commissioner for Human Rights (OHCHR) and the specialised agencies of the UN should work to strengthen capacity for early warning and early action by improving information gathering and analysis of minority rights violations, and institutionalising links with the UN Secretariat in New York (in particular the Special Adviser on the Prevention of Genocide), possibly by appointing a Special Adviser on Minorities to the High Commissioner. The Special Adviser would gather, systematize and analyse, from a minority rights perspective, the information available from the extensive human rights mechanisms based in the OHCHR, and ensure the all-important flow of information between human rights and conflict prevention activities.

5. The OHCHR and other relevant UN organs and specialized agencies, when implementing development assistance and Technical Cooperation Programmes, should incorporate guidance on the effective implementation of the UN Declaration on Minorities, and the design of appropriate domestic legislation, policies and programmes accommodating minority concerns in cooperation with all concerned. Such programmes should also focus on improving the compilation and availability of data disaggregated according to minority groups and gender.
working to secure the rights of minorities and indigenous peoples

Notes

3 See, inter alia, UN Secretary-General’s report to the General Assembly, 1999, UN. Doc. A/54/1.
7 It should be noted that the UN Committee on the Elimination of Racial Discrimination has an early warning mechanism, but that it can only be triggered when the Committee sits (twice a year), and then only in regard to a state which is a party to the International Convention on the Elimination of all Forms of Racial Discrimination.
8 Article 9 of the UN Declaration on the Rights of persons Belonging to National or Ethnic, Religious and Linguistic Minorities states that UN specialized agencies “shall contribute to the full realization of the rights and principles set forth in this Declaration”.
10 Gurr, T. D. (see note 9).
11 Speech by UN Secretary-General Kofi Annan (see note 5).
12 Speech by UN Secretary-General Kofi Annan (see note 5).
15 Speech by the UN Secretary-General to the OSCE Summit in Istanbul, 18 November 1999.
17 See also IPA Workshop Report, ‘Sharing Best Practices on Conflict Prevention: the UN, Regional and Subregional Organizations, National and Local Actors’, 2002, Alexandria, rapporteur: S.J. Lodge, p. 6. While noting the particular historical context of regional integration from which the HCNM institution emerged, it is concluded that, in view of the similarity of challenges around the world, HCNM practices and approaches would be of use also outside the OSCE system.
18 The OSCE High Commissioner has addressed situations including the Russian-speaking minority and ethnic Estonians and Latvians in those Baltic states; ethnic Russians and other groups in Kazakhstan, Kyrgyzstan, and Ukraine; Albanians and other groups in Macedonia; Greeks and Albanians in Albania; and Hungary and the neighboring states of Slovakia, Romania, Yugoslavia and Ukraine, where Hungarians are minorities. The work of the High Commissioner has facilitated dialogue and helped encourage local roundtables, and specific recommendations have been on national legislation affecting minorities, such as language and citizenship laws, the establishment of special governmental bodies, or an ombudsman dealing with minority issues. General recommendations to assist state authorities have been drawn up in consultation with groups of independent and internationally recognised experts in the fields of language, education, public participation and the use of minority languages in the broadcasting media. See www.osce.org/hcnm.
20 See the Commentary on the UN Declaration of The Rights of Minorities, by Asbjørn Eide, E/CN.4/Sub.2/AC.5.2001/2.
21 Minority Rights Group, Minorities and Conflict Prevention: The Case for a Special Representative, March 2002, ISBN 1 8976 93 49 4. MRG is part of a coalition lobbying for such a mechanism, with the International Movement Against All Forms of Discrimination and Racism, the International Federation of Human Rights Leagues (FIDH), and the Bahá’í International Community. MRG is also a member of the International Campaign to End Genocide, which has been lobbying for a dedicated genocide prevention body within the UN Secretariat.

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Minority Rights Group International (MRG) is a non-governmental organization (NGO) working to secure the rights of ethnic, religious and linguistic minorities and indigenous peoples worldwide, and to promote cooperation and understanding between communities. MRG has consultative status with the United Nations Economic and Social Council (ECOSOC) and observer status with the African Commission on Human and Peoples’ Rights. MRG is registered as a charity, no. 282305, and a company limited by guarantee in the UK no 1544957.

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