

Papers in the Theory and Practice
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**The United Nations' Struggle against
Racism and Racial Discrimination**
**The Special Rapporteur on Contemporary Forms of
Racism, Racial Discrimination, Xenophobia and Related
Intolerance**

By Bernhard Schäfer
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PAPERS IN THE THEORY AND PRACTICE OF HUMAN RIGHTS

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The United Nations' Struggle against Racism and Racial Discrimination

The Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance

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PREFACE

This study by Bernhard Schäfer of the United Nations Human Rights Commission's Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination Xenophobia and Related Intolerance was begun in 1999 as a dissertation for the LLM in International Human Rights Law. He has since updated and expanded it for publication as part of the Human Rights Centre's contribution to the UN Year of Mobilisation against Racism, Racial Discrimination, Xenophobia and Related Intolerance, 2001 and the World Conference on Racism and Related Intolerance to be held in Durban 31 August - 7 September 2001.

Thematic rapporteurs charged to study, respond to, and report on subjects of serious global human rights concern, are a vital part of the United Nations overall approach to the promotion as well as the protection of human rights. The Human Rights Commission appointed Maurice Glele-Ahanhazo (Benin) in December 1993 who has held the position since that date. This study is a detailed and scholarly examination of the activities of the Special Rapporteur to date under his mandate and offers an assessment of his contribution to the struggle to eliminate racism and racial discrimination. The study places the work of the Special Rapporteur in the context of UN efforts as a whole to combat racism over the last fifty years. It will come as little surprise to many that the authors main criticisms are directed at the lack of co-operation, communication and co-ordination between the office of the Special Rapporteur and other mechanisms, in particular the Committee on Racial Discrimination that has responsibility for implementation of the Convention on the Elimination of Racial Discrimination.

The resurgence of racism in its many dimensions and manifestations is now a global human rights challenge. The Durban World Conference has the opportunity to achieve consensus around practical policies to stem and to reverse this evil. One priority should be that of ensuring that the organisations and machinery established at the global and regional levels to combat racism work together rather than in conflict one with another. The specific recommendations of this study address that need and demand attention at Durban.

Kevin Boyle
Former Director, Human Rights Centre
University of Essex

Table of Abbreviations

For full reference of UN resolutions, see Selected United Nations Documents. For citation of literature and full reference of periodical articles, see Bibliography.

| | |
|------------------------|---|
| ACHPR | African Charter on Human and Peoples' Rights |
| ACHR | Pact of San Jose, Costa Rica [American Convention on Human Rights] |
| AJIL | American Journal of International Law |
| <i>A/sess. no./...</i> | Document of the General Assembly of the United Nations |
| AustYBIL | Australian Yearbook of International Law |
| BYIL | British Yearbook of International Law |
| CERD | Committee on the Elimination of Racial Discrimination |
| CERD/... | Document of the Committee on the Elimination of Racial Discrimination |
| CHR/Commission | United Nations Commission on Human Rights |
| CoE | Council of Europe |
| COM | Commission of the European Communities documents |
| Dec | Decision |
| Doc | Document |
| E/... | Document of the Economic and Social Council of the United Nations |
| EafrLRev | East African Law Review |
| EC | European Community/-ies |
| ECHR | Convention for Protection of Human Rights and Fundamental Freedoms [European Convention on Human Rights] |
| E/CN.4/... | Document of the Commission on Human Rights of the United Nations |
| E/CN.4/Sub.2/... | Document of the Sub-Commission on Prevention of Discrimination and Protection of Minorities of the United Nations |
| ECOSOC | Economic and Social Council of the United Nations |
| ECRI | European Commission against Racism and Intolerance (CoE) |
| <i>eg</i> | <i>exempli gratia</i> (for example) |
| EHRLR | European Human Rights Law Review |
| EHRR | European Human Rights Reports |
| EPIL <i>vol.</i> | Encyclopedia of Public International Law |
| <i>et al</i> | <i>et alii</i> (and others) |
| <i>Etc</i> | <i>et cetera</i> (and so on) |

| | |
|-------------------------|--|
| <i>et seq</i> | <i>et sequentes</i> (and following) |
| ETS <i>no</i> | European Treaty Series |
| EU | European Union |
| EUMC | European Monitoring Centre on Racism and Xenophobia (EU) |
| Fn | footnote |
| GA | General Assembly of the United Nations |
| GaJICL | Georgia Journal of International and Comparative Law |
| Geneva Conventions I-IV | 1949 Geneva Conventions (see Table of Treaties) |
| HCHR | United Nations High Commissioner for Human Rights |
| HLRev | Harvard Law Review |
| HowLJ | Howard Law Journal |
| HRLJ | Human Rights Law Journal |
| HRQ | Human Rights Quarterly |
| ICCPR | International Covenant on Civil and Political Rights |
| ICERD | International Convention on the Elimination of All Forms of Racial Discrimination |
| ICC Statute | Rome Statute of the International Criminal Court |
| ICESCR | International Covenant on Economic, Social and Cultural Rights |
| ICJ | International Court of Justice |
| ICLQ | International and Comparative Law Quarterly |
| IGO | Intergovernmental Organisation |
| IGYB | International Geneva Yearbook |
| IHRR | International Human Rights Reports |
| ILM | International Legal Materials |
| ILO | International Labour Organization/Office |
| ILSA-JICL | ILSA – Journal of International and Comparative Law |
| IsraelYBHR | Israel Yearbook on Human Rights |
| JILP | Journal of International Law and Policy |
| LNTS | League of Nations Treaty Series |
| MichJIL | Michigan Journal of International Law |
| MLR | Modern Law Review |
| n | note |
| NGO | Non-governmental organisation |
| NQHR | Netherlands Quarterly of Human Rights |
| OAS | Organisation of American States |
| OAU | Organization of African Unity |
| OHCHR | Office of the United Nations High Commissioner for Human Rights (formerly Centre for Human Rights) |

| | |
|---------------------|---|
| OJ <i>no</i> | Official Journal of the European Communities (L= legislation, C= Information and Notices) |
| Programme of Action | Programme of Action for the Third Decade to Combat Racism and Racial Discrimination (1993-2003). |
| Protocols I and II | 1977 Protocols Additional to the Geneva Conventions (see Table of Treaties) |
| Revue des Droits | <i>Revue des Droits de l'Homme</i> |
| SAJHR | South African Journal on Human Rights |
| SC | Security Council of the United Nations |
| Series A <i>no</i> | Publications of the European Court of Human Rights, Series A – Judgments and Decisions |
| Special Rapporteur | Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance |
| SR | Summary Records |
| Sub-Commission | Sub-Commission on Prevention of Discrimination and Protection of Minorities; since 1999: Sub-Commission on Promotion and Protection of Human Rights |
| TEC | Treaty Establishing the European Community |
| TexasILJ | Texas International Law Journal |
| Third Decade | Third Decade to Combat Racism and Racial Discrimination |
| UDHR | Universal Declaration of Human Rights |
| UN | United Nations Organization |
| UN Charter | Charter of the United Nations |
| UNESCO | United Nations Educational, Scientific and Cultural Organization |
| UNHCR | United Nations High Commissioner for Refugees |
| UNICEF | United Nations Children's Fund |
| UNTS | United Nations Treaty Series |
| YUN | Yearbook of the United Nations |

Table of Treaties and Declarations

Treaties

- 1926 Slavery Convention of 25 September 1926, 60 LNTS 253, entered into force 9 March 1927.
- 1945 Charter of the United Nations of 26 June 1945, 15 UN Conference on International Organization Documents 335 (1945), entered into force 24 October 1945, as amended.
- 1948 Convention on the Prevention and Punishment of the Crime of Genocide of 9 December 1948, 78 UNTS 277, entered into force 12 January 1951.
- 1949 Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field [I], - for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of Armed Forces at Sea [II], - Relative to the Treatment of Prisoners of War [III], - Relative to the Protection of Civilian Persons in Time of War [IV] of 12 August 1949, 75 UNTS 31, 85, 135 and 287, entered into force 21 October 1950.
- 1950 Convention for Protection of Human Rights and Fundamental Freedoms [European Convention on Human Rights] of 4 November 1950, ETS 5 = 213 UNTS 221, entered into force 3 September 1953, as last amended by Protocol No 11 of 11 May 1994, ETS 155, entered into force on 1 November 1998.
- 1951 Convention relating to the Status of Refugees of 28 July 1951, 189 UNTS 150, entered into force 22 April 1954.
- 1953 Protocol amending the Slavery Convention of 7 December 1953, 182 UNTS 51, entered into force 7 December 1953.
- 1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery of 7 September 1956, 226 UNTS 3, entered into force 30 April 1957.
- 1957 Treaty Establishing the European [Economic] Community of 25 March 1957, entered into force 1 January 1958, as last modified by the Treaty of Amsterdam of 2 October 1997, entered into force 1 May 1999, consolidated version: OJ C 340, 10 November 1997, 173.
- 1957 Convention concerning the Protection and Integration of Indigenous and Other Tribal and Semi-Tribal Populations in Independent Countries [ILO Convention No 107] of 26 June 1957, 328 UNTS 249, entered into force 2 June 1959. [Revised by Convention 169]
- 1958 Convention concerning Discrimination in Respect of Employment and Occupation [ILO Convention No 111] of 25 June 1958, 362 UNTS 31, entered into force 15 June 1960.
- 1960 Convention against Discrimination in Education [UNESCO] of 15 December 1960, 429 UNTS 93, entered into force 22 May 1962.
- 1965 International Convention on the Elimination of All Forms of Racial Discrimination of 21 December 1965, 660 UNTS 195, entered into force 4 January 1969.
- 1966 International Covenant on Economic, Social and Cultural Rights of 16 December 1966, 993 UNTS 3, entered into force 3 January 1976.
- 1966 International Covenant on Civil and Political Rights of 16 December 1966, 999 UNTS 171, entered into force 23 March 1976.

- 1966 Optional Protocol to the International Covenant on Civil and Political Rights of 16 December 1966, 999 UNTS 302, entered into force 23 March 1976.
- 1969 Pact of San Jose, Costa Rica [American Convention on Human Rights] of 22 November 1969, 1144 UNTS 123, entered into force 18 July 1978.
- 1973 International Convention on the Suppression and Punishment of the Crime of Apartheid of 30 November 1973, A/RES/3068 (XXVIII), annex, 6 December 1973 = 13 ILM 51 (1974), entered into force 18 July 1976.
- 1977 Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), – , and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II) of 12 December 1977, 1125 UNTS 3 and 609, entered into force 7 December 1978.
- 1981 African Charter on Human and Peoples' Rights [Banjul Charter] of 27 June 1981, OAU Doc. CAB/LEG/67/3 Rev. 5 = 21 ILM 59 (1982), entered into force 21 October 1986.
- 1985 International Convention against Apartheid in Sports of 10 December 1985, 1500 UNTS 161, entered into force 3 April 1988.
- 1989 Convention concerning Indigenous and Tribal Peoples in Independent Countries [ILO Convention No 169] of 27 June 1989, 72 ILO Official Bulletin 59 = 28 ILM 1384 (1989), entered into force 5 September 1991.
- 1989 Convention on the Rights of the Child of 20 November 1989, A/RES/44/25, annex, 5 December 1989 = 28 ILM 1457 (1989), entered into force 2 September 1990.
- 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families of 18 December 1990, A/RES/45/158, annex, 25 February 1991 = 30 ILM 1521 (1991), not in force.
- 1998 Rome Statute of the International Criminal Court of 17 July 1998, A/CONF.183/9 = 37 ILM 1002 (1998), not in force.

Declarations

- 1948 Universal Declaration of Human Rights of 10 December 1948, GA Res 217 A (III), A/810, 71 (1948).
- 1959 Declaration of the Rights of the Child of 20 November 1959, GA Res 1386 (XIV), A/4354, 19 (1959).
- 1960 Declaration on the Granting of Independence to Colonial Territories and Peoples of 14 December 1960, GA Res 1514 (XV), YUN 49 (1960).
- 1963 United Nations Declaration on Elimination of all Forms of Racial Discrimination of 20 November 1963, GA Res 1904 (XVIII), YUN 344 (1963).
- 1978 Declaration on Race and Racial Prejudice [UNESCO] of 27 November 1978, UNESCO's Standard-Setting Instruments, No III.C.1. Encyclopaedia of Human Rights, 1223.
- 1985 Declaration on the Human Rights of Individuals who are not Nationals of the Country in which They Live of 13 December 1985, GA Res 40/144, 39 YUN 850 (1985).
- 1992 Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities of 18 December 1992, GA Res 47/135, annex, 46 YUN 723 (1992).
- 1993 Vienna Declaration and Programme of Action of 25 June 1993, adopted by the World Conference on Human Rights, Vienna, 14-25 June 1993, A/CONF.157/24 (Part I), III, 13 October 1993, 32 ILM 1663 (1993).

1994 Draft Declaration on the Rights of Indigenous Peoples of 20 April 1994,
E/CN.4/SUB.2/1994/ 2/Add.1.

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I INTRODUCTION *

“[A]ll forms of racism and racial discrimination, particularly in their institutionalised form, such as apartheid, or resulting from official doctrines of racial superiority or exclusivity, are among the most serious violations of human rights in the contemporary world and must be combated by all available means”.¹ This was “once again” declared by the General Assembly of the United Nations in 1990 and repeatedly ever after.²

Since its creation in 1945, the UN has been engaged in the struggle against racism and racial discrimination in accordance with one of the organisation’s purposes to “achieve international co-operation ... in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion” (Article 1 (3) UN Charter).³ Despite the various efforts of the UN to combat racism and racial discrimination during the twentieth century, the ultimate aim, to eradicate racism and racial discrimination, has not been achieved. On the contrary, a resurgence of racism, racial discrimination, xenophobia and related intolerance and an increase of manifestations thereof is recognised around the world⁴ and extreme forms of these phenomena, like the genocide and the ethnic expulsions⁵ in Rwanda and the former Yugoslavia dominate daily news.

One has to ask, therefore, what impact the UN’s efforts have, whether the right measures have been taken, whether “all available means” have been used, whether the activities and their impact are regularly evaluated and necessary changes in the approach to the problem made; whether there is sufficient co-operation between the relevant mechanisms and co-ordination of their activities; and what new efforts are undertaken to address the resurgence of racism, racial discrimination, xenophobia and related intolerance.

This paper neither attempts to nor can it address all of these questions. However, they are raised in order to set a framework of thoughts that should be kept in mind when looking at any of the mechanisms of the UN established in the struggle against racism and racial discrimination.

This study will examine one such mechanism, the Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance (hereinafter the Special Rapporteur), a relatively new initiative established within the context of the recognised resurgence of these phenomena. The mandate of the Special Rapporteur was adopted by the Commission on Human Rights as a thematic procedure in 1993.⁶ Thematic procedures are intended to deal with violations of specific types of human rights and to examine the phenomenon or phenomena in question, including the examination of individual

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¹ GA Res 45/105, para 1.

² See, eg, GA Res 53/132, para 1.

³ See also Articles 13 (1) (b), 55 (c), 56 and 76 (c) and, with regard to human rights in general, 62 (2) and 68 UN Charter, and the GA’s conviction in, eg, GA Res 53/132, preambular para 2, that “racism and racial discrimination constitute a total negation of the purposes and principles of the Charter and the Universal Declaration of Human Rights”.

⁴ *Infra* III.1.

⁵ It is unfortunate that a demagogical *Unwort* like “ethnic cleansing” is still used also in official documents.

⁶ See *infra* III.1.

cases of alleged human rights violations, on a global basis.⁷ The first thematic procedure of the Commission, the Working Group on Enforced or Involuntary Disappearance, was established in 1980,⁸ followed by the adoption of three further mandates during the same decade⁹ and by a considerable increase of thematic mandates during the 1990s.¹⁰ Although the activities of the thematic procedures show certain similarities,¹¹ the terms of reference, as well as the implementation of the mandates vary considerably.¹² Their general task and importance is noted by the Commission in its latest resolution on the thematic procedures:

“... thematic procedures established by the Commission with regard to the consideration of questions related to the promotion and protection of all human rights, being a major achievement and representing an essential element of the United Nations efforts to promote and protect internationally recognized human rights, have an important role among its human rights monitoring mechanisms”.¹³

Before turning to the Special Rapporteur, an overview of the major activities of the UN in the field of racism and racial discrimination will be presented in order to place the mandate of the Special Rapporteur in context.

II THE UNITED NATIONS' STRUGGLE AGAINST RACISM AND RACIAL DISCRIMINATION - AN OVERVIEW

The following overview is by no means exhaustive. Its purpose is to indicate the broad scope of the subject under consideration, the many issues involved in this field and to show what has been and is being done by the UN in the struggle against racism and racial discrimination.

1. Declarations and Treaties

With the images of the atrocities committed by the Nazis against religious, ethnic, racial and other groups before and during the Second World War in mind, the first Convention adopted by the UN was the 1948 Convention on the Prevention and Punishment of the Crime of Genocide. One day later, on 10 December 1948, the GA adopted the Universal Declaration of Human Rights, proclaiming that “[a]ll human beings are born free and equal in dignity and rights”¹⁴ and that “[e]veryone is entitled to all the rights and freedoms set

⁷ In contrast to the country mechanisms of the Commission established to examine and monitor the human rights situation in specific countries or territories. Both are referred to as the “special procedures” of the Commission. For the background and development of these procedures, see Alston, 155-181.

⁸ CHR Res 20 (XXXVI) of 29 February 1980.

⁹ The Special Rapporteur on Summary or Arbitrary Executions (1982), the Special Rapporteur on Torture (1985), and the Special Rapporteur on Religious Intolerance (1986).

¹⁰ As of the end of 1999, the number of thematic mandates reached 21. For a list of all the mandates, see E/CN.4/2000/5, appendix I.

¹¹ *Eg* the work of the thematic rapporteurs and working groups generally includes: seeking and receiving information; asking governments to provide information concerning legislation and official practices and to comment on individual cases of alleged human rights violations; undertaking country visits, if invited; reporting to the Commission; and, where provided for in the mandate, “to respond effectively” to information.

¹² For the earlier mandates, see, Rodley, 8 HRQ 700-730 (1986) and Weissbrodt, 80 AJIL 685-699 (1986). For a recent comparison of seven thematic procedures, including the Special Rapporteur, see Rudolf, (2000) 543-561. On the Special Rapporteur, see also Rudolf, 395-455.

¹³ CHR Res 2000/86, preambular para 1.

¹⁴ Art 1 clause 1 UDHR.

forth in this Declaration, without distinction of any kind, such as race, colour, ..., national or social origin, ..., birth or other status.”¹⁵ The latter non-discrimination clause is repeated in Article 2 (1) of the ICCPR¹⁶ and Article 2 (2) of the ICESCR. The prohibition of racial discrimination is similarly found in, for example, Article 3 of the 1951 Convention Relating to the Status of Refugees or Article 2 (1) of the 1989 Convention on the Rights of the Child,¹⁷ both adopted under the auspices of the UN.

In addition to the Genocide Convention, the UN also addressed two other extreme forms of racism with declarations and treaties: slavery¹⁸ and apartheid. The international efforts against the apartheid regime in South Africa led to a proliferation of resolutions and declarations by the UN and to the adoption of the International Convention on the Suppression and Punishment of the Crime of Apartheid in 1973.¹⁹

Specialised agencies of the UN, particularly UNESCO and the ILO, also adopted declarations and conventions on the present subject, namely the 1960 Convention Against Discrimination in Education²⁰ and the 1958 Convention Concerning Discrimination in Respect of Employment and Occupation.²¹

Other declarations and treaties adopted on related topics are also of relevance to racism and racial discrimination, such as the 1960 Declaration on the Granting of Independence to Colonial Territories and Peoples,²² the 1985 Declaration on the Human Rights of Individuals who are not Nationals of the Country in which They Live, the 1990 International Convention on the Protection of the Rights of all Migrant Workers and Members of Their Families,²³ and the 1992 Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities.²⁴

The Rome Statute of the International Criminal Court²⁵ adopted under the auspices of the UN, is also of importance, as it establishes jurisdiction over, *inter alia*, the crime of genocide.²⁶

¹⁵ Art 2 clause 1 UDHR. See also Art 7 UDHR: “All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.”

¹⁶ See also Art 20 (2) and 26 ICCPR.

¹⁷ See also Principle 1 of the Declaration of the Rights of the Child.

¹⁸ See the 1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery and the 1953 Protocol amending the Slavery Convention of 1926.

¹⁹ See also the 1985 International Convention against Apartheid in Sports. On UN actions against apartheid see, *inter alia*, Baehr/Gordenker, 109-112 and Delbrück, 27-38, and references cited therein.

²⁰ UNESCO. See also the 1978 Declaration on Race and Racial Prejudice.

²¹ ILO Convention No 111. See also Convention No 169 concerning Indigenous and Tribal Peoples in Independent Countries of 1989 which revised the 1957 Convention No 107. On the UNESCO Convention and ILO Convention No 111, see, eg, Dore, 10 IJLP 303-310 (1981); McKean, 124-135; Nielsen, 14 NQHR 401-417 (1996); Njenga, 1 EAFrLRev 151-157 (1968).

²² Note also GA Res 2106 (XX), B of 21 December 1965 and Art 15 ICERD.

²³ Not in force.

²⁴ See the commentary prepared by Asbjørn Eide, E/CN.4/Sub.2/AC.5/2000/WP.1. See also the 1994 Draft Declaration on the Rights of Indigenous Peoples.

²⁵ Not in force yet.

²⁶ Art 5 (1) (a) ICC Statute. Note also Art 7 (1) (h) and (j) ICC Statute concerning persecution on racial grounds and the crime of apartheid. See also the relevant articles of the statutes established by SC Res 827 (1993) of 25 May 1993 and SC Res 955 (1994) of 8 November 1994: Art 4 and 5 (h) of the Statute of the International Criminal Tribunal for the former Yugoslavia, 32 ILM 1192 (1993), and Art 2 and 3 (h) of the Statute of the International Criminal Tribunal for Rwanda, 33 ILM 1602 (1994).

However, the central treaty in the struggle against racism and racial discrimination is the International Convention on the Elimination of all Forms of Racial Discrimination (ICERD). It was adopted in 1966,²⁷ following the Declaration made in 1963.²⁸

2. UN Machinery

2.1 Bodies Involved

As racism and racial discrimination is such a broad theme, influencing so many areas from education to international security, and because the prohibition of racial discrimination is included in so many declarations and treaties, the list of UN charter and treaty-based bodies and specialised agencies involved in the struggle against racism and racial discrimination is correspondingly long.

Among these involved are: the GA and the SC²⁹ (as principle organs), the Commission³⁰ (as a charter-based body), UNESCO and ILO³¹ (as specialised agencies), and the Human Rights Committee³² (as a treaty based body). Furthermore, the ICJ³³ has also been occupied with questions involving racism and racial discrimination.³⁴

The main charter-based body is the Sub-Commission and the main treaty-based body CERD. The functions of these two bodies will be briefly outlined in the following two sections.

²⁷ On the Convention in general and specific articles thereof, see Farrior, 5 ILSA-JICL 291-299 (1999); Lerner; Lerner, Group Rights and Discrimination, 45-74; Lerner, 22 IsraelYBHR 1-15 (1993); McKean, 152-165; Meron, 79 AJIL 283-318 (1985); Meron, Human Rights Law-Making in the UN, 7-52; Partsch, 14 Texas ILJ 191-250 (1979); Robertson/Merrills, 97-101; Schwelb, 15 ICLQ 996-1068 (1966).

²⁸ UN Declaration on the Elimination of All Forms of Racial Discrimination.

²⁹ Through resolutions and declarations, see, *eg*, the ample resolutions contained in A/CONF.119/15 (Part I)-(Part III) and the Decades and Programmes of Action proclaimed by the GA, *infra*. The first time the SC took formal action in a predominantly human rights issue was the reaction to the massacre in Sharpeville, South Africa, 21 March 1960, where 69 peaceful African demonstrators were killed and 180 others wounded, SC Res 134 (1960) of 1 April 1960. See further YUN 142-147 (1960).

³⁰ The issues of slavery, apartheid, racism and racial discrimination have been part of the Commission's agenda since its first session in 1947. See, *eg*, the many resolutions adopted by the Commission contained in A/CONF.119/15 (Part V). Especially the procedure established by ECOSOC Res 1235 (XLII) of 6 June 1967, authorising the Commission to examine information relevant to gross violations of human rights and fundamental freedoms, was predominantly directed at the struggle against racism, racial discrimination, and, especially, apartheid, as already apparent from its wording. These phenomena lead also to the first country specific procedure established by the Commission in 1967, Res 2 (XXIII), the *Ad Hoc* Working Group of Experts on Human Rights in South Africa. The Special Rapporteur discussed herein is not at least also a thematic special procedure of the Commission. For the Commission in general, see, *eg*, Alston, 126-210. The Commission presently also acts as the Preparatory Committee for the World Conference, see *infra*.

³¹ See, *eg*, the Declarations and Conventions adopted by UNESCO and the ILO, cited *supra*.

³² Through interpretation and supervision of the relevant ICCPR provisions. See especially General Comment 18, Non-discrimination, adopted on 9 November 1989 (37th session), HRI/GEN/1/Rev.1, 26 (1994). On the Human Rights Committee in general, see McGoldrick.

³³ The principle judicial organ of the UN, Art 92 UN Charter.

³⁴ See, especially: *Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide*, Advisory Opinion of 28 May 1951, ICJ Rep 1951, 15; *South-West Africa Cases* (Ethiopia v South Africa; Liberia v South Africa) (Second Phase), Judgment of 18 July 1966, ICJ Rep 1966, 6; *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)*, Advisory Opinion of 21 June 1971, ICJ Rep 1971, 6.

2.2 The Sub-Commission

The Sub-Commission on Prevention of Discrimination and Protection of Minorities was established in 1947 as a subordinate expert body of the Commission on Human Rights.³⁵ Although the main aim of the establishment was (as the title suggests) the prevention of discrimination and the protection of minorities, including racial discrimination, the functions of the Sub-Commission have been expanded considerably at the request of the Commission and ECOSOC, as well as on the Sub-Commission's own initiative.³⁶ That the Sub-Commission is concerned with far more than discrimination and minorities *per se* is now reflected in the fact that ECOSOC renamed the Sub-Commission in 1999 as the "Sub-Commission on Promotion and Protection of Human Rights".³⁷

The main contribution of the Sub-Commission with regard to racism and racial discrimination is, in accordance with its mandate, the undertaking of studies.³⁸ Of the many studies undertaken on or related to the subject,³⁹ the Study of Racial Discrimination in the Political, Economic, Social and Cultural Sphere⁴⁰ and the Study on Achievements Made and Obstacles Encountered During the Decades to Combat Racism and Racial Discrimination⁴¹ might be explicitly mentioned here.

Presently, the Sub-Commission is also contributing to the preparations for the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance.⁴²

2.3 CERD

The Committee on the Elimination of Racial Discrimination (CERD) is the main treaty-based body established under the auspices of the UN in the struggle against racial discrimination and racism.⁴³ CERD's main function is to supervise the states parties' implementation of the ICERD.⁴⁴ To this end, CERD has five tasks: to examine states parties' reports (Article 9); to consider inter-state communications (Articles 11

³⁵ For the terms of reference, as amended, see the Report of the Commission (1st session), E/259 (1947), para 19 and (5th session), E/1371 (1949), para 13. On the Sub-Commission in general, see, *eg*, Eide, 211-264; McKean, 72-81.

³⁶ Eide, 212-213: "... Sub-Commission, to which the Commission has come to turn for tasks far beyond its original terms of reference."

³⁷ Dec. of 27 April 1999.

³⁸ A further important contribution of the Sub-Commission was the drafting of the anti-discrimination provisions of the UDHR, namely Article 2, and its contribution to the drafting of the Declaration on the Elimination of all Forms of Racial Discrimination and the ICERD. See, *eg*, Koufa, 10 IGYB 54-55 (1996); Lerner, 4-5.

³⁹ See, *eg*, McKean, 94-97, and Koufa, 10 IGYB 55-56 (1996), both with further references.

⁴⁰ By Hernán Santa Cruz, revised and updated version presented in 1976, E/CN.4/Sub.2/370/Rev.1.

⁴¹ By Asbjørn Eide, E/CN.4/Sub.2/1989/8 and Add.1.

⁴² As invited to do so by CHR Res 1998/26, para 52 and GA Res 53/132, para 35. See the Sub-Commission's resolutions on the World Conference, Res 1998/6 and 1999/6, and the working paper prepared by Marc Bossuyt on the concept of affirmative action, E/CN.4/Sub.2/1998/5, the working paper prepared by David Weissbrodt on the rights of non-citizens, E/CN.4/Sub.2/1999/7 and Add.1, the working paper prepared by Mr Oloka-Onyango on globalisation in the context of increased incidents of racism, racial discrimination and xenophobia, E/CN.4/Sub.2/1999/8, and further A/CONF.189/PC.1/13 and the proposals for the work of the World Conference contained in A/CONF.189/PC.1/13/Add.1.

⁴³ On CERD in general, its functions and work done so far, see Banton, 99-318; Banton, Decision-Taking in CERD, 55-78; Bernard-Maugiron, 4 NQHR 395-402 (1990); Buergenthal, 12 TexasILJ 187-221 (1977); Burrowes, 7 AustYBIL 236-278 (1981); Lerner, 102-153; Lerner, 13 IsraelYBHR 170-188 (1983); O'Flaherty, 83-109; O'Flaherty, CERD, 207-233; Partsch, 339-368; Schwelb, 15 ICLQ 1032-1053; Wolfrum, 51-78.

⁴⁴ The primary obligation of implementation lies with the states parties, O'Flaherty, CERD, 209.

to 13);⁴⁵ to receive and consider communications from individuals or groups (Article 14); to aid other UN bodies in matters of petitions from inhabitants of Trust and Non-Self-Governing Territories (Article 15);⁴⁶ to report annually on its activities and may make suggestions and general recommendations (Articles 9 (2), 14 (8), 15 (3)).

So far, the main task of the Committee has been the examination of reports⁴⁷ and the establishment of a dialogue with states parties, as well as the interpretation of the Convention's substantial provisions.⁴⁸ With regard to individual communications, the cases so far submitted have been of limited quantity.⁴⁹ Besides the fact that as of 31 July 2000 only 30 states of the 156 states parties to the ICERD had made the declaration under Article 14 (1) ICERD,⁵⁰ recognising the competence of CERD to receive and consider communications from individuals, it has also become clear that most victims of racial discrimination are underprivileged people who lack the necessary knowledge to understand the international mechanisms or the social capacity to use such mechanisms.⁵¹

Since its 42nd session in 1993, CERD has established as one of its regular and principal agenda items an item on "prevention of racial discrimination, including early warning and urgent procedures".⁵² Early warning measures are intended to address existing problems so as to prevent them from escalating into conflicts and the urgent procedures aim to respond to problems requiring immediate attention to prevent or limit the scale or number of serious violations of the Convention.⁵³ Under these procedures the Committee takes action, *inter alia*, in the form of adopting formal decisions expressing its views and usually requesting

⁴⁵ The interstate procedure has never been used by any state party, A/52/18, para 627. However, some states alleged other states parties of racial discrimination via Art 9 ICERD, what has been called "disguised interstate disputes", see Banton, 108-112, 128-129; Partsch, 361-362.

⁴⁶ See, eg, A/51/18, paras 614-615, and Lerner, 13 IsraelYBHR 176-177.

⁴⁷ See, eg, A/51/18, paras 588-608.

⁴⁸ Especially through its General Recommendations adopted under Art 9 (2) ICERD. For General Recommendations I to XXIII, see the Compilation of General Recommendations, CERD/C/365 of 11 February 1999, reprinted in 1(3) IHRR 4-13 (1994) and 5 IHRR 17-22 (1998). For General Recommendation XXIV of 27 August 1999 (55th session) concerning Article 1 of the Convention, see A/54/18, annex V. General Recommendations XXV of 20 March 2000 (56th session) on gender related dimensions of racial discrimination, XXVI of 24 March 2000 (56th session) on Article 6 of the Convention, and XXVII of 16 August 2000 (57th session) on discrimination against Roma can be found in the treaty bodies database of the OHCHR, <http://www.unhchr.ch/data.htm>. See also the two studies prepared by members of CERD for the Second World Conference: Study on the Implementation of Article 4 ICERD, A/CONF.119/10 and Study on the Implementation of Article 7 ICERD, A/CONF.119/11.

⁴⁹ As of 16 March 2000 (56th session), CERD had considered the following eleven communications under Art 14 ICERD: *Yilmaz-Dogan v The Netherlands* (No 1/1984), Opinion of 10 August 1988, 2 IHRR 348 (1995); *Diop v France* (No 2/1989), Opinion of 18 March 1991, 12 HRLJ 300 (1991); *Narrainen v Norway* (No 3/1991), Opinion of 15 March 1994, 1(3) IHRR 130 (1994); *L K v The Netherlands* (No 4/1991), Opinion of 16 March 1993, 1(1) IHRR 32 (1994); *C P and M P v Denmark* (No 5/1994), Decision on Admissibility of 15 March 1994, 2 IHRR 608 (1995); *ZUBS v Australia* (No 6/1995), Opinion of 26 August 1999, A/54/18, annex III.B.; *Barbaro v Australia* (No 7/1995), Decision on Admissibility of 14 August 1997, 5 IHRR 347 (1998); *B M S v Australia* (No 8/1996), Opinion of 12 March 1999, A/54/18, annex III.A.; *D S v Sweden* (No 9/1997), Decision on Admissibility of 17 August 1998, A/53/18, annex III; *Ziad Ben Ahmed Habassi v Denmark* (No 10/1997), Opinion of 26 August 1999, A/54/18, annex III.A.; *Kashif Ahmed v Denmark* (No 16/1999), Opinion of 13 March 2000, CERD/C/56/D/16/1999.

⁵⁰ As of 27 August 1999, 28 of 155 states had made the declaration under Art 14 ICERD, A/54/18, para 1 and 2, annex I.A. and I B Liechtenstein acceded as the 156th state and the Yugoslav Republic of Macedonia and Portugal made the declaration under Art 14 (1) ICERD this year; CERD/C/SR.1372, para 3 and CERD/C/SR.1400, para 3.

⁵¹ E/CN.4/1997/68/Add.1, para 28.

⁵² For the background and more detail, see A/48/18, paras 15-19, and annex III. See also Banton, 161-168, 309-310; O'Flaherty, 103-104; O'Flaherty, CERD, 219-221; van Boven, 165-182.

⁵³ A/53/18, para 18.

the immediate submission of a report by the state concerned,⁵⁴ bringing the particular situations to the attention of another UN body, such as the GA and the SC,⁵⁵ and, with the consent of the government concerned, the undertaking of field missions ("good offices mission").⁵⁶

CERD is also contributing to the preparatory work for the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance.⁵⁷

3. Decades and Related Programmes of Action and World Conferences

On 20 December 1993 the GA proclaimed the Third Decade to Combat Racism and Racial Discrimination (1993-2003) and adopted the related Programme of Action.⁵⁸ The first Decade was proclaimed in 1973⁵⁹ and the Second Decade in 1983.⁶⁰ The ultimate goals of the Third Decade are the same as envisaged during the two preceding decades: "to promote human rights and fundamental freedoms for all, without distinction of any kind on grounds of race, colour, descent or national or ethnic origin, especially by eradicating racial prejudice, racism and racial discrimination".⁶¹ Although one needs not cite any source to notice the obvious fact that racism and racial discrimination still exist, the GA recognised that "the principal objectives of the two Decades for Action to Combat Racism and Racial Discrimination have not been attained and ... millions of human beings continue to this day to be the victims of varied forms of racism, racial discrimination and apartheid".⁶²

The related (revised) Programme of Action for the Third Decade⁶³ envisages action at the international, national and regional level, basic research and studies, co-ordination and reporting and regular system-wide consultations. With regard to action at the international level, the Programme recognises that the biggest contribution to the elimination of racial discrimination would be that which resulted from the actions of states within their own territories. International action should therefore be directed so as to assist states to

⁵⁴ Such decisions have been adopted in almost all the cases so far considered; see, the decisions on Yugoslavia, Australia, Rwanda, Democratic Republic of Congo, Sudan and Kosovo (Federal Republic of Yugoslavia) adopted in 1999, A/54/18, paras 21 and 23.

⁵⁵ This was the case of Burundi and Bosnia and Herzegovina in 1995, O'Flaherty, CERD, 220, n. 54.

⁵⁶ Such a mission was undertaken by three members of CERD to Yugoslavia to help promoting dialogue between Kosovo-Albanians and the government of the Federal Republic of Yugoslavia, A/49/18, paras 22-23. See also Banton, 162; van Boven, 178.

For the problems CERD has encountered with the overdue state reports, see General Recommendation VI and the long list of overdue state reports to CERD's 55th session, A/54/18, para 564. For evaluations of CERD's work, see the references cited *supra* on the ICERD, especially Banton, 75 *et seq.* See also the report of the seminar to assess the implementation of ICERD, E/CN.4/1997/68/Add.1.

⁵⁷ As invited by GA Res 52/111, para 30 and CHR Res 1998/26, para 51. For its contributions, see the Joint Working Paper with the Sub-Commission on Art 7 ICERD, E/CN.4/Sub.2/1998/4, the background papers prepared by members of CERD for the sessional open-ended working group, E/CN.4/1999/WG.1/BP.6-BP.11 and the decisions and documents listed in A/CONF.189/PC.1/12.

⁵⁸ GA Res 48/91, para 2 and annex. See also the Revised Programme of Action, GA Res 49/146, annex.

⁵⁹ GA Res 3057 (XXVIII), para 1-2, as already decided in 1972, GA Res 2919 (XXVII), para 1. For the Programme for the first Decade for Action to Combat Racism and Racial Discrimination, see GA Res 3057 (XXVIII), annex.

⁶⁰ GA Res 38/14, para 1. The GA thereby followed the proposal of the Second World Conference to Combat Racism and Racial Discrimination (1983) to proclaim a second decade and approved the Programme of Action for the Second Decade to Combat Racism and Racial Discrimination as adopted by the World Conference; GA Res 38/14, para 3 and annex.

⁶¹ GA Res 48/91, annex, para 1, citing para 8 of GA Res 3057 (XXVIII), annex.

⁶² GA Res 48/91, preambular para 8.

⁶³ GA Res 49/146, annex. The Revised Programme of Action is, apart from minor changes and amendments, like para 7 (k) and measures concerning South Africa, essentially the same as the original Programme of Action (GA Res 48/91, annex).

act effectively.⁶⁴ As part of the action at the international level, the GA requests, *inter alia*, the Secretary-General to organise regional workshops and seminars on several themes.⁶⁵

However, during the period 1994-1998 very few of the planned activities were carried out.⁶⁶ Until the end of 1996, for example, only one seminar was organised by the Centre for Human Rights⁶⁷ and by the end of 1998 the number of seminars convened reached a total of only three.⁶⁸ Another seminar was held in 1999⁶⁹ and most recently in February 2000.⁷⁰ The marginal implementation of the Programme of Action is mainly due to the constant “lack of interest, support and financial resources for the Third Decade and its related Programme of Action”,⁷¹ thereby repeating the picture of the preceding decades.⁷²

One of the reasons for the lack of interest and financial support⁷³ might be that the Programme of Action itself is “appalling”, as one expert has privately commented. This view is not unfounded when comparing the Programme of Action for the Third Decade with the one adopted for the Second Decade which was more detailed and elaborated.⁷⁴ Another problem is the lack of co-ordination of all the activities of the Third Decade. Repeated appeals by the GA, ECOSOC and the Commission for the establishment of a mechanism

⁶⁴ GA Res 49/146, annex, para 5.

⁶⁵ *Ibid*, para 7.

⁶⁶ Cf GA Res 53/132, para 12 and CHR Res 1999/78, para 15.

⁶⁷ GA Res 51/81, para 16.

⁶⁸ Seminar to Assess the Implementation of the International Convention on the Elimination of All Forms of Racial Discrimination with Particular Reference to Articles 4 and 6 (Geneva, 9-13 September 1996), E/CN.4/1997/68/Add.1; Seminar on the Role of the Internet in the Light of the Provisions of the International Convention on the Elimination of All Forms of Racial Discrimination (Geneva, 10-14 November 1997), E/CN.4/1998/77/Add.2; Seminar on Immigration, Racism and Racial Discrimination (Geneva, 5-9 May 1997), E/CN.4/1998/77/Add.1. See also the final draft of the Model National Legislation for the Guidance of Governments in the Enactment of Further Legislation Against Racial Discrimination, HR/PUB/96/2, prepared by the Secretary-General within the framework of the Programme of Action. For the (non-)implementation of the Programme of Action, see further the reports submitted by the Secretary-General to the GA: A/52/528; A/53/305; and A/54/299. For the latest activities, see CHR Res 2000/14, II.

⁶⁹ Seminar on Racism, Refugees and Multi-Ethnic States (Geneva, 6-8 December 1999), A/CONF.189/PC.1/9.

⁷⁰ Seminar on Remedies Available to the Victims of Racial Discrimination, Xenophobia and Related Intolerance and on Good National Practices (Geneva, 16-18 February 2000), A/CONF.189/PC.1/8.

⁷¹ As recognised by the GA in Res 53/132, para 12, and complained throughout the Decade. So also the Commission, CHR Res 2000/14, para 18.

⁷² These Decades were also only marginally implemented and lacked adequate resources. Cf, eg, GA Res 45/105, para 14 and Res 47/77, para 12. For the preceding decades, see further the Study on the Achievements made and Obstacles Encountered During the Decades to Combat Racism and Racial Discrimination, E/CN.4/Sub.2/1989/8. See also Second Decade to Combat Racism and Racial Discrimination: Global Compilation of National Legislation Against Racial Discrimination of 1991, HR/PUB/90/8.

⁷³ With regard to financial resources, the contributions made to the Trust Fund for the Third Decade, which is the main source to finance the Programme of Action, remain below the level required, GA Res 53/132, para 13. See the figures provided in A/52/528, annex; A/53/305, annex; and A/54/299, annex. An annual total of US\$ 12,000.- (1990) or even US\$ 96,759.- (1995), as the highest figure appearing in the period 1985-1999, is by far not enough to implement any significant activities.

⁷⁴ Compare GA Res 49/146, annex with GA Res 38/14, annex. That the Programme of Action for the Second Decade is more elaborate is probably due to the fact that this programme was adopted by the Second World Conference in the first place, see A/CONF.119/26, II. However, the programmes for the preceding decades were only marginally implemented as well, as already mentioned. Another reason for the marginal implementation of the preceding decades that can be adduced are “political” quarrels within the GA. See, eg, the voting against resolutions relating to the Decade and Programme of Action in 1975 caused by the adoption of the so called “Zionism equals Racism Resolution”, GA Res 3379 (XXX) of 10 November 1975 (adopted by roll-call vote of 72 to 35, with 32 abstentions). See the summary in 29 YUN 587-593 (1975). However, this determination was “revoked” by GA Res 46/86 of 16 December 1991.

within the OHCHR to serve as a focal point for co-ordination were only addressed in March 1998 with the establishment of a “racism project team”⁷⁵.

With regard to all three decades, Theo van Boven observes:

“the first and second United Nations Decades to Combat Racism and Racial Discrimination did not lead to concrete results; they were events without noise and without effect and the current third decade risks to share the same fate.”⁷⁶

In 1997, the GA decided to convene a World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance⁷⁷ whose main objectives will be, *inter alia*: to review progress made in the fight against racism, racial discrimination, xenophobia and related intolerance; to reappraise the obstacles to further progress in the field and ways to overcome them; and to formulate concrete recommendations on ways to increase the effectiveness of the activities and mechanisms of the UN through programmes aimed at combating racism, racial discrimination, xenophobia and related intolerance.⁷⁸

The GA designated the Commission as the Preparatory Committee,⁷⁹ which held its first session from 1 to 5 May 2000 in Geneva.⁸⁰ Governments, specialised agencies, other international organisations, concerned UN bodies, regional organisations, NGOs, CERD, the Special Rapporteur and other human rights mechanisms are requested to assist the Preparatory Committee, to undertake reviews, to submit recommendations concerning the World Conference and the preparations therefor to the Preparatory Committee and to participate actively in the World Conference, as well as to hold national or regional meetings or to take other initiatives in preparation for the World Conference.⁸¹ At present, the activities of the various UN and

⁷⁵ Cf A/53/305, para 10. In GA Res 53/132, para 15, the GA still called for the *full* establishment of such a mechanism, whereas in its 1999 resolution, GA Res 54/154, the GA only welcomes the establishment of a racism project team. See also CHR Res 1999/78, para 20.

⁷⁶ United Nations Strategies to Combat Racism and Racial Discrimination: Past Experience and Present Perspectives, E/CN.4/1999/WG.1/BP.7, 3.(c). Note also the reason adduced: “The [UN] Organization is largely controlled by State interests and by sensitivities of Governments to such an extent that any publicity campaigns or actions which risk to affect these interests and sensitivities are turned down to a level that fail to catch the public eye and remain ineffective.”

⁷⁷ GA Res 52/111, para 28. The holding of such a world conference was, *inter alia*, recommended by the Sub-Commission and Commission, as well as by the Special Rapporteur. To the latter’s recommendations, see *infra* III.3.6.(b).

In December 1995, the GA requested the Secretary-General to consult member states, IGOs, as well as NGOs on the possibility of holding a world conference to combat racism *etc.* (GA Res 50/136, para 12), and in 1996, the GA invited the Commission to consider at its 53rd session as a matter of priority the question of such a world conference and to make appropriate recommendations through ECOSOC to the GA at its 52nd session (GA Res 51/81, para 24). In response, the Commission decided in 1997 to recommend to the GA the convening of a world conference (CHR Res 1997/74, paras 42). The possibility of convening a world conference to take place in 1997 was already recommended by the Sub-Commission in 1994 (Res 1994/2) of which the Commission took note in CHR Res 1995/12, para 1. See also Sub-Commission Res 1996/8, para 5.

⁷⁸ GA Res 52/111, para 28 (a) and (d).

⁷⁹ *Ibid*, para 29 (d).

⁸⁰ For the first session of the Preparatory Committee, see the documents published under the common string of A/CONF.189/PC.1/-, namely the report of the Preparatory Committee on its first session, A/CONF.189/PC.1/21. The second session of the Preparatory Committee will take place in May 2001. During its first session, the Preparatory Committee also decided to recommend that the GA establishes an inter-sessional open-ended working group to meet at the end of January 2001 in order to develop the draft agenda, draft declaration and draft programme of action of the World Conference, Dec. PC/9 of 5 May 2000, A/CONF.189/PC.1/21, annex I. See also the Report of the Open-ended Working Group to Review and Formulate Proposals for the World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance, E/CN.4/1999/16, which took place in Geneva from 24 to 26 March 1999, as decided by CHR Res 1998/26, para 44.

⁸¹ GA Res 52/111, para 30 and 32. Repeated in GA Res 53/132, para 35 and GA Res 54/154, para 37.

other bodies engaged in the subject are focused on contributions to the preparations for the World Conference.⁸²

This will be the third such World Conference, following the World Conferences in 1978⁸³ and 1983.⁸⁴ The third World Conference will take place from 31 August to 7 September 2001 in Durban, South Africa.⁸⁵

To draw the world's attention to the objectives of the World Conference and to give new momentum to the political commitment to the subject, the GA proclaimed the year 2001 as the International Year of Mobilization against Racism, Racial Discrimination, Xenophobia and Related Intolerance.⁸⁶

III THE SPECIAL RAPPORTEUR ON CONTEMPORARY FORMS OF RACISM, RACIAL DISCRIMINATION, XENOPHOBIA AND RELATED INTOLERANCE

At its forty-ninth session in 1993, the Commission on Human Rights decided to appoint for a three-year period a special rapporteur on contemporary forms of racism, racial discrimination and xenophobia and related intolerance.⁸⁷ The first Special Rapporteur, Mr Robert Dossou (Benin), was appointed on 30 March 1993 by the Chairman of the Commission. However, shortly thereafter on 7 December 1993 Mr Dossou was replaced by Mr Maurice Glélé-Ahanhanzo (Benin), due to the appointment of the former as Minister for Foreign Affairs of his country.⁸⁸

Before looking at the mandate of the Special Rapporteur and its implementation to date, the background of the decision to appoint a special rapporteur on this issue should be set out.

⁸² See already the contributions of CERD and the Sub-Commission cited *supra*. For the preparations of the World Conference, see further: GA Res 53/132, II. and 54/154, II.; CHR Res 1998/26, VI., 1999/78, V and 2000/15, V; Sub-Commission Res 1998/6 and 1999/6; the report of the HCHR on the objectives of the World Conference and other issues, E/CN.4/1999/12; the report of the Secretary-General, E/CN.4/2000/15, V; the report of the sessional Open-ended Working Group, E/CN.4/1999/16; the report of the Preparatory Committee on its first session, A/CONF.189/PC.1/21. See also the report of the Consultation on the World Conference, held in Bellagio from 24-28 January 2000, A/CONF.189/PC.1/10. The purpose of this consultation was to bring together a diverse group of experts from around the world to formulate recommendations on the forthcoming World Conference pursuant to GA Res 53/132, para 35 and 54/154, para 37.

⁸³ The first World Conference to Combat Racism and Racial Discrimination was convened in Geneva from 14-25 August 1978, as decided in GA Res 32/129, para 3. For the report of the World Conference, see A/CONF.92/40.

⁸⁴ The Second World Conference to Combat Racism and Racial Discrimination was held in Geneva from 1-12 August 1983, as decided in GA Res 35/33, para 18. For the report of the Second World Conference, see A/CONF.119/26.

⁸⁵ Preparatory Committee Dec. PC/2 of 1 May 2000; A/CONF.189/PC.1/21, annex I.

⁸⁶ GA Res 53/132, para 37. Note also the International Day for the Elimination of Racial Discrimination, 21 March, commemorating the incident at Sharpeville, South Africa in 1960, where 69 demonstrators against pass laws were killed and 180 others wounded.

⁸⁷ CHR Res 1993/20, para 10, as approved by ECOSOC Dec. 1993/258. The mandate was extended for another three-year period in 1996 by CHR Res 1996/21, para 9, as approved by ECOSOC Dec. 1996/259.

⁸⁸ Cf E/CN.4/1994/66, para 6.

1. Background of the Appointment of a Special Rapporteur

The Commission's appointment of a special rapporteur was initiated by Sub-Commission Resolution 1992/5. In this resolution the Sub-Commission recommended to the Commission the appointment of a thematic special rapporteur to address the issues of contemporary forms of racism, racial discrimination and xenophobia that occur in any part of the world and recommended the adoption of a corresponding draft resolution.⁸⁹

1.1 Sub-Commission Stage

The adoption of Sub-Commission Resolution 1992/5 was preceded by the consideration of a report submitted by Asbjørn Eide⁹⁰ at the Sub-Commission's 41st session in 1989 and 42nd session in 1990.⁹¹ One of the report's conclusions was that the problems facing minorities have increased with the emergence of nationalism and the growing intensity of ethnic conflicts, that the problems facing migrant workers and refugees are substantial, and that great efforts have to be made in order to face up to these problems.⁹² Asbjørn Eide recommended, *inter alia*, that it might be desirable to update the study on racial discrimination prepared by Hernán Santa Cruz and presented in 1976⁹³ of which the main focus should be the assessment of the achievements made at the national level in different parts of the world in the elimination of racial discrimination.⁹⁴

During the sessions following the report, members of the Sub-Commission expressed their concern about recent incidents evidencing racism and the apparent resurgence of various manifestations of racial discrimination and racism around the world. It was apparent that more work was needed to combat racism and racial discrimination. Asbjørn Eide, for example, maintained during the 42nd session that racism in Europe has not disappeared but has increased with the changes in Eastern Europe and the rise of nationalism.⁹⁵ Anti-Semitism and, more recently, hostility towards people from North Africa and other migrant workers were the most pernicious forms of racism.⁹⁶ The conflict over economic resources was also recognised as a problem.⁹⁷ Deeply concerned by the signs of an upsurge of racism and related intolerance directed against minorities, indigenous peoples, migrant workers and other vulnerable groups,⁹⁸ the Sub-Commission requested the Secretary-General to prepare an overview of current trends in racism, discrimination, intolerance and xenophobia, affecting these groups, as well as measures taken by governments against those phenomena.⁹⁹ The Secretary-General was to submit his report for consideration by the Sub-Commission at its 43rd session.

⁸⁹ Res 1992/5, para 4 and 5. For the text of the Sub-Commission's draft resolution, see E/CN.4/1993/2, E/CN.4/Sub.2/1992/58, 1. Para 10 of the draft resolution, concerning the appointment of a special rapporteur, remained, apart from one substantial change, the inclusion of the words "and related intolerance" after "xenophobia", mainly unchanged by the Commission.

⁹⁰ Study on the Achievements made and Obstacles Encountered during the Decades to Combat Racism and Racial Discrimination, E/CN.4/Sub.2/1989/8 and Add.1.

⁹¹ The Sub-Commission considered the report in 1989 but agreed to discuss the recommendations at the following session; see Maher/Weissbrodt, 12 HRQ 315-316 (1990) and Brody/Convery/Weissbrodt, 13 HRQ 280-281 (1991). E/CN.4/Sub.2/1989/8/Add.1, para 443.

⁹² E/CN.4/Sub.2/370/Rev.1 (1977). See also E/CN.4/Sub.2/370 and Add.1-6, Add.6/Corr.1.

⁹³ E/CN.4/Sub.2/1989/8/Add.1, para 445 (3.).

⁹⁴ E/CN.4/Sub.2/1990/SR.5, para 16-18.

⁹⁵ *Ibid*, para 16.

⁹⁶ Brody/Convery/Weissbrodt, 13 HRQ 281 (1991).

⁹⁷ Cf Sub-Commission Res 1990/2, preambular para 5.

⁹⁸ *Ibid*, para 4.

During the following session in 1991, several Sub-Commission members again noted increased xenophobia and extreme nationalism in Central and Eastern Europe, a rise in anti-Semitism and fascist sentiments, and an upsurge in violence against migrant workers and refugees in Western Europe.¹⁰⁰ The result of the session was a lengthy resolution on measures to combat racism and racial discrimination, in which the Sub-Commission pressed for a special rapporteur of the Sub-Commission to be appointed to update the study on racial discrimination prepared by Hernán Santa Cruz.¹⁰¹ In the same resolution, noting that the overview requested of the Secretary-General had not been prepared,¹⁰² the Sub-Commission renewed its request and in addition asked the Secretary-General to report on serious incidents attributable to racism, racial discrimination and xenophobia.¹⁰³

This overview was prepared for and considered at the Sub-Commission's next (44th) session in 1992. Besides considering the Secretary-General's report¹⁰⁴ under agenda item 5 (a),¹⁰⁵ the Sub-Commission also discussed the changing situation in South Africa under agenda item 5 (b). The report of the Secretary-General contained an overview of current trends in racism, racial discrimination, intolerance and xenophobia (I), a list of serious incidents attributable to racism, racial discrimination and xenophobia in various countries (II), and measures taken at the national, regional and international levels (III). The report of the Secretary-General concluded:

“The information gathered effectively testifies to the resurgence of racism and xenophobia throughout the world and more particularly in Europe, the United States and Australia. Through the insidious praise heaped on cultural differences by the advocates of racial discrimination, the ideological content of racism has undergone a change that makes it more attractive to populations who fear and refuse to live in harmony with communities or individuals of different origin. In the last analysis, and as in the past, contemporary racism and xenophobia boil down to intolerance and lead to increasingly numerous acts of violence.”¹⁰⁶

During the Sub-Commission's meetings the resurgence of racism and related intolerance, especially in Europe and North America, was discussed and the dangers inherent in such trends mentioned.¹⁰⁷

¹⁰⁰ Reiersen/Weissbrodt, 14 HRQ 251 (1992).

¹⁰¹ Res 1991/2, para 13. Note also preambular para 7: “Conscious that the scourges of racism and racial discrimination are constantly assuming new forms, requiring a periodic re-examination of the methods used to combat them”.

¹⁰² The Secretary-General informed the Sub-Commission by note dated 5 June 1991 (E/CN.4/Sub.2/1991/12) that the overview could, in the light of the few replies to the Secretary-General's request for information addressed to governments and other bodies, not be prepared, E/CN.4/Sub.2/1992/11, paras 3-4.

¹⁰³ Res 1991/2, paras 11-12.

¹⁰⁴ E/CN.4/Sub.2/1992/11. See also the statement of the International League for the Rights and Liberation of Peoples, E/CN.4/Sub.2/1992/NGO/1.

¹⁰⁵ “Measures to Combat Racism and Racial Discrimination and the Role of the Sub-Commission”, included in the agenda of the Sub-Commission since its 31st session in 1978.

¹⁰⁶ E/CN.4/Sub.2/1992/11, para 142.

¹⁰⁷ Ironically, Mr Milošević (Observer for Yugoslavia) attended the meeting of the Sub-Commission in 1992, categorically rejecting that segregation, apartheid and “ethnic cleansing” occurred in Yugoslavia and insisting that Albanians in Kosovo enjoyed the same human rights as all other Yugoslav citizens (E/CN.4/Sub.2/1992/SR.11, paras 82-83). What happened in Kosovo at the end of 1998 and the beginning of 1999 is unfortunately well known.

Observations similar to the ones of the preceding sessions were made¹⁰⁸ and it was felt that even more decisive action in a superior body was needed.¹⁰⁹

Thus, in the light of the Secretary-General's report and the discussions following it, as well as the preceding sessions recognising the resurgence of various manifestations of racism and related intolerance around the world, the Sub-Commission adopted Resolution 1992/5,¹¹⁰ recommending that the Commission should appoint a thematic special rapporteur to address contemporary forms of racism, racial discrimination and xenophobia.¹¹¹

1.2 Commission Stage

During the discussions on the Sub-Commission's recommendation that followed at the Commission's 49th session in 1993 under agenda item 16, Commission members similarly expressed their concern about the resurgence of racism, racial discrimination, xenophobia and related intolerance. Mr Venera (Czech Republic), for example, expressed concerns that acts of violence resulting from racism persisted and were even increasing in a number of countries in North America and Europe.¹¹² Mr Hjelde (Observer for Norway) pointed out that racism in all its forms was a denial of basic democratic values and human rights. He mentioned the "ethnic cleansing" in the former Yugoslavia and neo-Nazi violence against immigrants in several parts of Europe.¹¹³ Mr Khestov (Russian Federation) was concerned about the recent outbursts of xenophobia that had occurred in all countries of the world. With regard to anti-Semitism, he admitted that the Russian Federation had extreme anti-Semitic newspapers.¹¹⁴

The debate brought out the need to sharply distinguish an institutionalised policy of racism and the acts of individuals or small groups. Mr Palacios Serrano (Observer for Spain), for instance, raised this issue and added that his delegation supported the suggestion that a special rapporteur be appointed to review current forms of non-institutionalised racism and xenophobia throughout the world.¹¹⁵

Moreover, Mr Sezgin (Observer for Turkey) recognised a gap in the UN human rights machinery for combating racism and the violent manifestations of that phenomenon. The adoption of the draft resolution, calling for the appointment of a special rapporteur, would fill that gap and constitute a decisive step in the fight against those evils.¹¹⁶

¹⁰⁸ *Eg* Mr Abram (Observer for the USA) pointed out that the Sub-Commission and Commission had spent whole days, even weeks, discussing apartheid and had been effective in helping to bring about its destruction, yet the two bodies had done little to address other forms of racial discrimination ranging through the world, against which they should rail with the same force and vigour as they had done against apartheid, E/CN.4/Sub.2/1992/SR.11, para 25. For other observations made, see E/CN.4/Sub.2/1992/SR.9, SR.10, and SR.11.

¹⁰⁹ E/CN.4/Sub.2/1992/SR.10, para 29. See also the statement by Mr Aktan (Observer for Turkey) that the Sub-Commission might propose the designation of a thematic special rapporteur to the Commission and ECOSOC; E/CN.4/Sub.2/1992/SR.11, paras 36.

¹¹⁰ Adopted without a vote at its 27th meeting on 21 August 1992, E/CN.4/Sub.2/1992/SR.27, para 1.

¹¹¹ Res 1992/5, para 5 and 6.

¹¹² E/CN.4/1993/SR.11, para 31.

¹¹³ E/CN.4/1993/SR.17, para 51.

¹¹⁴ E/CN.4/1993/SR.12, para 36-37.

¹¹⁵ E/CN.4/1993/SR.17, para 57-59.

¹¹⁶ E/CN.4/1993/SR.48, para 3.

After the discussions and minor changes of the proposed revised draft resolution,¹¹⁷ the Commission adopted Resolution 1993/20 without a vote, appointing a special rapporteur.¹¹⁸

Thus, as the discussions in the Sub-Commission and Commission show, it was felt that more and urgent action against the resurgence of racism, racial discrimination and related intolerance in the world and in particular in Europe, North America and Australia was needed. Particular vulnerable groups, such as migrant workers, immigrants and indigenous peoples, needed more protection against these phenomena. With regard to the variety of possible forms and manifestations of racism and racial discrimination, it was felt that the ICERD could not cover and CERD not possibly reveal all of these phenomena,¹¹⁹ as indicated by some concerns expressed in the Sub-Commission¹²⁰ and the Commission.¹²¹ Further, CERD's supervision is restricted to states parties to the ICERD,¹²² whereas the Special Rapporteur might also consider the situation in states not party to the Convention. In addition, the changing situation in South Africa during those years allowed attention to be paid also to other forms of racism other than apartheid, which had so far been the predominant focus of the UN.

One has also to mention, however, that the establishment of a special rapporteur was mainly initiated by countries not parties to the ICERD¹²³ and by states that were interested in directing attention from developing countries towards developed countries. "Political" interests in the establishment of the new mechanism needs to be noted alongside the reasons given in the Sub-Commission debates.¹²⁴

¹¹⁷ Operative paras 7 and 8 of the revised draft resolution (E/CN.4/1993/L.20/Rev.1) were altered by deleting the words "minority and" and by changing the words "to ratify" into "to consider ratifying", E/C.4/1993/SR.48, para 1. See *infra*, however, with regard to the withdrawn draft resolution submitted by EC countries and the Russian Federation and the changes of the original draft resolution.

¹¹⁸ E/CN.4/1993/SR.48, para 13-14.

¹¹⁹ In this context it should be pointed out that CERD was not consulted at any stage during the discussions on the establishment of a special rapporteur, Banton, 41.

¹²⁰ Mr Aktan (Observer for Turkey) stressed, *eg*, that in almost all countries where racism existed, racist incidents were under-reported, and therefore, a mechanism should be established to follow, report and process information on such incidents. In many respects, the ICERD fell short of what was required in the present conditions, E/CN.4/Sub.2/1992/SR.11, paras 30-31.

¹²¹ See Mr Sezgin (Observer for Turkey), E/CN.4/1993/SR.48, para 3, *supra*, and Mr Venera (Czech Republic) recognising that, as CERD's activity could not possibly reveal all the manifestations and forms of racism, his delegation supported the suggestion to appoint a thematic special rapporteur to report on recent trends throughout the world; E/CN.4/1993/SR.11, para 33.

¹²² Though the ICERD is one of the most ratified treaties. As of 31 July 2000, 156 states have ratified or acceded to the Convention and 5 states have signed but not ratified it (Benin, Bhutan, Grenada, Ireland and Turkey); A/54/18, annex I.A.

¹²³ As pointed out by Mr Wolfrum during CERD's 51st session, CERD/C/SR.1242/Add.1, para 24.

¹²⁴ The adopted draft resolution (E/CN.4/1993/L.20 as revised) was submitted by Pakistan and Turkey. Turkey has signed but not yet ratified the ICERD. For Turkey's motivation and the political background, see, *eg*, *The Times*, 12 December 1994, reprinted in Banton, 41: the appointment stemmed from "the resentment many Third World countries felt at what they saw as the 'disproportionate' focus on abuse in the developing world, and the relative silence over race relations in richer, industrialized countries. Turkey, especially, was piqued at the focus on its treatment of Kurds, and wanted more publicity for the treatment of Turkish migrant workers in Germany." Note also the withdrawn draft resolution tabled by member states of the EC and the Russian Federation (E/CN.4/1993/L.29) and Mr Larsen's (Observer for Denmark) explanation for the withdrawal, speaking on behalf of the EC: "with a view to reaching a consensus", E/CN.4/1993/SR.48, para 7. How this consensus with the Western countries was achieved is apparent when comparing the original draft resolution submitted by Pakistan and Turkey (E/CN.4/1993/L.20) with the draft of the EC (E/CN.4/1993/L.29) and the resolution finally adopted (CHR Res 1993/20). Especially preambular para 6 of the Turkish draft, mentioning North America and Europe explicitly, was changed into "particularly developed countries" (now preambular para 8), whereas the EC draft was limited to "including developed countries". Preambular para 6 of the resolution had also to be inserted, pointing out the "fundamental difference between, on the one hand, racism and racial discrimination as an institutionalised governmental policy, ..., and on the other hand, manifestations of racism, racial discrimination xenophobia and related intolerance taking place in segments of many societies and perpetrated by individuals or groups". Note also Rudolf, 337 and 398, observing that the Western countries gave up their opposition to the establishment of a special rapporteur on racism and racial discrimination in return for the establishment of a special rapporteur on the promotion and protection of the right to freedom of opinion and expression, established in the same year (CHR Res 1993/45 of 5 March 1993).

Whether a new mechanism in addition to the existing machinery, especially CERD, was and is really needed, remains open to debate.¹²⁵

2. The Mandate of the Special Rapporteur

2.1 Subject and Scope of the Mandate

With Resolution 1993/20 the Commission on Human Rights decided to appoint a “special rapporteur on contemporary forms of racism, racial discrimination and xenophobia and related intolerance and requests the special rapporteur to report thereon to the Commission on an annual basis”¹²⁶. During the following session in 1994, the Commission made the mandate more explicit by requesting the Special Rapporteur “to examine according to his mandate incidents of contemporary forms of racism, racial discrimination, any form of discrimination against Blacks, Arabs and Muslims, xenophobia, negrophobia, anti-Semitism, and related intolerance, as well as governmental measures to overcome them, and to report on these matters to the Commission”.¹²⁷ In the same resolution the Commission also requested the Special Rapporteur “to have an exchange of views with the various relevant mechanisms and treaty bodies within the United Nations system ... in order to further enhance their effectiveness and mutual cooperation”.¹²⁸

(a) The Special Rapporteur's views

The Special Rapporteur considered his mandate in his “preliminary report” to the Commission¹²⁹ and, after the Commission's 1994 further specification of his role, in his “interim report” to the GA.¹³⁰

In his preliminary report to the Commission, the Special Rapporteur examines the *legal framework* of his mandate.¹³¹ He cites Article 2 UDHR, Article 2 (2) ICESCR and Article 2 (1) ICCPR, the non-discrimination clauses of the general human rights instruments adopted by the UN, and the specific instrument addressing racial discrimination, the ICERD. He also mentions the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities which represented a significant addition to Article 27 ICCPR. Finally, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, although not yet in force, is cited.

¹²⁵ Banton, 41, *eg*, remarks on the establishment of the Special Rapporteur: “Since there was no suggestion that the special rapporteur should cover states that were not submitting reports under the ICERD, the need for such a post was not evident.”

¹²⁶ CHR Res 1993/20, para 10.

¹²⁷ CHR Res 1994/64, para 4.

¹²⁸ *Ibid*, para 5.

¹²⁹ E/CN.4/1994/66, paras 9 *et seq*.

¹³⁰ A/49/677, paras 15 *et seq*.

¹³¹ E/CN.4/1994/66, paras 9-12.

In the subsequent paragraphs of his report, the Special Rapporteur considers various aspects of his mandate of which only a few can be mentioned.¹³² He notes that the mandate, which includes “racism, racial discrimination, xenophobia and related intolerance”, encompasses a broad range of situations. The emphasis was nevertheless intended to be on recent manifestations of these phenomena in developed countries and in particular on the situation of migrant workers and other vulnerable groups.¹³³

The Special Rapporteur also notes that the Commission is conscious of the *fundamental difference* between, on the one hand, racism and racial discrimination as an institutionalised governmental policy, such as apartheid, or resulting from official doctrines of racial superiority or exclusivity (“institutionalised form”), and on the other hand, other manifestations of racism, racial discrimination, xenophobia and related intolerance taking place in segments of many societies (“indirect forms”).¹³⁴

Several other issues are highlighted: the *obligation* of the international community to take urgent measures to eradicate apartheid completely and to combat all other forms of racism, racial discrimination, xenophobia and related intolerance;¹³⁵ the importance of a complementarity of economic, social, educational and information measures at the national level, including legislative, administrative and penal measures and of measures taken at the international level in the struggle against racism and racial discrimination; the important role that can be played by the Sub-Commission in this regard, as well as the need for more effective co-ordination between the Centre for Human Rights (now OHCHR) and organisations of the UN system which undertake operational activities for development.¹³⁶ He concludes by mentioning other resolutions relevant to his mandate.¹³⁷

In his interim report to the GA,¹³⁸ the Special Rapporteur, under the heading “Concerning the Mandate of the Special Rapporteur”¹³⁹, refers to the Commission’s specification of the mandate in Resolution 1994/64 and considers, with regard to the new elements, that the issue of discrimination against Muslims “should be taken up by the Special Rapporteur on religious intolerance in order to avoid any duplication of the latter’s mandate.”¹⁴⁰

In the same report, the Special Rapporteur under the sub-heading “scope of analysis” offers some *definitions* of the phenomena under consideration, in order to establish an analytical framework and define the scope of the study.¹⁴¹ He first examines the notions of his mandate contained in Commission Resolution 1993/20: racism, racial discrimination, xenophobia, and related intolerance.

¹³² In detail, see *Ibid*, paras 13-31.

¹³³ Other vulnerable groups include: indigenous peoples and ethnic, cultural, linguistic, religious and other minorities, *Cf Ibid*, para 13 and 19. See also preambular paras 8-10 and operative para 8 of CHR Res 1993/20. It is also to mention that by letter of 29 August 1994, the Assistant Secretary-General of Human Rights drew the attention of the Special Rapporteur to the need to report regularly and systematically on available information on human rights violations affecting women; *Cf A/49/677*, para 12 and E/CN.4/1995/78, para 6.

¹³⁴ E/CN.4/1994/66, paras 16-17. *Cf* CHR Res 1993/20, preambular para 6. See also, *eg*, GA Res 53/133, preambular para 8.

¹³⁵ As emphasised by Commission Res 1993/20, para 3.

¹³⁶ E/CN.4/1994/66, para 25-27.

¹³⁷ *Ibid*, para 31: CHR Res 1991/11 and 1992/8; Sub-Commission Res 1990/1 and 1990/2; GA Res 45/105; CHR Res 1992/41.

¹³⁸ A/49/677.

¹³⁹ *Ibid*, paras 15-17.

¹⁴⁰ *Ibid*, para 17.

¹⁴¹ *Ibid*, para 20-37. This sub-section (“Scope of Analysis”) is presented by the Special Rapporteur under the section “Working Methods”, but shall be discussed here, as the notions define the subject and scope of the mandate.

With regard to the notion of *racism* the Special Rapporteur looks at the pseudo-scientific theories that have evolved mainly during the 19th and 20th centuries as well as new versions of such theories that have shifted from biological explanations of differences between races to a hierarchy of cultures.¹⁴² He defines contemporary racism as “a kind of anachronistic biological and cultural fundamentalism, given that the current trend of human societies is towards racial mixing and globalization.”¹⁴³ He also mentions that the theory differs from “the stereotypes existing in many of the world’s societies, which are not in themselves of any consequence but which may occasionally generate ethnic or religious tensions or conflicts that are frequently comparable to racism.”¹⁴⁴

Concerned with the term of *racial discrimination*, which he describes as “the legitimization of racism and applies to all practices deriving therefrom”¹⁴⁵, the Special Rapporteur refers to the definition contained in Article 1 (1) ICERD. He stresses “that the definition set out in the Convention refers not only to distinctions, exclusions, restrictions or preferences based on race, colour or descent but also to those based on national or ethnic origin”. Therefore, “it can be seen that racial discrimination covers situations which do not have their origin in racial antagonisms *stricto sensu*, but have to do with within a single race or between ethnic groups animosities.”¹⁴⁶

Xenophobia was defined as the “rejection of outsiders.”¹⁴⁷ He recognises that although distinguishable, racism and xenophobia were in many cases similar. The Special Rapporteur also mentions the seemingly institutionalisation of xenophobia in the form of measures taken by certain states against migrant workers and asylum-seekers.

Before turning to the notions added by Commission Resolution 1994/64, the Special Rapporteur examines the meaning of *related intolerance*, stating:

“Intolerance would seem to be a generic yet all-embracing term. In fact, intolerance is not a complement to racism, as the wording of the mandate would seem to imply, but lies at the root of other phenomena. It is the refusal to accept the Other for what he is, with his differences, and the violation of his integrity, his person or even his property because of his differences which lead to racism, racial discrimination and xenophobia.”¹⁴⁸

With regard to the notions included in Commission Resolution 1994/64, “any form of discrimination against Blacks, Arabs and Muslims, xenophobia, negrophobia, anti-Semitism”, the Special Rapporteur only examines the terms *negrophobia*, defined as “the fear and rejection of Blacks”¹⁴⁹ and *anti-Semitism* that was “the despising of Jews” which “can be considered to be one of the root causes of racial and religious hatred.”¹⁵⁰ The Special Rapporteur makes no special reference to *any form of discrimination against Blacks, Arabs and Muslims*.

¹⁴² For the “ideological mutations” of racism, see also A/50/476, paras 34 *et seq.*

¹⁴³ A/49/677, para 27.

¹⁴⁴ *Ibid*, para 20

¹⁴⁵ *Ibid*, para 28.

¹⁴⁶ *Ibid*

¹⁴⁷ *Ibid*, para 29.

¹⁴⁸ *Ibid*, para 30.

¹⁴⁹ *Ibid*, para 32.

¹⁵⁰ *Ibid*, para 37.

(b) Legal framework

The legal framework and the particularly vulnerable groups mentioned show that the mandate of the Special Rapporteur encompasses a broad range of phenomena and situations and inevitably overlaps with other mandates.¹⁵¹ It is therefore important that the Special Rapporteur has an exchange of views with the various other relevant mechanisms and treaty bodies in order to enhance their effectiveness and mutual co-operation, as requested by the Commission, and to avoid duplication of their work.

The Special Rapporteur rightly recognises that the emphasis of his mandate lies in recent manifestations of racism, racial discrimination, xenophobia and related intolerance in especially so called developed countries, as emphasised in Commission Resolution 1993/20¹⁵² and given the background of the appointment. His mandate nevertheless embraces the whole globe and racism and racial discrimination exist in all parts of the world and need to be studied.¹⁵³ That the mandate is not confined solely to the examination of Western countries and that it is no less important to examine the situation in all regions of the world has also been recognised by the Special Rapporteur and is proven by his subsequent practice.¹⁵⁴

The legal framework, including the fundamental difference between “institutionalised forms” and “indirect forms” of racial discrimination and the emphasised “obligation”¹⁵⁵ of the “international community” to take urgent measures to combat all forms of racism, racial discrimination and xenophobia, would have merited more attention by the Special Rapporteur.

First, the Special Rapporteur refers only to declarations and treaties and not to *general international law*.¹⁵⁶ Taking into account that there is already a treaty body, CERD, to supervise the implementation of states parties’ obligations under ICERD, one reason to establish another mechanism is to supervise states not party to the Convention, states are bound by general international law. There can be no doubt, looking only at the many declarations¹⁵⁷ and treaties cited above,¹⁵⁸ namely the ICERD,¹⁵⁹ in conjunction with the (racial) non-discrimination provisions of regional treaties¹⁶⁰ and humanitarian law conventions,¹⁶¹ the state practice, exemplified by the concerted action against the apartheid regime in South Africa, the acceptance as law (*opinio iuris*), as not only evidenced by the many unanimously adopted GA resolutions on the subject,¹⁶² and the case-law of the ICJ,¹⁶³ that in addition

¹⁵¹ The mandate overlaps, *inter alia*, with the work of CERD and the Sub-Commission. With regard to the situation of migrant workers and their families, there is now also a special rapporteur on this issue; established by CHR Res 1999/44, para 3. See further *infra* III.3.2.(b).

¹⁵² Preambular para 8: “manifestations occurring particularly in developed countries”.

¹⁵³ A short overview until 1970, on racism as a global phenomenon, can be found in Banton, 82-98.

¹⁵⁴ See *infra* III.3.

¹⁵⁵ Note also GA Res 1999/53, preambular para 9 and CHR Res 1999/78, preambular para 12, reaffirming the “responsibility of Governments for safeguarding and protecting the rights of individuals residing in their territory against racist or xenophobic crimes perpetrated by individuals or groups” (emphasis added).

¹⁵⁶ For the sources of public international law, see Art 38 (1) of the Statute of the International Court of Justice and, *eg*, Shaw, Chapter 3.

¹⁵⁷ Note also the Vienna Declaration and Programme of Action, Part I, para 15: “Respect for human rights and fundamental freedoms without distinction of any kind is a *fundamental rule of international human rights law*.” (emphasis added).

¹⁵⁸ II.1.

¹⁵⁹ Ratified by a clear majority of states (156).

¹⁶⁰ Art 14 ECHR; Art 1 (1), 24 ACHR; Art 2, 3 ACHPR. See also Art 4 (1) ICCPR; Art 27 (1) ACHR.

¹⁶¹ Especially Art 12 Geneva Conventions I and II; Art 16 Geneva Convention III; Art 3 (1) Geneva Convention IV, which are almost universally ratified (188 states); Art 9 (1) Protocol I; Art 2 (1) Protocol II.

¹⁶² See, *eg*, the resolutions cited *supra* I., II.2.1. and II.3.

¹⁶³ See the cases cited *supra* II.2.1. and especially the dissenting opinion of Judge Tanaka, ICJ Rep 1966, 293: “... we consider that the norm of non-discrimination or non-separation on the basis of race has become a rule of customary international law ...”. See further the *Case Concerning the Barcelona Traction, Light and Power Company, Limited (Belgium v Spain) (Second Phase)*, Judgment of 5 February 1970, ICJ Rep 1970, 3: “... obligations *erga omnes* ... such obligations derive ... from the outlawing of genocide, as also from the principles and rules concerning the basic rights of human person, including protection from slavery and racial discrimination” (paras 33-34).

to the prohibition of slavery and genocide the prohibition of

racial discrimination is now also part of general international law¹⁶⁴ and even of peremptory character (*ius cogens*).¹⁶⁵ Furthermore almost all states are members of the UN and bound by its Charter, whose non-discrimination clauses are not only of programmatic character but constitute clear legal obligations.¹⁶⁶

Secondly, one has to ask from where the obligation derives, not only to refrain from racial discrimination, but also to combat racial discrimination, racism and xenophobia. This question arises especially with regard to the two last mentioned phenomena and “indirect forms” of them. In this regard it is surprising that the Special Rapporteur, while citing Articles 2 UDHR and 2 (1) ICCPR, does not mention Articles 7 UDHR and 26 ICCPR.¹⁶⁷ Taking, for example, the latter provision together with the states parties’ obligation not only to “respect” but also to “ensure” the rights recognised in the Covenant (Article 2 (1) ICCPR), then it is clear that states also have *positive* obligations to fulfil and that the provisions also have a *horizontal effect*.¹⁶⁸ Such an obligation is even expressly contained in Article 20 (2) ICCPR, pursuant which any advocacy of racial hatred that constitutes incitement to hostility or violence shall be prohibited by law.¹⁶⁹ That the non-discrimination provisions of the ICCPR have horizontal effects is also indicated by the Human Rights Committee, stating that it “wishes to know if there remain any problems of discrimination in fact, which may be practised either by public authorities, ..., or by *private* persons or bodies”¹⁷⁰ (emphasis added). This also indicates that not only discrimination in law but also in fact is prohibited.¹⁷¹ The Human Rights Committee further states that the principle of equality¹⁷² “sometimes requires states parties to take

¹⁶⁴ So also: Dinstein, 15 IsraelYBHR 11 (1985); McKean, 271-284; Meron, 79 *et seq.*; Ramcharan, 249-250; Shaw, 204; Rodley, 38 ICLQ 321-333; moderate ALI, Third Restatement, 161-173 (§ 702 (a), (b) and (f)). The precise scope of this obligation under general international law is uncertain, however. For the content and scope of the concept of discrimination, see, the general principles deriving from the studies undertaken by the Sub-Commission listed in McKean, 95-96 and Vijapur, 54-55, both with references to the relevant studies. Note also Art 18 (f) of the Draft Code of Crimes against the Peace and Security of Mankind (1996) of the International Law Commission, A/51/10, II.D.: “A crime against humanity means any of the following acts, when committed in a systematic manner or on a large scale and instigated or directed by a Government or by any organization or group: ... institutionalized discrimination on racial, ethnic or religious grounds involving the violation of fundamental human rights and freedoms and resulting in seriously disadvantaging a part of the population”.

¹⁶⁵ So also McKean, 277-284, at 283, Ramcharan, 249-250.

¹⁶⁶ Partsch, Article 55 (c), 778; Partsch, Racial Discrimination, 1003. See also the *Namibia Case*, ICJ Rep 1971, 6, para 131: “To establish ... and to enforce, distinctions, exclusions ... exclusively based on grounds of race, colour ... which constitutes a denial of fundamental human rights is a flagrant *violation of the purposes and principles of the Charter*.” (emphasis added). See also, eg, GA Res 54/154, preambular para 2: “... that racism and racial discrimination constitute a total negation of the purposes and principles of the Charter and the Universal Declaration of Human Rights ...”.

¹⁶⁷ See hereto, Möller, 115-141 and Nowak, 458-479. With regard to the ECHR, containing no “free-standing” provision equivalent to Art 26 ICCPR, the Committee of Ministers of the CoE adopted on 26 June 2000 Protocol No 12 to the ECHR which provides for a general prohibition of discrimination in Art 1. The Protocol will be opened for signature by member States in Rome on 4 November 2000. The text of Protocol No 12, the explanatory report and commentary can be found at: www.dhdirhr.coe.fr. For positive obligations and “reverse discrimination” in the framework of the ECHR, see, eg, Harris/O’Boyle/Warbrick, 483-486.

¹⁶⁸ See, Nowak, 36-39; Ramcharan, 261-263; Sieghart, 77.

¹⁶⁹ For the somewhat unclear formulation of the whole provision and in general, see Nowak, 365-367.

¹⁷⁰ Human Rights Committee, General Comment 18, *op cit*, para 9.

¹⁷¹ Clearly stated *Ibid*, para 12: “It [the autonomous right provided by Art 26 ICCPR] prohibits discrimination in law and in fact in any field regulated and protected by public authorities.”

¹⁷² Equality and non-discrimination can be seen as positive and negative statements of the same principle, so eg, Ramcharan, 252 and Bayefsky, 11 HRLJ 1, fn 1 (1990), with further references. For the notions discrimination and equality, see further Vierdag, 7-18. For the principle of non-discrimination or equality in general, see Bayefsky, 11 HRLJ 1-34 (1990); Opsahl, 51-65; Vierdag.

affirmative action in order to diminish or eliminate conditions which cause or help to perpetuate discrimination”¹⁷³ (emphasis added).

With regard to positive obligations, affirmative action¹⁷⁴ and the obligation also to combat racism and xenophobia, the provisions contained in the ICERD are more specific. Those particularly worthy of mention are: Articles 1 (4), 2 (1) and (2), 4, 5 (f) and 7 ICERD.¹⁷⁵ Pursuant to these provisions states are, *inter alia*, under an obligation to *promote* understanding among all races through, for example, prohibiting and bringing to an end by all appropriate means racial discrimination by *any* person, group or organisation (Article 2 (1) (d) ICERD), to adopt immediate and *positive* measures designed to eradicate all incitement to, or acts of, discrimination as described in Article 4 ICERD, including propaganda based on ideas or theories of superiority of one “race” or group of persons of one colour or ethnic origin, and to this end, among others, states shall declare an offence punishable by law all dissemination of such ideas (Article 4 (a) ICERD),¹⁷⁶ and to undertake and adopt immediate and *effective* measures, particularly in the fields of teaching, education, culture and information, with a view to combating *prejudices* which lead to racial discrimination and to *promoting* understanding, tolerance and friendship among nations and racial or ethnical groups (Article 7 ICERD).¹⁷⁷

Without going into more detail, but looking only at the aforementioned provisions, one can confirm that the “international community” (basically meaning states) is under an obligation not only to refrain from racial discrimination but also to take positive measures to eradicate the underlying causes of racial discrimination, that is, racist ideas, xenophobia and related intolerance, and to combat their various forms and manifestations and, where needed, to adopt special measures¹⁷⁸ to advance a situation where all racial, ethnic and other groups and individuals can actually enjoy and exercise their human rights and fundamental freedoms equally. As long as racism, xenophobia and related intolerance exist in society, one cannot say that all individuals are on an “equal footing” and therefore enjoyed their human rights equally.

(c) Definitions

The categories of discrimination contained in Resolution 1993/20 are all interrelated and not strictly separable from each other and the specific issues added by Resolution 1994/64 then should not be taken as

¹⁷³ General Comment 18, *op cit*, para 10.

¹⁷⁴ For race-based affirmative action, see, *eg*, Paust, 18 MichJIL 659-677 (1977).

¹⁷⁵ In more detail hereto, see Lerner, 25-64; Lerner, Group Rights and Discrimination, 48-58; Lerner, 22 IsraelYBHR 1-15 (1993); Meron, 79 AJIL 291-311 (1985); Schwelb, 15 ICLQ 1001-1029 (1966). See also Farrior, 5 ILSA-JICL 291-299 (1999) on Art 7 and Partsch, 14 TexasILJ 191-259 (1979) on Art 5 (a)-(d). For the concept of positive rights and affirmative action, see, *eg*, Niewerth, 113-129.

¹⁷⁶ For the problem of a possible conflict with freedom of opinion and expression, see, *eg*: General Recommendation XV, *op cit*, para 4, stating that the prohibition of the dissemination of racist ideas or hatred is compatible with the right to freedom of opinion and expression; the study prepared by Türk and Joinet, E/CN.4/Sub.2/1992/9, concluding that, under international law, racism is not an opinion but an offence. See also the difficult case of *Jersild v Denmark*, Judgment of the European Court of Human Rights of 23 September 1994, Series A 298 = 19 EHRR 1 (1995). Hereto, Harris/O’Boyle/Warbrick, 374-375. On this topic, see also the contributions in Coliver, Striking the Balance.

¹⁷⁷ On Art 7 ICERD, see especially CERD’s General Recommendation V, *op cit*, stressing that the obligations under Art 7 ICERD are binding on all states, and General Recommendation XIII, *op cit*, urging states to give law enforcement officials intensive training to ensure that in the performance of their duties they respect as well as protect human dignity and maintain and uphold the human rights of all persons without distinction as to race, colour or national or ethnic origin. See also the study on the implementation of Art 7 ICERD, A/CONF.119/11, and the Joint Working Paper on Art 7 ICERD, E/CN.4/Sub.2/1998/4. With regard to education, the obligation to promote understanding, tolerance and friendship among nations and racial or ethnic groups, is similarly contained in Art 26 (2) UDHR, Art 13 (1) ICESCR, Art 29 (1) (d) of the Convention on the Rights of the Child, and Art 5 (1) (a) of the Convention against Discrimination in Education.

¹⁷⁸ Affirmative action or positive discrimination.

a hierarchy or even exclusive list of racism related phenomena to be studied. This is apparent from the controversy in the Commission about what should be inserted in the resolution and what should not.¹⁷⁹ Mr Padya (Mauritius) pointed out that the listing of various forms of discrimination tended to create a hierarchy of violations and to imply that those absent from the list were less important.¹⁸⁰ The inclusion of “discrimination against Blacks and Arabs”, for example, was not necessary as it was already covered by the term “racial discrimination”.

Looking at each of the terms contained in the mandate, one might start with the notion of *racial discrimination*. Here it is appropriate to adopt the same definition as contained in Article 1 (1) ICERD,¹⁸¹ not least to safeguard a uniform interpretation of the term in international law.¹⁸² It is also a necessarily broad definition not limited to the questionable notion of “race”¹⁸³, but covering also “colour, descent, or national or ethnic origin”. This reflects the fact that race is a socially defined concept rather than a biologically determined reality.¹⁸⁴

With regard to *racism*,¹⁸⁵ a theory or doctrine purporting to explain the superiority of one “race” over another due to alleged biological, social or other differences has been comprehensively rejected.¹⁸⁶ In any case, looking at such theories from a philosophical and human rights perspective, they make no sense, as all human beings are born equal in dignity and rights. Furthermore, from a “biological” perspective, a differentiation between the “races” is getting more and more absurd with the progressive intermingling of human beings from different parts of the world.

The term racism is, however, used in several senses.¹⁸⁷ The notion can refer to the sense of individual and group beliefs, attitudes and their expressions. Racism in this sense is a certain state of mind and has to be analysed from a psychological as well as a sociological point of view. Although racism in this sense can be subdivided into different categories and different reasons for the formation of racist attitudes can be

¹⁷⁹ *Eg*, the delegation from the Russian Federation proposed the reference to “aggressive nationalism”, which was opposed and not included. The delegation found the text of the draft resolution as revised less balanced and wished no longer to be a sponsor of it, E/CN.4/1994/SR.64, para 8. The word “negrophobia” was inserted last minute by an oral amendment proposed by the Nigerian delegation shortly before the adoption of the whole draft resolution, E/CN.4/1994/SR.64, paras 5, 12-21. The revision of operative para 4 of CHR Res 1994/64, containing the additional notions, was initiated by Turkey and needed lengthy consultations with the countries and regions concerned, *Cf* E/CN.4/1994/SR.64, paras 1-2.

¹⁸⁰ E/CN.4/1994/SR.64, para 6.

¹⁸¹ See hereto, *eg*, Meron, 79 AJIL 286-291, 291 *et seq.* (1985).

¹⁸² The Human Rights Committee, *eg*, also refers to this definition in General Comment 18, *op cit*, para 6. See further the background paper prepared by Ion Diaconu on the definitions of racial discrimination, E/CN.4/1999/WG.1/BP.10.

¹⁸³ On this notion, see especially the four statements on the concept of race prepared by groups of experts brought together by UNESCO, reprinted in Encyclopedia of Human Rights, 1216-1223, and the Declaration on Race and Racial Prejudice. Art 1 (1) of the Declaration reads: “All human beings belong to a single species and are descended from a common stock. They are born equal in dignity and rights and all form an integral part of humanity.” See also Banton, Racial Theories.

¹⁸⁴ Hayes, Encyclopedia of Sociology, 1086. See also Vierdag, 90.

¹⁸⁵ On racism in general, see, *eg*, the interdisciplinary essays in Goldberg, Anatomy of Racism.

¹⁸⁶ “Any theory which involves the claim that racial or ethnic groups are inherently superior or inferior, thus implying that some would be entitled to dominate or eliminate others, presumed to be inferior, or which bases value judgements on racial differentiation, has no scientific foundation and is contrary to the moral and ethnic principles of humanity.” Art 2 (1) of the Declaration on Race and Racial Prejudice. See hereto and for the following paragraph also the comment by the Special Rapporteur in A/50/476, para 38: “There can be no denying that, while all the pseudo-scientific racist theories have collapsed, attitudes and behaviour patterns persist, as if racism could exist in the absence of any justification deriving from a ‘science’ of race.”

¹⁸⁷ Banton/Miles, Dictionary of Race and Ethnic Relations, 308-311. See also Art 2 (2) of the Declaration on Race and Racial Prejudice: “Racism includes racist ideologies, prejudiced attitudes, discriminatory behaviour, structural arrangements and institutionalized practices resulting in racial inequality ...”.

adduced,¹⁸⁸ one might simplify by defining racism as a “prejudice based on race and characterised by attitudes and beliefs about the inferior nature of persons of other races.”¹⁸⁹ Leaving the questionable notion of “race” aside or taking it as what some people assume “race” to mean, the central notion here is “prejudice”.¹⁹⁰ The danger of such prejudices is that if made manifest it can range from avoidance or discrimination,¹⁹¹ acts of aggression, through to mass extermination.¹⁹² Such prejudices and ideas are not innate, however, but “handed down from generation to generation”¹⁹³; they are transmitted through education, teaching, information,¹⁹⁴ cultural isolation and alike, by parents, friends, teachers, politicians and other opinion leaders.

Therefore, looking at this background, it is clear that merely enacting legislation, for example, penalising certain racist acts, is not enough to “eradicate” racism. Measures are also needed especially in the field of education, as well as in the other fields mentioned in Article 7 ICERD, teaching, culture and information, so as to avoid such prejudices and ideas from coming into existence and thereby to tackle the problem of racism and the other phenomena under consideration at the roots.

Xenophobia is defined as a rejection of outsiders and is in many cases similar to racism. The term means literally, however, fear or dislike of strangers.¹⁹⁵ Xenophobia in its literal meaning thus applies to a fear or dislike of members of a variety of different groups, such as religious, ethnic, political or other groups. In the context of the Special Rapporteur’s mandate and the usage of the notion in recent times, xenophobia is more and more associated with a strong dislike or antipathy towards foreigners, especially foreigners with a different skin colour. The latter is reflected, for example, in Western Europe where EU citizens can move freely between countries. Such fears or aversions tend to be directed only towards foreigners of a different skin colour, coming from outside the EU, not towards other “white” Europeans.¹⁹⁶ The factor of skin colour is, however, mainly a trend in Western Europe. The mission report of the Special Rapporteur on South Africa,¹⁹⁷ for example, shows that xenophobia exists between people of the same “colour” and related only to the status of being a foreigner. Xenophobia is thus (although similar) different from racism. Racism

¹⁸⁸ Eg: “dominative racism”, “aversive racism” and “cultural racism”; see Mageli, *Encyclopedia of Psychology*, 1394-1397, with further references. See also Appiah, *Racisms*, 3-17

¹⁸⁹ *Dictionary of Psychology*, 630.

¹⁹⁰ A notion as such neutral and meaning the forming of an attitude prior to having sufficient information, a preconception. It is generally used, however, in the sense of a negative attitude towards a particular group of persons based on negative traits assumed to be uniformly displayed by all members of that group. See *Dictionary of Psychology*, 590. For the similar notion “stereotypes” as used by the Special Rapporteur (A/49/677, para 20, cited *supra*), see, eg, Mageli, *Encyclopedia of Psychology*, 1395: “..., both prejudice and discrimination, many psychologists argue, are rooted in those human cognitive processes involved in the formation of stereotypes. Stereotypes are ideas, often rigidly held, concerning members of a group to which one does not belong.”

¹⁹¹ Note Art 7 ICERD: “... prejudices which lead to racial discrimination...”

¹⁹² *Oxford Dictionary of Sociology*, 523.

¹⁹³ This quotation is taken from the Study on the Implementation of Art 7 ICERD, A/CONF.119/11, para 38 (referring to the conclusions of a round table seminar on the teaching of problems of racial discrimination, held at Geneva from 5 to 9 November 1979, ST/HR/SER.A/5): “... prejudice and the idea of inequality between the races are acquired, accepted and assimilated, as it were, by mimicry or mental torpor, and are not innate. ... racism can be seen as a form of collective consciousness of a group of people in a society, handed down from generation to generation.”

¹⁹⁴ Note hereto, eg, the Special Rapporteur’s finding in A/50/476, para 121: “Apart from the hate media, the traditional media contribute to differences of opinion with regard to immigrants, ethnic minorities and indigenous populations by propagating stereotypes and summary or tendentious analyses which help to reinforce the prejudices on which intolerance flourishes.”

¹⁹⁵ From the Greek *xenos* for stranger and *phobia*, a fear or aversion; Banton, *Dictionary of Race and Ethnic Relations*, 382.

¹⁹⁶ See also Banton, *loc.cit.*: “... its more recent application has been in the context of attacks on immigrants and asylum seekers in western Europe.”

¹⁹⁷ E/CN.4/1999/15/Add.1, *Cf infra* III.3.4.

usually also implies a relation of superiority and inferiority, whereas xenophobia does not necessarily imply such a meaning. The inclusion of this term in the Special Rapporteur's mandate is thus justified.¹⁹⁸

With regard to the notion of *negrophobia*, it is apparent that it is only one of other possible specifications of the notions already contained in the mandate.¹⁹⁹ One might ask why other “phobias” were not listed, such as the fear or dislike of Asians, aboriginal peoples or other groups.²⁰⁰ The latter can also be said with regard to *discrimination of Blacks and Arabs*. These should be understood as illustrative subdivisions of racial discrimination and xenophobia and should not be taken as excluding other specific forms of racial discrimination, racism or xenophobia.²⁰¹

In practice, the Special Rapporteur has not confined himself rightly to the listed examples, but also takes account of other issues, such as discrimination against Roma, Gypsies or travellers.²⁰²

The notions of *anti-Semitism* and *discrimination against Muslims*, contained in Commission Resolution 1994/64, appear more problematic.

With regard to discrimination against Muslims, without exploring the notion the Special Rapporteur determined that “this issue should be taken up by the Special Rapporteur on religious intolerance in order to avoid any duplication of the latter’s mandate.”²⁰³ It is perhaps surprising, however, that the Special Rapporteur did not have similar thoughts on anti-Semitism, which he defines as the “despising of Jews”, and that this sentiment could be considered to be one of the root causes of racial and *religious* hatred.²⁰⁴ As this statement shows, anti-Semitism can be viewed in terms of both religion and “race”.²⁰⁵ However, the mandate inevitably overlaps with other subjects and mandates, including those related to religion.

Although it is not exactly clear what led to the inclusion of these specific forms of discrimination, they should perhaps be seen in the light of the title of the resolution and the mandate of the Special Rapporteur.²⁰⁶ In the context of the Special Rapporteur’s mandate, the terms Arabs and Muslim might be read together. What leads to discrimination against Muslims, especially with regard to Western countries with a mainly Christian culture, might not be religion as such but rather the physical and external appearance and different culture of people from countries with a mainly Arabic or Muslim population. What is decisive for the ignorant, discriminatory, hostile or violent behaviour towards people from Asia and North Africa is not necessarily their religion but their different skin colour, their different dressing, like the

¹⁹⁸ Interesting to note is the observation by Banton, *loc. cit.*: “In Germany, the word *Rassismus* is uncomfortably associated with the Nazi era. German institutions are more ready to refer to *Fremdenfeindlichkeit* and translate this into English as xenophobia. This is one factor underlying the increased reference to xenophobia in internationally-agreed documents.”

¹⁹⁹ This notion was inserted shortly before the adoption of the draft resolution, as already mentioned above. Note also the comment on the amendment by Mr Chaben (Uruguay) that as the revised draft already listed specific groups that were subject to discrimination, there was no harm in adding another item, E/CN.4/1994/SR.64, para 23.

²⁰⁰ The Indonesian delegation failed to understand the difference between discrimination against Blacks and negrophobia, E/CN.4/1994/SR.64, para 22.

²⁰¹ See also the French delegation’s comment, that it hoped that the use of innovative language in the text and the establishment of a list of forms of discrimination would not create a precedent, E/CN.4/1994/SR.64, para 20.

²⁰² Cf *infra* III.3.2.(b) and 3.4.(b) – Mission to Hungary, Czech Republic and Romania.

²⁰³ A/49/677, para 17.

²⁰⁴ *Ibid*, para 37.

²⁰⁵ Cashmore, Dictionary of Race and Ethnic Relations, 32.

²⁰⁶ As also pointed out by Mr Cankorel (Observer for Turkey), E/CN.4/1994/SR.64, para 4.

head scarf, or similar features, as well as certain stereotypes.²⁰⁷ Thus, the notion “Muslims” has to be read not only in religious but also cultural terms and therefore should not be excluded from consideration right from the beginning.

The Special Rapporteur, in a later report, also recognised that manifestations of racism and xenophobia against Arabs are increasingly accompanied by a form of “*Islamophobia*” and it was therefore difficult to separate acts of racial discrimination from acts of religious intolerance, as each may reinforce or encourage the other.²⁰⁸ He nevertheless maintained that the question of Islamophobia should be referred to the Special Rapporteur on religious intolerance.²⁰⁹

In the context of cultural differences between groups, it would have been worth consideration to introduce and discuss the notion of *ethnocentrism*²¹⁰, defined as a conviction that one’s own group and its culture are superior to all other groups and their cultures, a term that is closely linked to xenophobia and racism.²¹¹

With regard to *anti-Semitism*, the Special Rapporteur’s initial analysis is relatively short. As already mentioned, it is open to debate whether anti-Semitism can be viewed in terms of religion, “race” or both. Looking at it in religious terms, the Special Rapporteur could have referred this issue also to the Special Rapporteur on religious intolerance. However, without going into details of the origin of the notion and the historical background,²¹² some remarks on the latter annotation of “race” are needed. First, one might point out that taking the term anti-Semitism literally, it would also cover hostility towards other Semites,²¹³ namely Arabs.²¹⁴ The term is mainly used in association with Jews, however. Negative stereotypes towards Jews, which unfortunately still exist are often perceived in racial terms, seeing the alleged characteristics of Jews as ineradicable racial traits.²¹⁵ With regard to such negative stereotypes linked to the notion of “race”, and taking the horrific historical experience of the Holocaust committed by fascist Nazi Germany into account, it is appropriate to consider anti-Semitism as a specific form of racism and therefore to enlist it in the mandate.²¹⁶

One can not avoid looking at the notions anti-Semitism and discrimination against Muslims and Arabs from a political point of view. The UN has not always given the best example on anti-Semitism and its confusion with anti-Zionism and criticism of Israel over the Palestine question.²¹⁷ During the Commission’s

²⁰⁷ Like the sometimes almost automatic association of Arabs or Muslims with terrorism in mainly Western countries. See, eg, the stereotypes and the role of the media in the USA as reported by the Special Rapporteur, E/CN.4/1995/78/Add.1, para 68.

²⁰⁸ E/CN.4/1998/79, para 36.

²⁰⁹ *Ibid.*

²¹⁰ See also A/50/476, paras 39 *et seq.*

²¹¹ See Madden, *Encyclopedia of Sociology*, 1519 and *Dictionary of Psychology*, 630.

²¹² See hereto, eg, Cashmore, *Dictionary of Race and Ethnic Relations*, 32-33 and Mageli, *Encyclopedia of Sociology*, 78-82, both with further references.

²¹³ The term Semite is translated in the *Concise Oxford Dictionary*, 1259, as: “a number of any of the peoples supposed to be descended from Shem, son of Noah (Gen. 10:21ff.), including especially the Jews, Arabs, Assyrians, ...”.

²¹⁴ Note also the explanation of vote before the adoption of operative para 4 of the draft resolution by Mr Khoury (Syrian Arab Republic), that since the Arabs were Semites, they like other groups were concerned about anti-Semitism, E/CN.4/1994/SR.64, para 19.

²¹⁵ Mageli, *Encyclopedia of Sociology*, 78.

²¹⁶ Anti-Semitism is also regarded as racial discrimination within the meaning of ICERD. For the discussions on the proposal to include the prohibition of anti-Semitism explicitly in the ICERD, see Lerner, 68-73 and Schwelb, 15 ICLQ 1011-1015 (1966).

²¹⁷ See hereto Dinstein, 17 *IsraelYBHR* 15-23; Keyes, 17 *IsraelYBHR* 24-28. The quarrels have also influenced the first two World Conferences to Combat Racism and Racial Discrimination. Israel and the USA, eg, did not attend the Second World Conference; Lerner, 13 *IsraelYBHR* 172 (1983). Note also the already mentioned “Zionism equals Racism Resolution” (GA Res 3379 (XXX) of 10 November 1975; “revoked” in 1991 by GA Res 46/86) and the reactions caused by it; see 29 *YUN* 587-593, 599-560 (1975).

discussions on these additional notions, Mr Abram (World Jewish Congress), for example, pointed out that the Commission had never condemned anti-Semitism,²¹⁸ and thus on this occasion the Commission did so for the first time. Looking at the notions of anti-Semitism and discrimination against Arabs and Muslims, the statement by Mr Cankorel, that the new version of operative paragraph 4 of the draft resolution would contain in a “balanced manner” all the essential elements of the Secretary-General’s report,²¹⁹ can be read as referring to having found a balance between the two “parties” and finally the inclusion of both terms.²²⁰

In conclusion, it is apparent that the exact meaning of the various forms and manifestation of racism can be controversial and that the phenomena under consideration are not permanent but, like society itself, ever changing. This reflects the complexity and subtlety of the main theme and therefore, as the Special Rapporteur puts it, “there is a need to redefine or refocus, by further refining, the concepts or notions of racism, of racial discrimination, of xenophobia and of intolerance”.²²¹ The additions approved by Resolution 1994/64 should not be taken as creating a hierarchy or exclusivity, but only as providing examples. The subsequent practice of the Special Rapporteur shows that he is not preoccupied with the additional list, as he also focuses on other forms of racism and racial discrimination.²²² Thus, the mandate should be interpreted in its broadest possible way, as already apparent from the ending of the mandate with the words “and related intolerance”.

2.2 Working Methods of the Special Rapporteur

The mandate as established by Commission Resolution 1993/20 “contains few indications as to the nature, framework and scope of the Special Rapporteur’s activities, the appropriate methodology and the sources of information on which he may draw.”²²³ The Special Rapporteur therefore has explored the methods of work in his preliminary report drawing attention to the complexity and subtlety of the main theme and by examining the methodology of other thematic procedures.²²⁴

²¹⁸ E/CN.4/1994/SR.9, para 6.

²¹⁹ E/CN.4/1994/SR.64, para 3, referring to E/CN.4/Sub.2/1992/11. Note also Ms Farhi (International Council of Jewish Women) complaining about the absence of any mention of the phenomenon of anti-Semitism in UN human rights documents and that the word anti-Semitism appeared only in the Secretary-General’s report, E/CN.4/1994/SR.9, para 14.

²²⁰ Note also the comment on CHR Res 1994/64, para 4 by van Boven, E/CN.4/1999/WG.1/BP.7, 3.(c): “... this formula was not only an illustration of the various forms and manifestations of intolerance and racism, it also opened up a box of Pandora in order to accommodate or reconcile diverse or even opposing interests. This complex formula proves that divergent forces are at work at the United Nations which by their nature tend to corrode a common platform of struggle against racism and racial discrimination.”

²²¹ E/CN.4/1994/66, para 33.

²²² See, eg, A/50/476, para 50: “Here we shall examine those forms and manifestations of racism and racial discrimination which do *not* affect the groups explicitly designated by the Commission ...” (emphasis added). He later also examines the issue of, eg, neo-Fascism and neo-Nazism which is closer to the notion “aggressive nationalism” which was considered but not inserted in CHR Res 1994/64, *Cf supra*.

²²³ E/CN.4/1994/66, para 32.

²²⁴ *Ibid*, para 32-45. See also E/CN.4/1997/71, paras 7-8, after the extension of the mandate: “...since his mandate had remained essentially unchanged, there is no need to redefine the working methods...”. For other thematic procedures and their working methods, see, eg, Rodley, 70-76; Rodley, 8 HRQ 700-730 (1986); Rudolf, 55-394 and 456-541; Weissbrodt, 80 AJIL 685-699 (1986). In comparison to other special rapporteurs, particularly the Special Rapporteur on Summary and Arbitrary Executions and the Special Rapporteur on Torture, the Special Rapporteur is not mandated “to respond effectively” to information. This expression has been interpreted by the respective special rapporteurs in such a way that these terms serve as the basis for sending out “urgent messages” to governments where a violation of an individual’s respective right is imminent or threatened. The omission of these terms in the mandate of the Special Rapporteur might be explained by the different nature of the phenomena to be studied.

(a) Approach and methodology

Following the complexity and subtlety of the main theme, contemporary forms of racism, racial discrimination, xenophobia and intolerance, the Special Rapporteur rightly regards it as necessary to foster a comprehensive, broad and multidimensional as well as open and multidisciplinary approach.²²⁵

He suggests further the adoption of a dual approach, comprising a factual and a theoretical and conceptual aspect, which would comprise the legal dimension.²²⁶ Accordingly, he wants to study the facts or phenomena that have been recorded through the appropriate channels, consider communications in a manner similar to that used in other thematic procedures, and analyse cases of alleged violations and government replies, which would contribute to a better grasp of manifestations of racial discrimination and thus would help to identify and determine indicators of its contemporary forms.²²⁷

The second aspect would involve a theoretical and conceptual study of new forms of discrimination and consequently refine the concepts of discrimination, intolerance, xenophobia and their modern forms, as well as the collection and analysis of legal and administrative provisions enacted by Governments, including legal decisions.²²⁸

He further considers undertaking missions in the field, which as he explains in the following report, would be intended to allow the Special Rapporteur to assess the conditions actually prevailing in a country by giving him direct access to first-hand reports and to dialogue with the authorities of the countries concerned as well as key figures in civil society.²²⁹

He also suggests that it would be appropriate to set up a machinery for regular consultation and dialogue between special rapporteurs, also recommending that systematic co-operation in the form of regular consultations and joint studies should be arranged with the other specialised agencies of the UN system.²³⁰ The need for co-operation among the various bodies involved in the issue was subsequently echoed in Commission Resolution 1994/64, para. 5, requesting the Special Rapporteur to have an exchange of views with the various relevant mechanisms and treaty bodies within the UN system. To this end a mechanism of periodic consultations of special rapporteurs was established in 1994.²³¹

(b) Sources of information

Commission Resolution 1993/20 contained no indication as to the sources on which the Special Rapporteur may draw. After the Special Rapporteur indicated incidentally in his preliminary report to the Commission what sources he would use, the Commission clarified this issue in Resolution 1994/64. It calls upon all governments, IGOs, relevant organisations of the UN system and NGOs to supply information to the Special Rapporteur and requests the Special Rapporteur to use *any* information that he might deem relevant

²²⁵ E/CN.4/1994/66, para 33-34. See also A/49/677, para 18.

²²⁶ E/CN.4/1994/66, para 35. See also A/49/677, para 18.

²²⁷ E/CN.4/1994/66, paras 37-39

²²⁸ *Ibid*, paras 40-42.

²²⁹ A/49/677, para 46. In accordance with his mandate, CHR Res 1993/20, para 11 (“... in carrying out missions ...”).

²³⁰ E/CN.4/1994/66, para 44-45.

²³¹ See hereto and further, *infra* III.3.5.(a).

to his mandate.²³² In subsequent practice the Special Rapporteur, thus, also uses reliable international press sources or information from the Internet for his work.²³³

2.3 Resources

In Resolution 1993/20, the Commission requested the Secretary-General to provide the Special Rapporteur with all necessary assistance, in particular the staff and resources required to perform his or her functions.²³⁴ The Special Rapporteur considered that he would require a person at the professional level with certain requirements and a secretary at the Office in Geneva.²³⁵ He also listed certain tasks, which the secretariat would have to fulfil in assisting him in implementing his mandate.²³⁶

From his appointment to the present, the Special Rapporteur has not been provided with the necessary personnel or financial resources to fulfil his mandate properly,²³⁷ despite repeated requests by the Commission and the GA to the Secretary-General to provide the Special Rapporteur with all the necessary assistance and resources.²³⁸

3. Implementation of the Mandate

3.1 Reports to the Commission and the General Assembly

Pursuant to Commission Resolution 1993/20, paragraph 10, the Special Rapporteur submits annual reports to the Commission upon the implementation of his mandate.²³⁹ The Special Rapporteur also reports on an annual basis to the GA, as invited to do so by the Commission and GA.²⁴⁰ The reports to the Commission and to the GA are not identical, however, and need to be read in conjunction.²⁴¹

The reports typically consist of an introduction, a summary of the activities conducted by the Special Rapporteur, a section on contemporary manifestations of racism, racial discrimination, xenophobia and related intolerance, measures taken or envisaged by governments²⁴² (and IGOs), actions and initiatives by

²³² Res 1994/64, paras 6 and 8. See also later: CHR Res 1996/21, para 13 (“... to make the fullest use of all additional sources of information, including country visits and the evaluation of the mass media, ...”); CHR Res 2000/14, para 34 (“... all appropriate sources ...”).

²³³ See, *eg*, A/49/677, para 124; E/CN.4/1998/79, para 3 (“As in the past, he also drew on unofficial sources, and in particular reliable international press sources, to make up for the shortcomings due to the lack of cooperation on the part of the majority of States.”); A/54/347, para 30.

²³⁴ Res 1993/20, para 11.

²³⁵ E/CN.4/1994/66, para 46.

²³⁶ *Ibid* para 47. See also his recommendations on resources in A/49/677, paras 130-138.

²³⁷ *Cf eg*, A/49/677, para 50-51, 133-134; E/CN.4/1995/78, para 13-14; E/CN.4/1996/72, para 61; E/CN.4/1998/79, para 106. The constraints with regard to administrative, financial and personnel resources is a general problem, facing also the other special procedures of the Commission. See, *eg*, the report of the meeting of special rapporteurs *et al.*, E/CN.4/1998/45, paras 47-56, expressing concern, *inter alia*, about the fact that staff members were very often assisting the experts on a part-time basis because they were assigned to several mandates.

²³⁸ *Eg*: CHR Res 1997/74, paras 35-36; GA Res 53/133, para 18.

²³⁹ Reiterated in later resolutions on the mandate.

²⁴⁰ *Cf eg*, GA Res 49/147, para 3.

²⁴¹ The following reports are expressly mentioned by the Special Rapporteur to be read in conjunction with each other or as supplementary: E/CN.4/1995/78 together with A/49/677; E/CN.4/1997/71 together with A/51/301; E/CN.4/1999/15 together with A/53/269; E/CN.2000/16 together with A/54/347.

²⁴² And later also legislative and judicial bodies and other authorities.

civil society, and conclusions and recommendations.²⁴³ Later reports also contain replies to allegations transmitted to governments, replies to the Special Rapporteur's request for information, and a section on the follow-up to field missions. Some of the reports also contain additional sections on specific topics.²⁴⁴ Mission reports of the countries visited by the Special Rapporteur are issued as addendum to the reports to the Commission.²⁴⁵

3.2 Contemporary Manifestations of Racism, Racial Discrimination, Xenophobia and Related Intolerance; Incidents and Allegations

The reports of the Special Rapporteur regularly contain a section on "Contemporary Manifestations of Racism, Racial Discrimination, Xenophobia and Related Intolerance" and another section called "Replies to Allegations Transmitted to Governments by the Special Rapporteur". The former usually contains more general observations and analysis of the situation with regard to the phenomena under consideration, whereas the latter comprises allegations of factual racist, discriminatory, xenophobic and related incidents together with government replies and comments.

In two of his first reports, the Special Rapporteur dealt with both general observations and incidents under the heading "Contemporary Manifestations of Racism and Racial Discrimination and Incidents".²⁴⁶ He later changed this practice, however, as will be discussed below.

(a) The Special Rapporteur's first reports and his subsequent practice

The Special Rapporteur listed allegations, facts and general remarks in his first report to the GA in one section,²⁴⁷ and stated an account of the facts, as brought to his attention in his following report to the Commission.²⁴⁸ These two reports caused negative reactions by some governments and NGOs, which the Special Rapporteur reproduced partly in his following report to the GA.²⁴⁹ Comments of the governments of Kuwait and Germany concerned alleged incidents reported. The Kuwaiti government complained: "It is, to say the last, surprising that this erroneous information have been published without even trying to verify it with the Kuwaiti authorities concerned."²⁵⁰ Similarly, the German government stated that it "finds it regrettable that the Special Rapporteur ... mentions in his report ... xenophobic incidents alleged to have occurred in Germany without giving the federal Government an opportunity to explain its position before the report went to press."²⁵¹ The German government further complained about "unverified information"

²⁴³ The contents of some sections is, however, not always consistent with the heading of the section.

²⁴⁴ Eg, "Causes and Vectors of Racism, Racial Discrimination and Xenophobia", A/49/677, IV., continued in A/50/476, III.A., but under a different heading.

²⁴⁵ For the mission reports, see *infra* III.3.4.

²⁴⁶ A/49/677, III. and E/CN.4/1995/78, II.

²⁴⁷ A/49/677, III.

²⁴⁸ E/CN.4/1995/78, II.

²⁴⁹ A/50/476, paras 10-17. See also *Ibid*, paras 10-13, for the protests caused by A/49/677, paras 22 and 37 on anti-Semitism.

The protests of several delegations of the Organization of the Islamic Conference (A/52/471, paras 6-7) on a quote concerning Islamist and Arab anti-Semitism contained in E/CN.4/1997/71, para 27 lead to CHR Dec. 1997/125 of 18 April 1997, requesting its Chairman "to ask the Special Rapporteur to take corrective action". The Special Rapporteur then deleted the final sentence of section 3 of para 27 of that report by E/CN.4/1997/71/Corr.1. This unprecedented Commission intervention in turn caused reactions by other special rapporteurs during their meeting in 1997: "There was consensus among the participants that it was inappropriate for the Commission to request a special rapporteur to amend his report. It was clearly stressed that the special rapporteurs were responsible for the contents of their reports and that the Commission could criticize the substance of a report.", E/CN.4/1998/45, para 23.

²⁵⁰ A/50/476, para 15, first part of the extracted communication dated 13 April 1995.

²⁵¹ *Ibid*, para 16, second paragraph of the extracted communication dated 21 March 1995.

and the insufficient evidence in some of the cases listed to support the hypothesis of xenophobic or racist aggression and clarified some of the cases.

In reply to these complaints, the Special Rapporteur referred to the administrative and financial constraints which made an adversary procedure giving governments the possibility to comment on reported incidents “impractical in the immediate future” and stated that for the time being he was “trying to the best of his ability to inform Governments of the cases submitted to him.”²⁵²

In his subsequent practice, the Special Rapporteur has taken these complaints into account, however, by communicating the allegations to the governments concerned before publishing them. The allegations together with communications of the governments concerned clarifying or commenting on the allegations are now not listed under the heading of contemporary manifestations but under a separate heading.²⁵³

When receiving allegations of racism, racial discrimination, xenophobia or related intolerance, the Special Rapporteur, in accordance with his “established practice” transmits them to the Governments concerned and expects replies three months later. In the absence of a reply, or if the Special Rapporteur believes that the reply received would be complete, he brings the information in his possession to the attention of the Commission, together with his comments (observations).²⁵⁴ The 1999 report to the Commission indicates that the Special Rapporteur has modified his practice by not publishing allegations, if government replies are received within a “reasonable” period of time and the allegations are found not to be justified. Otherwise he brings the situations reported to him to the Commission’s attention.²⁵⁵

Unfortunately the Special Rapporteur only gives an account of the allegations brought to his attention together with the replies of governments. Apart from some general observations added in two of his reports,²⁵⁶ he does not comment upon or analyse the individual cases.

(b) Contemporary manifestations: topics discussed by the Special Rapporteur

Under the heading “Contemporary Manifestations of Racism, Racial Discrimination, Xenophobia and Related Intolerance”, the Special Rapporteur includes more general observations on the phenomena covered by his mandate, as well as giving examples, by, *inter alia*, referring to or citing information that he has received.

The Special Rapporteur examines contemporary forms and manifestations by topic, region and/or country. Regular topics discussed are: racism and racial discrimination in general; racism and racial discrimination against Blacks, including negrophobia; discrimination against Arabs; anti-Semitism; xenophobia; discrimination against immigrants and migrant workers; and discrimination against women. With regard to the situation of migrants, the Special Rapporteur indicates in his 1999 report to the GA that he will not consider this issue any longer,²⁵⁷ as there is now a newly established special rapporteur on the human rights

²⁵² *Ibid*, para 17.

²⁵³ “Communications Relating to Allegations ...” or “Replies to Allegations transmitted to Governments by the Special Rapporteur”. For the allegations and replies, see: E/CN.4/1996/72, annex I; E/CN.4/1997/71, IV.; A/51/301, II.A. and B.; E/CN.4/1998/79, V.; E/CN.4/1999/15, IV.; E/CN.4/2000/16, IV.

²⁵⁴ E/CN.4/1997/71, para 41; E/CN.4/1998/79, para 53.

²⁵⁵ E/CN.4/1999/15, para 101.

²⁵⁶ E/CN.4/1997/71, IV. and E/CN.4/1998/79, V.

²⁵⁷ A/54/347, before para 30: “This report does not cover the situation of migrants and their families, an issue which is the subject of a new mandate entrusted to Ms Rodríguez Pizarro.”

of migrants.²⁵⁸ Further topics taken up by the Special Rapporteur are: racism and discrimination against children;²⁵⁹ the situation of Roma, Gypsies or travellers;²⁶⁰ incitement to racial hatred and freedom of opinion and expression;²⁶¹ the world wide immigration crisis;²⁶² racism and incitement to racial hatred through computer networks (Internet);²⁶³ the discriminatory application of the death penalty in the USA;²⁶⁴ neo-fascism and neo-nazism;²⁶⁵ exploitation and manipulation of ethnicity for political purposes;²⁶⁶ the question of the “untouchables” in India;²⁶⁷ and insidious and subtle forms of racism and racial discrimination.²⁶⁸

It is not possible in this paper to restate the many allegations and cases of racist, discriminatory, xenophobic and related incidents cited in these reports. Reference can be made to the respective sections of the Special Rapporteur’s reports.²⁶⁹ The Special Rapporteur’s more general observations and analyses of contemporary manifestations of racism, racial discrimination, xenophobia and related intolerance, are given in summary form in an annex to this paper.

The reports of the Special Rapporteur amply confirm the case for the creation of such a mandate. They testify to the resurgence and increase of racism, racial discrimination, xenophobia and related intolerance throughout the world. The reports show that racism, racial discrimination and xenophobia persist within society as well as (although not necessarily as a matter of state policy) in an institutionalised form. The former ranges from, for example, daily harassment of foreigners to open racist or xenophobic violence and murder. The latter covers, *inter alia*, racially motivated police violence, subtle forms of racist, discriminatory or xenophobic policies, such as racial discrimination in immigration policy, discriminatory application of the death penalty, and mass expulsions of ethnic groups. The Special Rapporteur rightly looks not only at the specifically listed issues in Commission Resolution 1994/64, but also takes up other topics, such as the situation of Roma or the resurgence of neo-Fascism and neo-Nazism.

²⁵⁸ The Special Rapporteur on the human rights of migrants was established by the Commission in 1999, CHR Res 1999/44, para 3. The working group of intergovernmental experts, reconvened pursuant to CHR Res 1998/16, para 5, recommended in its report to the Commission’s 55th session to appoint a special rapporteur on this issue, E/CN.4/1999/80, paras 123-124. The Commission subsequently adopted the mandate of the Special Rapporteur on the Human Rights of Migrants in Res 1999/44, para 3. In the same resolution, para 10, the Special Rapporteur on the Human Rights of Migrants is also invited to contribute to the preparations for the Third World Conference, including by identifying major issues to be considered by the Conference. See her contribution Discrimination against Migrants: in the search of remedies, A/CONF.189/PC.1/19. For the first report of the Special Rapporteur on the Human Rights of Migrants, see E/CN.4/2000/82.

²⁵⁹ Particularly A/50/476, paras 112-117.

²⁶⁰ A/50/476, paras 57-61; E/CN.4/1997/71, paras 28-30; A/52/471, paras 22-25; E/CN.4/1998/79, para 46; E/CN.4/1999/15, para 80-87; E/CN.4/2000/16, para 35; and mission report E/CN.4/2000/16/Add.1.

²⁶¹ A/50/476, paras 118-131.

²⁶² A/51/301, paras 19-37.

²⁶³ A/51/301, paras 45-46; A/52/471, paras 19-21; E/CN.4/1998/79, paras 49-51; A/53/269, para 29; and A/54/347, paras 33-46.

²⁶⁴ A/52/471, paras 26-27. See also the conclusions and recommendations in E/CN.4/2000/16, para 173: “The Special Rapporteur remains concerned at the discriminatory manner in which the death penalty is applied in the United States of America and hopes that the advent of a new millennium will also offer an opportunity for that great country to envisage penal sanctions more in line with the international human rights standards and with the prevailing tendency, which is towards the abolition of capital punishment.”

²⁶⁵ A/53/269, paras 17-19; E/CN.4/1999/15, para 74; and A/54/347, paras 47-57.

²⁶⁶ A/53/269, paras 25-28.

²⁶⁷ E/CN.4/1999/15, paras 88-100.

²⁶⁸ A/54/347, paras 60-61. Unfortunately is the title of this section more promising than its contents, which consists only of a circular from the French Minister of Justice.

²⁶⁹ See, *eg*, the long list of allegations in E/CN.4/2000/16, paras 36-153.

The importance of collecting and publishing such data on a global level lies in bringing to the world's attention that racism, racial discrimination, xenophobia and related intolerance still persist, displaying the various and new forms and manifestations of these phenomena, showing their potential danger, including murder and even genocide, and indicating that more efforts and action against these phenomena are needed.

3.3 Measures Taken or Envisaged by Governments and other Bodies and Action Undertaken by Civil Society

The Special Rapporteur regularly reports, in accordance with his mandate,²⁷⁰ on the measures taken or envisaged by governments to overcome the phenomena under consideration. The Special Rapporteur stressed in his first report to the GA that “[i]n analysing the various manifestations of racism, racial discrimination and xenophobia, one must also look at the reactions of the people in the countries concerned and the reactions and actions of their governments.”²⁷¹

Accordingly, the Special Rapporteur collects information and data from governments, specialised agencies, IGOs and NGOs,²⁷² not only on measures taken or envisaged by governments,²⁷³ but also on action and initiatives undertaken by civil society, including activities of NGOs, university institutions, trade unions and community associations,²⁷⁴ and activities conducted by IGOs.²⁷⁵ With regard to activities of civil society and IGOs, information is sometimes also included in the section on governmental measures.²⁷⁶ Unfortunately, since the 1996 report to the GA the Special Rapporteur does not report on them specifically any longer.²⁷⁷

With regard to the measures taken or envisaged by governments,²⁷⁸ the Special Rapporteur, as indicated in his first report,²⁷⁹ collects and analyses not only constitutional and other legal provisions of the country concerned, but also examines educational, administrative and other measures, legal decisions and institutions established on the subject. The data collected reflect the broad scope of the mandate. They include information, *inter alia*, on penal provisions including, for example, the difficult question of

²⁷⁰ CHR Res 1994/64, para 4.

²⁷¹ A/49/677, paras 118.

²⁷² To this end the Special Rapporteur, *inter alia*, sent out a questionnaire, E/CN.4/1994/66, annex (“Draft Questionnaire to Governments”), and circular letters of 26 May 1997, 17 June 1998, and 17 May 1999; Cf respectively E/CN.4/1998/79, para 73; E/CN.4/1999/15, para 11; and E/CN.4/2000/16, paras 5-6.

²⁷³ Discussed under “Measures Taken or Envisaged by Governments, Legislative and Judicial bodies and other Authorities” or similar shorter headings. In later reports he also uses the heading “Replies of Governments to the Special Rapporteur’s Request for Information”, containing replies to the just mentioned circular letters.

²⁷⁴ In detail, see A/49/677, V. (paras 119-120); A/50/476, V.; A/51/301, V. Only one of the many interesting and important activities might be pointed out here: the launching of radio programmes in Burundi by two European humanitarian organisations to counterbalance radio stations that spread ethnic hatred, A/52/301, para 54.

²⁷⁵ In detail, see E/CN.4/1995/78, IV. (activities conducted by European bodies) and V. (contributions of UNESCO); A/50/476, IV.A.2. and 3. (European authorities and UNESCO); A/53/269, IV.F. (Europe).

²⁷⁶ Eg, in E/CN.4/1995/78, para 76 and 85, he reports on “chains of light”, solidarity concerts *etc.* undertaken by civil society in Germany and of private bodies in Austria offering contacts and information on social and psychological help available to individuals and groups. In A/49/677, para 123, he reports on a plan of action to combat racism, xenophobia anti-Semitism and intolerance adopted within the framework of the CoE.

²⁷⁷ Such information are still contained in his country reports, however.

²⁷⁸ In detail, see A/49/677, V.; E/CN.4/1995/78, III.; A/50/476, IV.; A/51/301, IV.; E/CN.4/1997/71, III.; A/52/471, IV.; E/CN.4/1998/79, VI. and VII. (replies of governments); A/53/269, IV.; E/CN.4/1999/15, II. (replies of governments); A/54/347, IV.; E/CN.4/2000/16, II. (replies of governments). See also “Follow-up to field visits” for the measures taken or envisaged by governments of the countries the Special Rapporteur has visited, *infra* III.3.4.(c).

²⁷⁹ E/CN.4/1994/66, para 42.

balancing freedom of expression and disseminating of racist ideas or incitement to racial hatred,²⁸⁰ provisions for the protection of foreigners, minorities, disadvantaged groups or indigenous peoples,²⁸¹ immigration and naturalisation legislation,²⁸² legislation on the use of the Internet,²⁸³ policies and other non-legal measures and initiatives,²⁸⁴ bodies and procedures established on racism and racial discrimination or the protection of human rights in general,²⁸⁵ individual court decisions or the judiciary in general,²⁸⁶ and educational measures.²⁸⁷ The Special Rapporteur sometimes also comments on such measures or tries to assess their effectiveness.²⁸⁸

By collecting such data, the Special Rapporteur certainly undertakes an important task. Information on the measures taken by governments are needed not least to place one in a position to assess the “international community’s” compliance with the obligation to combat all forms of racism, racial discrimination, xenophobia and related intolerance.²⁸⁹ The reports also reveal, *inter alia*, how different governmental measures in the struggle against racism, racial discrimination and xenophobia can be,²⁹⁰ depending in part on the different situations existing in the many countries or regions.²⁹¹

One has to ask, however, to what extent the Special Rapporteur collaborates in this field with other international bodies involved in collecting such data, especially CERD and ECRI, as there is a potential overlap and duplication of work. That there is a certain duplication of work is indicated, for example, by the Special Rapporteur’s 2000 report to the Commission, stating that in reply to the Special Rapporteur’s request for information, three countries had sent him their periodic reports submitted to CERD which already contain information on measures taken in their countries.²⁹² From this and the lack of reference in his reports, it can be inferred that the Special Rapporteur does not take the relevant information submitted to other bodies into account to the extent that is desirable and indeed a matter of common sense.

3.4 Field Missions

Field missions are intended, as outlined by the Special Rapporteur in his first report to the GA, “to allow the Special Rapporteur to assess the conditions actually prevailing in a country by giving him direct access to first-hand reports and to the dialogue established with the authorities of the countries concerned and key figures of civil society.”²⁹³ The Special Rapporteur has said that he selects his missions by taking into account the criterion of geographical distribution and bearing in mind that racial discrimination is a

²⁸⁰ Eg, E/CN.4/1995/78, paras 77-78 (*re* Australia) and paras 98-102 (*re* France).

²⁸¹ Eg, E/CN.4/1995/78, paras 92-97 (*re* Brazil).

²⁸² Eg, A/52/471, paras 38-40; E/CN.4/1998/79, paras 118-120; and A/53/269, para 31 (*re* France, especially with regard to the criticised “Pasqua/Debré laws” and new draft legislation).

²⁸³ Eg, A/52/471, para 31 (*re* Germany).

²⁸⁴ Eg, E/CN.4/1995/78, paras 81-85 (*re* Austria); A/52/471, paras 33-36 (*re* USA, President Clinton’s initiative on race: “One America in the 21st Century”); *Ibid*, para 44 (*re* Australia, Australian Reconciliation Convention).

²⁸⁵ Eg, E/CN.4/1995/78, para 112 (*re* Swaziland).

²⁸⁶ Eg, A/50/476, paras 149-159 (*re* France and Germany); A/51/301, paras 49-51 (*re* Brazil, Australia - appointment of the first aborigine judge -, and Germany).

²⁸⁷ Eg, A/50/476, paras 132-136 (*re* France, Mexico *et al.*).

²⁸⁸ Eg, E/CN.4/1995/78, paras 86-89 (*re* Austria) and 103 (*re* France).

²⁸⁹ Cf CHR Res 1993/20, para 3, as briefly discussed *supra* III.2.1.(b).

²⁹⁰ See, eg, the different enforcement agencies (though on anti-discrimination in general) discussed in MacEwen, Anti-Discrimination Law Enforcement. For Europe, see, eg, MacEwen, Tackling Racism in Europe.

²⁹¹ See, eg, the different situations of the countries the Special Rapporteur has visited and similarities of certain regions as in Europe; *infra* III.3.4.(b).

²⁹² E/CN.4/2000/16, para 5.

²⁹³ A/49/677, para 46. Repeated in E/CN.4/1995/78, para 11.

phenomenon which occurs on all five continents.²⁹⁴ He intends to undertake three ordinary annual missions, as well as emergency missions, either on his own initiative, alone or together with one or more rapporteurs dealing with similar topics.²⁹⁵

So far, the Special Rapporteur has undertaken missions to the following countries²⁹⁶: the USA,²⁹⁷ Brazil,²⁹⁸ Germany,²⁹⁹ France,³⁰⁰ the United Kingdom,³⁰¹ Colombia,³⁰² Kuwait,³⁰³ South Africa,³⁰⁴ Hungary, the Czech Republic and Romania.³⁰⁵ A planned visit to Australia has not yet taken place,³⁰⁶ and the Special Rapporteur was unable to take part in a scheduled joint mission with the Special Rapporteur on violence against women to Indonesia.³⁰⁷ The Special Rapporteur, in order to amplify his analysis of the situation in different parts of the world and consider the allegations brought to his attention, intends to visit Australia, Peru and “possibly” India during the year 2000.³⁰⁸

From the missions so far undertaken by the Special Rapporteur, the following general remarks can be made, supplemented by some exemplary selected issues from the countries visited and some aspects of the Special Rapporteur’s follow-up to field visits.

(a) General remarks

Although the structure of the reports does vary according to the specific circumstances prevailing in the country under consideration, these regularly consist of an introduction outlining the purpose and programme of the mission, as well as giving an historical, social and political overview of the country or the particular circumstances leading to the country visit, a section on manifestations and incidents covered by the mandate, measures taken by the state against these phenomena, as well as actions by society at large, and closes with conclusions and recommendations.

The reports of the Special Rapporteur reflect his open and comprehensive approach, looking not only at discrimination in the field of civil and political rights, but also at discrimination in the area of social, economic and cultural rights and the situation of individuals and groups in society at large. He further relies

²⁹⁴ A/49/677, para 47.

²⁹⁵ E/CN.4/1994/66, para 43. See also A/49/677, para 49: “... it being understood, however, that the Special Rapporteur is limited by the applicable rules to no more than three missions a year.”

²⁹⁶ Listed in chronological order. The following footnotes indicate when the mission took place, the source of the detailed mission report, and in brackets the source of a mission summary in the regular reports to the Commission or GA.

²⁹⁷ 9 to 22 October 1994, E/CN.4/1995/78/Add.1 (A/50/476, paras 18-20).

²⁹⁸ 6 to 17 June 1995, E/CN.4/1996/72/Add.1 (A/50/476, paras 21-23).

²⁹⁹ 18 to 27 September 1995, E/CN.4/1996/72/Add.2 (E/CN.4/1996/72, paras 14-32).

³⁰⁰ 29 September to 9 October 1995, E/CN.4/1996/72/Add.3 (E/CN.4/1996/72, paras 33-45).

³⁰¹ 13 to 24 November 1995, E/CN.4/1996/72/Add.4 (E/CN.4/1996/72, paras 46-55).

³⁰² 28 June to 15 July 1996, E/CN.4/1997/71/Add.1 (A/51/301, paras 13-15).

³⁰³ 17 to 27 November 1996, E/CN.4/1997/71/Add.2.

³⁰⁴ 24 February to 5 March 1998, E/CN.4/1999/15/Add.1 (A/53/269, paras 6-10).

³⁰⁵ 20 to 30 September 1999, E/CN.4/2000/16/Add.1, regional mission to these three countries.

³⁰⁶ See A/52/471, para 11; E/CN.4/1998/79, para 15; A/53/269, para 11 (scheduled for 3 to 19 May 1998, but “for reasons outside the control of the Special Rapporteur and the Government” it was postponed to a later date to be agreed upon); and E/CN.4/1999/15, paras 4-8 (so far only a briefing by the Australian government took place). The Special Rapporteur now intends to visit Australia during the year 2000, E/CN.4/2000/16, para 4.

³⁰⁷ E/CN.4/1999/15, para 9.

³⁰⁸ E/CN.4/2000/16, para 4. See already E/CN.4/1999/15, para 10: “... the Special Rapporteur intends to visit Asia and Eastern Europe in the near future ...”. The Special Rapporteur had been criticised that he has visited western countries, despite the fact that he is mandated to study the phenomena throughout the world. The missions in fact undertaken along with his plans do not support this critique, however. Cf also A/51/301, paras 8-9.

not only upon statements and publications by public authorities but also takes non-governmental publications, statements and activities into account. The meetings organised during his visits reflect this aspect. Besides consulting with governmental and local officials, the Special Rapporteur also converses with representatives of IGOs, if represented in the country, NGOs, institutes and universities, civil movements, as well as victims of racial discrimination. Furthermore, he visits different places in the country, including localities where vulnerable groups, victims or potential victims live or are compelled to live, such as holding camps or prisons, and (private) institutions involved in the struggle against racism, racial discrimination, and xenophobia.

All but two of the countries visited so far were parties to the ICERD at the time of the visit.³⁰⁹ It is therefore unfortunate, if not extraordinary, that the Special Rapporteur does not take the reports submitted by these states under Art 9 ICERD and the respective concluding observations³¹⁰ of CERD into account in the majority of his reports.³¹¹ The sixth and seventh periodic report of Colombia, for example, was considered by CERD just shortly before the Special Rapporteur's visit to Colombia.³¹² In his report on Colombia, the Special Rapporteur does not even refer to the report or the concluding observations adopted by CERD. In this regard CERD itself expressed concerns in 1997, stating that the "Special Rapporteur's reports on missions have neglected relevant data submitted by the States concerned in their periodic reports under the Convention."³¹³ In a background paper issued in 1999 CERD observed that the Special Rapporteur's findings and recommendations on Germany, France, the United Kingdom, Colombia and Kuwait "completely ignored the relevant concluding observations of CERD with regard to the same countries."³¹⁴

This raises not only the question of duplication of work but of the undermining of both UN procedures for combating racism.³¹⁵

³⁰⁹ The USA ratified the ICERD on 21 October 1994 at the end of the Special Rapporteur's visit to the country and South Africa ratified the Convention on 10 December 1998 after the Special Rapporteur's visit at the beginning of the same year. Both countries have yet to submit their reports under Art 9 ICERD of which South Africa's initial report and the USA's initial, second and third reports are overdue.

³¹⁰ For the concluding observations issued before the Special Rapporteur's visit and further reference to the respective country reports, see in chronological order: A/42/18, paras 544-566 (Brazil); A/48/18, paras 442-452 (Germany); A/49/18, paras 140-159 (France); A/48/18, paras 409-425 (UK); A/51/18, paras 38-59 (Colombia); A/48/18, paras 372-381 (Kuwait); A/51/18, paras 106-131 (Hungary); A/53/18, paras 111-138 (Czech Republic); A/50/18, paras 262-278 (Romania). See also Decision 2 (53) on the Czech Republic of 11 August 1998, A/53/18, para 22, requesting additional information on "the disturbing reports that in certain municipalities measures are contemplated for the physical segregation of some residential units housing Roma families", and the corresponding report, CERD/C/348.

³¹¹ Only the following reports of the Special Rapporteur contain references to documents of CERD: E/CN.4/1996/Add.3, para 16, referring to statistics of France's 11th periodic report (CERD/C/225/Add.2, para 10); E/CN.4/1996/Add.4, para 69, referring to the United Kingdom's 12th and 13th periodic report regarding measures taken by the government and local communities (CERD/C/226/Add.4 and CERD/C/263/Add.7); E/CN.4/2000/16, para 7, referring to the initial and 2nd report of the Czech Republic regarding measures taken by the government (CERD/C/2897/Add.1); E/CN.4/2000/16, para 63, referring to the 9th, 10th and 11th periodic report of Romania (CERD/C/210/Add.4, paras 16 to 19), concerning data on national minorities and the Roma.

³¹² The reports were submitted in one document on 12 April 1995, CERD/C/257/Add.1, and considered by CERD during its 48th session on 29 February and 1 March 1996, CERD/C/SR.1135 and 1136. On 11 March 1996, CERD adopted the concluding observations, CERD/C/304/Add.1, issued on 28 March 1996 (= A/51/18, paras 38-59). The Special Rapporteur's visit took place from 28 June to 15 July 1996.

³¹³ A/52/18, para 666.

³¹⁴ Van Boven, United Nations Strategies to Combat Racism and Racial Discrimination: Past Experience and Present Perspective, E/CN.4/1999/WG.1/BP.7, n. 25. In comparison members of CERD are regularly provided with the reports of the Special Rapporteur when considering the agenda item on the Third Decade and when considering a state report, the country rapporteur of CERD is furnished with details of anything the Special Rapporteur has reported about that state.

³¹⁵ See further *infra* III.3.5.(a), Co-operation and Exchange of Views.

(b) The countries visited

This section comprises only selected examples of the issues raised and discussed by the Special Rapporteur in his country reports and is by no means meant to be exhaustive.³¹⁶ The purpose is to give an illustration of, *inter alia*, the diverse problems of the countries or regions, the different fields in which racism, racial discrimination, xenophobia and related intolerance persist, and the Special Rapporteur's approach to the problems in the countries. Despite the criticism of country reports failing to incorporate CERD documentation, it should be said that, in the whole, the quality of the country report is high and that they fulfil an important purpose in the UN efforts to combat racism.

- USA

The mission to the USA was the first country mission undertaken. The Special Rapporteur, among many other subjects, addresses sensitive issues like the discriminatory practice of the death penalty,³¹⁷ the one-sided composition of juries, as well as the issue of political prisoners ("anti-racist and independence activists" sentenced to inordinately long prison terms attributable to their political views).³¹⁸ He also examines the problematic relation between freedom of expression and association on the one hand, and incitement to racial hatred and racist organisations on the other, as there was no legislation prohibiting incitement of racial hatred and activities of racist organisations.³¹⁹ He further takes up the issue of "environmental discrimination",³²⁰ which one might not associate with racial discrimination at first sight.³²¹

- Brazil

Although "Brazil is perceived by the international community as a positive example of ethnic and racial integration"³²² and officially "there is no racism and racial discrimination in Brazil",³²³ the report on the mission to Brazil reveals that there exists a subtle economic and social discrimination, which can be described as "exclusion" as covered by the definition of racial discrimination in Article 1 (1) ICERD.³²⁴ Despite the intermingling of the different groups in Brazil (especially "Whites", "Blacks" and "Indians") to such an extent that it has become difficult to classify the population according to race,³²⁵ there exists a "colour hierarchy" showing a degree of structural segregation on account of social and economic conditions, reflected especially in education, employment, housing and the media.³²⁶

The report is also an indication of the need for affirmative action in some situations to combat racial discrimination. The "vicious circle" of poverty in which many Afro-Brazilians are trapped might not be

³¹⁶ In detail, see the above cited mission reports.

³¹⁷ See again E/CN.4/2000/16, para 173: "The Special Rapporteur remains concerned at the discriminatory manner in which the death penalty is applied in the United States ...".

³¹⁸ E/CN.4/1995/78/Add.1, paras 59-63, 105. See also recommendation 5, *Ibid*, para 112.

³¹⁹ *Ibid*, paras 106-107, citing a "disturbing" case of the US Supreme Court regarding the burning of a cross (KKK symbol) by a White adolescent on the property of an African American family in order to intimidate them and to move as a form of freedom of expression protected by the Constitution.

³²⁰ That is, *eg*, that the racial factor is a decisive one in the choice of sites for toxic waste dumps. See *Ibid*, paras 88-91. On this topic, see also Popovic, 14 NQHR 277-287 (1996).

³²¹ With regard to the USA and the ICERD, see further the articles in 40 HowLJ 571-729 (1997). See also the recent survey conducted in the USA that found that 50.3% of those questioned answered with 'Yes' to the statement: "It's okay if the races are basically separate from one another as long as everyone has equal opportunity." See *The Guardian*, 18 August 1999, p 14.

³²² E/CN.4/1996/72/Add.1, para 1.

³²³ *Ibid*, para 25 and 28 ("because the Constitution explicitly prohibits it").

³²⁴ *Ibid*, para 31.

³²⁵ *Ibid*, para 33.

³²⁶ *Ibid*, para 38 *et seq*.

escaped without special measures undertaken on the part of the state.³²⁷ As the Special Rapporteur was told that affirmative action was regarded impractical due to mixed parentage and because economic and social problems affected all Brazilians, he recommends that priority should be given to the education of the poorest who would be identified in terms of minimum income level.³²⁸ This, however, is also a form of special measure, taking into account the specific situation of the country.

- Germany, France and United Kingdom

The reports on the three EU countries, Germany, France and the United Kingdom, reflect a current trend in Western Europe of increasing xenophobia towards non-European foreigners and the toughening of immigration and asylum legislation, as well as the poor conditions of persons waiting for expulsion in holding centres or the like.³²⁹ The reports take also the country specific (recent) history and social and political situation into account. Thus, the Special Rapporteur puts the situations, *inter alia*, in context of post-war events and the reunification of Germany,³³⁰ the “identity crisis” and “national preference” attitude in France,³³¹ and the changing Commonwealth history and post-war circumstances of the United Kingdom.³³² He further points out problems regarding official policies or institutions, like the contradictions in Germany’s policy on integration of foreigners stemming from (but not only) its naturalisation law which still rests on the principle of *ius sanguinis* and the refusal to recognise dual nationality except in rare instances,³³³ the problematic “Pasqua Acts” in France,³³⁴ or the violence and prejudice of the police towards racial minorities in the United Kingdom.³³⁵

- Colombia

With the mission to Colombia, the Special Rapporteur intended “to study ... the obstacles preventing the full implementation of measures to combat racism and racial discrimination” and to address “the concerns of Colombian non-governmental organizations which had transmitted information to the Special Rapporteur concerning the persistence of racism and racial discrimination in various forms.

³³⁶ The report on Colombia

³²⁷ *Ibid*, para 44. The vicious circle being: material poverty – low level of education, failure at school, lack of training, unemployment or unskilled work, low wages – material poverty.

³²⁸ *Ibid*, para 74 (1.).

³²⁹ The tightening of immigration and asylum legislation is taking place in all EU countries, going along with a common policy following especially the Schengen Agreement and the Dublin Convention. See hereto and the “fortress Europe”, eg, Webber, 130-153 and Fekete, 154-172. On Europe see further, eg, van Boven, 11 NQHR 167-172 (1993); Curtin/Geurts, 14 NQHR 147-171 (1996); Fitzpatrick, Part II.

³³⁰ E/CN.4/1996/72/Add.2, paras 2, 12-13, 45 *et seq.* Para 2: “It should be recalled that German reunification was accompanied by violent outbursts of xenophobic sentiment and anti-Semitic acts fomented and perpetrated by extreme rightist organizations and neo-Nazi cells.” For East Germany, note also the 1999 elections in Brandenburg, where the extreme rightwing party *DVU* (German People’s Union) entered the parliament. This party already reached 13% of the vote in Saxony-Anhalt in 1998. See, *The Guardian*, 4 September 1999, p 13, and 6 September 1999, p 14. The problem of extreme rightwing and neo-Nazi violence still persists today, especially in East Germany.

³³¹ E/CN.4/1996/72/Add.3, paras 13, 42-44 (“... demobilization of civil society with regard to action to combat racism and racial discrimination.”). With regard to the visit in France, it is interesting to note that Ms Guillet de la Brosse, the Deputy Mayor of Toulon and a member of the *Front National*, refused, without giving any reason, to meet the Special Rapporteur; *Ibid*, para 8.

³³² E/CN.4/1996/72/Add.4, paras 10-14, 46 *et seq.*

³³³ E/CN.4/1996/72/Add.2, para 51.

³³⁴ E/CN.4/1996/72/Add.3, paras 33-34, and 47 (i).

³³⁵ E/CN.4/1996/72/Add.4, paras 2-3, 28-29, 80-90, 96 (b) and (c). The Special Rapporteur refers here also to the report of the Human Rights Committee, criticising, *inter alia*, the “stop-and-search” practice of the police, which is disproportionately applied to some ethnic minorities, CCPR/C/79/Add.55, para 14. See further, eg, Parratt/Foley, EHRLR 384-390 (1996, issue 4) on the UK’s 13th periodic report to CERD. For allegations of police “ill-treatment” of foreign nationals, asylum-seekers and ethnic minorities also in France and Germany, see AI Report 1999, 166-167 and 172-174.

³³⁶ E/CN.4/1997/71/Add.1, para 1.

highlights these persisting various forms and shows, *inter alia*, how deep rooted racist prejudice and stereotypes in the “collective conscience” of the population can be and that racial discrimination even seems to be almost “natural” and unconscious as reflected by some popular sayings cited by the Rapporteur and intentionally not repeated here, or by a weekly TV programme which ridicules “Blacks”.³³⁷ Especially frightening is one of the consequences of racial discrimination mentioned by the Special Rapporteur, referring to psychological studies and testimony gathered, that is, the loss of identity and low self-image of some Afro-Colombians. Afro-Mestizos, for example, lighten or straighten their hair since “black was ugly”.³³⁸ He noted that the influence of economic interests, not least of profit-seeking international firms, are hampering the territorial autonomy and the protection of the Amerindian.³³⁹

- **Kuwait**

With his country visit to Kuwait, the Special Rapporteur pursued the more specific purpose of examining allegations concerning racial discrimination and xenophobia with regard to migrant workers, particularly housekeepers, and the “Bidun”.³⁴⁰ The report shows, *inter alia*, how much the situations in countries can differ. Whereas in some European countries some people complain about the alleged “wave” of foreigners rushing into the country, who in fact make up only a lower percentage of the population, Kuwaitis are a minority in their own country.³⁴¹ The situation is, however, different in many ways as Kuwait is also in need of a foreign workforce.³⁴² That many people living in the country are not nationals of Kuwait is also related to Kuwait’s history and naturalisation policy.³⁴³

With regard to the situation of migrant workers in Kuwait, the report shows how broadly the Special Rapporteur interprets his mandate. Although the situation of migrant workers as a particularly vulnerable group is covered by his mandate, it nevertheless has to involve racism, racial discrimination or xenophobia. Reading the report of the Special Rapporteur, one has the impression that what is mainly involved is discrimination on grounds of nationality, combined with the lack of adequate labour legislation and ill-treatment of domestic workers.³⁴⁴ That is to say, human rights violations in general are involved, as the Special Rapporteur also indicates in his report.³⁴⁵ Nevertheless, regarding the situation of migrant workers and “Bidun” in general, one can also find here “exclusion” based on descent, national or ethnic origin, recognised as racial discrimination in Article 1 (1) ICERD. With regard to the recent establishment of the Special Rapporteur on the human rights of migrant workers,³⁴⁶ such situations might be better examined under the latter’s mandate in the future.

- **South Africa**

The mission to South Africa reflects the difficulties persisting in the transition process from apartheid towards an open and democratic society and the reconciliation between the communities,³⁴⁷ as well as new trends of racism and xenophobia. With regard to the former, only two aspects might be mentioned here, as

³³⁷ E/CN.4/1997/71/Add.1, para 7, 35-37, 39.

³³⁸ *Ibid*, para 40. Mentioned is also “self-discrimination” among Afro-Colombians.

³³⁹ *Ibid*, para 51 *et seq*. Note also that the Special Rapporteur “regrets not having been able to visit a *resguardo* ..., despite several applications to the Colombian authorities.”; *Ibid*, para 4.

³⁴⁰ E/CN.4/1997/71/Add.2, para 2.

³⁴¹ E/CN.4/1997/71/Add.2, para 7. Of an estimated population of about two million, there are approximately 700,000 Kuwaitis and 1,300,000 foreigners.

³⁴² *Ibid*, para 17.

³⁴³ See *Ibid*, paras 43-63.

³⁴⁴ See *Ibid*, paras 12-42.

³⁴⁵ *Ibid*, para 12.

³⁴⁶ CHR Res 1999/44, para 3, *Cf supra*.

³⁴⁷ For the latter see, *eg*, Dugard, 13 SAJHR 258-268 (1997).

the transition and reconciliation process is also monitored by other bodies, especially the Sub-Commission.³⁴⁸ The first aspect is the persisting opposition to the changes in politics, economy, the media and other areas,³⁴⁹ but especially dangerous in the administration. To implement a reform programme that is not supported by the administration whose origins lie in the apartheid regime is a very difficult task.³⁵⁰

The second aspect is, looking at the immigration problems and the accompanying rise in xenophobia in South Africa,³⁵¹ that xenophobia towards “coloured” immigrants persists and increases not only among the “white” population, as one might expect, but also among the “black” population.³⁵²

- Hungary, Czech Republic and Romania

Allegations of systematic discrimination, particularly in education, employment and housing, against the Roma, Gypsies or travellers and the frequent acts of violence against them by extreme right wing organisations and the police, as already reported by the Special Rapporteur earlier,³⁵³ and particularly the case of the town Ústi nad Labem,³⁵⁴ which was reported in the media around the world, led to the regional mission of the Special Rapporteur to Hungary, the Czech Republic and Romania.³⁵⁵

The Special Rapporteur rightly points out that he did not intend to stigmatise these three countries but that they were selected solely for illustrative and comparative purposes³⁵⁶ and not because the situation of the Roma there was more unusual than in other counties of the region or Western Europe.³⁵⁷ The problem is indeed a European one, including Western, Central and Eastern Europe.³⁵⁸ The Special Rapporteur also illustrates the consequences of the racist and discriminatory practice by mentioning the flight of Roma from Central and Eastern European countries to Western Europe that in turn lead to, *inter alia*, the reintroduction of entry visas for nationals of those countries.³⁵⁹ The discrimination experienced by Roma asylum-seekers in Western European countries, the obstacles of entering these countries and the problematic practice of summary review procedures and collective deportation of Roma is mentioned by the Special Rapporteur in his general report to the Commission.³⁶⁰

With regard to the countries visited, the Special Rapporteur finds similarities and also differences in the situation of the Roma population in all three countries. For example, prejudice against Roma was the same in all three countries, whereas violence against them was under control in Romania but persisted in the

³⁴⁸ See, eg, the mission report by the Special Rapporteur Miss Judith Sefi Attha, E/CN.4/Sub.2/1993/11/Add.1, and Sub-Commission Res 1994/3. With regard to the persisting difficulties in South Africa, the various missions and engagement of different bodies seems appropriate and necessary in support of the transition process.

³⁴⁹ See especially E/CN.4/1999/15/Add.1, paras 40-46.

³⁵⁰ See *Ibid*, para 43.

³⁵¹ *Ibid*, paras 47-77.

³⁵² *Ibid*, paras 67-77.

³⁵³ Eg E/CN.4/1999/15, paras 80-87.

³⁵⁴ In Ústi nad Labem, a high wall was built in order to separate the Roma population from the rest of the town. Due to the reporting of this case around the world and the following pressure from various organisations the wall was finally pulled down again. See hereto paras 24-29 and 55 of the report, E/CN.4/2000/16/Add.1.

³⁵⁵ *Ibid*, para 1.

³⁵⁶ And “owing to insufficient human and financial resources and time”, *Ibid*, para 4.

³⁵⁷ *Ibid*, paras 4 and 140.

³⁵⁸ See also A/54/347, para 28, drawing attention to the situation in Kosovo, where many cases of human rights violations committed against gypsies by Albanians had been reported and over 100,000 gypsies had to flee the province since the end of the war.

³⁵⁹ E/CN.4/2000/16/Add.1, paras 2-3 and E/CN.4/2000/16, para 35.

³⁶⁰ E/CN.4/2000/16, para 35.

Czech Republic and Hungary.³⁶¹ Racist violence was not only committed by right-wing groups and skinheads, as mainly in the Czech Republic, but also by the police, as in Hungary.³⁶²

The report demonstrates the persistence of racism and racial discrimination in the field of social, economic and cultural rights. Discrimination against the Roma population occurs especially in education, employment and housing. With regard to education, for example, an over-proportional number of Roma children are sent to “special” schools for differently abled children or children suffering from “asocial behaviour” in the Czech Republic and Hungary. In Romania only 50 per cent of Roma children go to school on a regular basis, due to anti-Roma feelings in schools.³⁶³ The difficult situation for the Roma on the labour market is not only the consequence of discrimination in education but also because of prejudices against them and discrimination on the part of employers.³⁶⁴ Racism and racial discrimination against Roma occurs further with regard to, *inter alia*, access to public places³⁶⁵ and adequate housing.³⁶⁶ The media often also plays a negative role in propagating prejudices against the Roma population.³⁶⁷

The report is moreover an illustration of the fact that legislative measures alone are not enough to combat racism and racial discrimination. To overcome the deep rooted racist prejudices unfortunately persisting in the minds of many people other measures are needed, such as educational and cultural measures, information campaigns, and training of teachers and law enforcement officials. The measures envisaged or undertaken by the governments and other bodies of the countries under consideration, as well as some of the Special Rapporteurs recommendations, reflect this aspect.³⁶⁸ The importance of NGOs and other private bodies and institutions in these fields and in the struggle against racism and racial discrimination in general is also indicated by the report.³⁶⁹

(c) Follow-up to field visits

Since the Special Rapporteur’s first field missions, the Commission regularly invites the governments of the states so far visited to consider ways to implement the recommendations contained in the reports of the Special Rapporteur and requests the Special Rapporteur to include in his reports to the Commission information on the measures taken to implement these recommendations and to undertake follow-up visits, if necessary.³⁷⁰ The Special Rapporteur therefore includes in his later reports a section specifically called follow-up to field visits, in which legislative, judicial and other measures taken or envisaged by governments

³⁶¹ E/CN.4/2000/16/Add.1, para 140.

³⁶² *Ibid*, paras 19-23 and 115-119. Problematic in this regard is also the lack of adequate remedies for victims against such racist acts. The justice system neither seems free from racial prejudices, *Cf Ibid* paras 49-53 (measures to increase Roma security in the Czech Republic) and 118, 120 (lack of adequate remedies and discrimination in the administration of justice in Hungary).

³⁶³ See *Ibid*, paras 15, 67-69 and 111-112. See also paras 37-38, 79-84 and 129 on measures taken in this field.

³⁶⁴ See *Ibid*, paras 14, 67-69 and 113-114. See also *Ibid*, paras 77 and 129 on measures taken in this field.

³⁶⁵ *Ibid*, paras 18 and 121.

³⁶⁶ *Ibid*, paras 78 and 109.

³⁶⁷ *Ibid*, paras 16 and 70.

³⁶⁸ See *Ibid*, paras 37-46, 79-84 and 131-132 (educational and cultural measures and recommendations), paras 144 (cultural exchange programmes), 145 (campaign to educate the general public), 147 (efforts to change police officers’ attitudes) and 150 (developing teaching methods that promote equal opportunities).

³⁶⁹ See, *Ibid*, paras 54-56, 91-96 and 134-139.

³⁷⁰ Since CHR Res 1997/74, para 32. See also already CHR Res 1996/21, para 3 and the latest CHR Res 2000/14, para 36. Note also that the Commission regularly urges the HCHR to provide those countries visited, at their request, with advisory services and technical assistance to enable them to implement fully the recommendations of the Special Rapporteur, *eg*, CHR Res 1997/74, para 34 and Res 2000/14, para 40. As of September 1999, no such request was made, A/54/347, para 21.

of the states so far visited are reported.³⁷¹ Such measures, as well as other government responses to the Special Rapporteur's visits and recommendations are also reported in other sections of the reports to the GA.³⁷²

From the reported measures taken or envisaged, it is not always apparent whether and how far they are a direct transformation and implementation of the Special Rapporteur's recommendation, or whether these measures go back also to recommendations of other bodies or are simply part of the state's general policy and initiatives.³⁷³ This is a problem that also other bodies, such as CERD, experience.³⁷⁴ To assess the effectiveness and impact of the work of international bodies and their recommendations, it is important that states explicitly report back whether the measures taken are due to the recommendations and advice given by these bodies. Some measures taken or envisaged by governments are, however, explicitly recognised by the Special Rapporteur as a response to his recommendations as, for example, with regard to measures taken by Brazil,³⁷⁵ Colombia³⁷⁶ and Kuwait.³⁷⁷ The Special Rapporteur summarises the implementation of his recommendations and the follow-up to his country visits in his conclusions of the 2000 report to the Commission by stating:

“He is delighted that most of the countries he has visited, ..., have given effect to his recommendations by adopting appropriate measures to check the development of racism, racial discrimination and xenophobia. He hopes that those States which have not yet reacted to his recommendations will inform him of the follow-up action taken on his missions in order to contribute to the satisfactory performance of his mandate.”³⁷⁸

The Special Rapporteur also stresses the dialogue and co-operation that had been established by his country visits.³⁷⁹ Despite the fact that all the countries visited reacted to his recommendations,³⁸⁰ the dialogue and

³⁷¹ E/CN.4/1998/79, VIII.B.; A/53/269, II.C.; E/CN.4/1999/15, V.; E/CN.4/2000/16, V.

³⁷² See, specially: A/51/301, paras 8-15 and 47 (field missions/implementation of recommendations); A/52/471, paras 29-42; A/53/269, paras 30-37 (measures taken or envisaged); A/54/347, paras 7-16 and 66 (participation in the work of the Commission/measures taken or envisaged). See also the provisional evaluation in E/CN.4/1996/72, paras 62-65.

³⁷³ This difficulty and the lack of reporting back by states might be also due to the fact that many of the Special Rapporteur's recommendations, especially in the earlier reports, are too general and not focused enough on more specific issues of concern.

³⁷⁴ Eg, during CERD's 56th session in March 2000, considering the French periodic reports, Mr Banton stressed that the Committee took great care in drafting its conclusions and recommendations to countries and it would appreciate countries giving them the attention they deserved and furnishing information on the efforts they had made to give effect to them. In its 1994 report, the Committee had recommended that France should recruit more people of different ethnic origins among those responsible for the implementation of human rights legislation. Even though improvements had been made in that area, there was no indication whether they had been the result of the Committee's remarks. He hoped that France would endeavour in its next report to provide clarifications of that kind, which gave the Committee an indication of the effectiveness of its work. CERD/C/SR.1374, para 66.

³⁷⁵ See A/51/301, paras 11-12 and 47; E/CN.4/1998/79, paras 121- 127; A/53/269, para 33; and E/CN.4/1999/15, para 128-131 on various issues, mentioning in para 131 of the latter report, that he welcomes the measures taken, which are “in keeping with his recommendations”. Compare with the recommendations in E/CN.4/1996/72/Add.1, para 74.

³⁷⁶ See A/53/269, paras 34-35 and A/54/347, para 12, with regard to the recommendation that the process of distributing land to the Afro-Colombian and indigenous populations should be speeded up, E/CN.4/1997/71/Add.1, para 68 (c).

³⁷⁷ See E/CN.4/2000/16, paras 166-171, with regard to his recommendations contained in E/CN.4/1997/71/ Add.2, para 69, concerning, *inter alia*, the problems of undocumented foreigners and drawing up new labour legislation in technical assistance with the ILO.

³⁷⁸ E/CN.4/2000/16, para 173. See also A/54/347, para 8, mentioning that some countries had already begun to act on some of his recommendations, others had promised to do so but felt that their legislation or constitution did not allow them to implement some of them, and others had not reacted to his recommendations.

³⁷⁹ Eg, E/CN.4/1996/72, para 62; A/51/301, para 9; A/54/347, para 7.

³⁸⁰ The last one being Kuwait, see E/CN.4/2000/16, paras 166-171.

information exchange between the Special Rapporteur and the countries visited leave room for improvement, as indicated by some remarks in the reports. In his 1998 report to the GA, for example, the Special Rapporteur complained that the United Kingdom, France and Kuwait had not transmitted any information on implementation of his recommendations,³⁸¹ and in his 1999 report to the Commission, after having referred to and cited from two reports issued by the government of the USA,³⁸² which he found very informative and useful, the Special Rapporteur expressed that it was “extremely dismaying” that these two reports were not sent by the government directly to him.³⁸³

With regard to the country missions in general, they have proven to be, as indicated by the Special Rapporteur’s provisional evaluation,³⁸⁴ an important working method of the Special Rapporteur. Such missions enable the Special Rapporteur, on the one hand, to get his own impressions of living reality and make observations which rely not only on written communications and, on the other hand, to provide information on the work of the UN in combating racism and racial discrimination, to give local and other private organisations involved in the issue “encouragement and fresh hope”³⁸⁵, and to stimulate and help the countries concerned in their efforts against these phenomena through recommendations and dialogue. The latter is certainly better to establish through personal contacts than through paper communication only and it is hoped that the dialogues will continue and improve.

3.5 Other Activities - Especially Co-operation and Exchange of Views

Other activities undertaken by the Special Rapporteur and reported by him will be briefly mentioned here. The co-operation and exchange of views with other relevant mechanisms and treaty bodies is of particular importance in order to avoid duplication of work and to enhance mutual effectiveness.³⁸⁶

(a) Co-operation and exchange of views

On 15 March 1995, the Special Rapporteur and the members of *CERD* held an exchange of views on ways in which to increase their co-operation.³⁸⁷ During that meeting several experts on the Committee stressed the importance and the need to establish an ongoing dialogue with the Special Rapporteur. It was emphasised that unlike the Committee members, because of his mandate the Special Rapporteur enjoyed the right to visit the countries concerned and in addition could gather information in States which were not party to

³⁸¹ A/53/269, para 13. See then A/54/347, para 16: “Of all the countries he had visited, Kuwait was the only one which had not yet reacted to the recommendations ...”.

³⁸² Issued in September 1998: President’s Advisory Board on Race, “One America in the 21st century: Forging a new future” and President’s Council of Economic Advisers, “Changing America: Indicators of social and economic well-being by race and Hispanic origin”, see E/CN.4/1999/15, paras 132-135.

³⁸³ E/CN.4/1999/15, para 136. In addition, the Special Rapporteur found the fact disappointing that these reports, whose stated purpose was to educate the US public on race and diversity issues, received such little publicity or press coverage.

Note also the reaction of the US government on the intention of the Special Rapporteur (*Cf* A/51/301, para 10) to publish his observations on the detailed comments submitted to him by the US government on his mission reported in E/CN.4/1997/71, para 14: “... that since it had not expressly asked him to publicize its comments, it would not be standard practice for him to do so.” Unfortunately the Special Rapporteur following this intervention refrained from publishing the comments, albeit that the Special Rapporteur, as a thematic mechanism is a public procedure and therefore is generally not restricted in publishing such information. See also Rudolf, 406-407.

³⁸⁴ E/CN.4/1996/72, paras 62-65. See also the status report on the execution of the mandate, A/51/301, paras 8-17.

³⁸⁵ E/CN.4/1996/72, para 65.

³⁸⁶ As already mentioned *supra* III.2.1.(b).

³⁸⁷ See A/50/476, paras 26-32. See also the report of CERD, A/50/18, paras 696-698, and in more detail the summary records of the meeting, CERD/C/SR.1095. Note also, *eg*, CHR Res 1997/74, para 33, inviting governments of the concerned states parties to ICERD to consider including in their periodic reports to CERD information on measures they have taken to implement the relevant recommendations of the Special Rapporteur.

ICERD. Some experts noted that, while the Committee studied reports from States one after the other and examined situations case by case, the Special Rapporteur, on the other hand, had more room to manoeuvre and could, for example, approach issues from a regional point of view. Suggestions were made for pursuing this co-operation. In that way, certain priorities could be established jointly in order to prevent the development of racist organisations or the resurgence of pseudo-scientific racist ideologies. Other priority activities would also be worth undertaking jointly, for example providing human rights training to police forces or campaigns to enlist youth in the fight against racism in all its forms. It was also suggested that the Committee should alert the Special Rapporteur to emergency situations examined in the context of the mechanism for the prevention of racial discrimination (early warning and emergency procedures).

For his part, the Special Rapporteur would make an effort to raise public awareness of the Committee's activities in its capacity as an expert body for the monitoring of ICERD. In reply to the suggestion of some experts of the Committee that he should pay greater attention to the situation in "third world countries", the Special Rapporteur did not agree that he had concentrated on Western countries. He assured the Committee that in the remaining three years of his mandate due account would be taken of the different continents in his reports. It was agreed that neither the Special Rapporteur nor the Committee should act in isolation and that both would gain from exchanging information and from providing mutual support. The need for the contribution of both mechanisms to the consideration of racism and racial discrimination was recognised.

The Special Rapporteur also participated in a joint meeting of *CERD* and the *Sub-Commission* on 8 August 1995.³⁸⁸

On 29 September 1995, the Special Rapporteur had a working meeting with the Bureau of the European Commission against Racism and Intolerance (*ECRI*).³⁸⁹ The Special Rapporteur outlined the mandate entrusted to him by the Commission and expressed his wish to work in close co-operation with the European Commission, in particular through regular exchange of information. He briefly referred to the tour he was making in Europe at that time (Germany and France) and requested some additional items of information on the situation of certain member states of the Council of Europe. The Special Rapporteur and *ECRI* mutually agreed to keep each other informed of any developments in Europe and within the UN in connection with combating racism, racial discrimination, xenophobia and intolerance.³⁹⁰

On 5 October 1995, the Special Rapporteur went to the headquarters of *UNESCO* in order to consider the scope for co-operation with the organisation and to acquaint himself with *UNESCO*'s work to combat racism, racial discrimination, xenophobia and intolerance.³⁹¹ This showed the Special Rapporteur that *UNESCO* was attentively following the implementation of the Third Decade to Combat Racism and Racial Discrimination and that *UNESCO* had, in that connection, organised several seminars and conferences that had given rise to publications. The Special Rapporteur said that such work would be very useful to him and invited *UNESCO* to refer also to the various reports he had submitted to the Commission and to the GA, and to consider practical measures to introduce the teaching of human rights as a subject in the curricula of pre-school, school, non-formal and university education, with a view to progressively putting an end to racism and xenophobia.

³⁸⁸ See A/50/476, para 33. See also the report of CERD, A/50/18, paras 699-702.

³⁸⁹ See E/CN.4/1996/72, paras 5-10.

³⁹⁰ On the work of *ECRI*, see especially *ECRI*'s country-by-country approach, Vol I-VI. See also the web site of *ECRI*: <http://www.ecri.coe.int>.

³⁹¹ E/CN.4/1996/72, paras 11-12.

Unfortunately, the Special Rapporteur does not report whether and how far the envisaged co-operation and exchange of views with these different bodies has been followed up. It is therefore difficult to assess these activities. That an information exchange with the relevant bodies has occurred can be inferred from some of the Special Rapporteur's reports to the GA and Commission, that mention information that he had received from other bodies.³⁹²

The Special Rapporteur does not report on all of the activities and participation in meetings relevant to assessing his co-operation and exchange of views. He mentions, for example, his participation in the sixth *Meeting of Special Rapporteurs/Representatives, Experts and Chairpersons of Working Groups of the Special Procedures of the Commission on Human Rights and of the Advisory Services Programme* in his 1999 report to the GA³⁹³ for the first time, albeit he has regularly participated in the previous meetings taking place annually since 1994.³⁹⁴ It would have been useful mentioning these meetings and any changes that had resulted in his approach, as they are of great importance for the harmonisation and co-ordination of the work of these various mechanisms in order to obtain greater efficiency, effectiveness and complementarity.

Co-operation, exchange of views and co-ordination of activities between the Special Rapporteur and the other mechanisms involved in the struggle against racism and racial discrimination, especially the Sub-Commission and CERD, needs to be improved in order to avoid duplication of work and contradictions in the findings of these bodies.³⁹⁵ Theo van Boven, in a background paper of 1999, for example, assesses:

³⁹² See, eg, A/50/476, para 6, mentioning that the Special Rapporteur made use of documents transmitted to him by the ILO, UNHCR, UNESCO *et al.*, and E/CN.4/1998/79, para 24-30, mentioning that he was informed of the work done by the Sub-Commission, CERD, the Working Group set up by the Commission to deal with the human rights of migrants, and the Committee of Ministers of the CoE.

³⁹³ A/54/347, para 26.

³⁹⁴ These meetings have been established pursuant to requests of the Commission and the appeal in para 95 of part II of the Vienna Declaration and Programme of Action in 1993. The meeting in 1994 was the first formal meeting of this kind. Two informal meetings were held before and during the World Conference on Human Rights in 1993. For the reports of the first to sixth meeting, see E/CN.4/1995/5; E/CN.4/1996/50; E/CN.4/1997/3; E/CN.4/1998/45; E/CN.4/1999/3; and E/CN.4/2000/5.

³⁹⁵ It should be pointed out, however, that the co-operation between the various special rapporteurs and other bodies very much depends on the communication and information exchange within the OHCHR in Geneva, as the staff of the secretariat is responsible for, *inter alia*, collecting and forwarding the communications, information and material received for the special rapporteurs and other bodies. It was brought to the present author's attention that the communication and co-operation within the OHCHR is not always satisfactory but that the situation was "improving". The Meetings of Special Rapporteurs *et al.*, also repeatedly address the issue of co-operation and the staffing situation within the Office. The report of the 1999 meeting, eg, stresses, *inter alia*, that the staffing situation deserved particular attention and that it was essential to design and implement special procedures databases in order for the system to perform more effectively. In this context, it was desirable for OHCHR to become more professional in the processing and management of information; E/CN.4/2000/5, paras 35 and 46. Note also CHR Res 2000/86, para 8, encouraging the UNHCHR to further strengthen co-operation among the thematic mechanisms of the Commission and other relevant UN bodies, including the human rights treaty bodies, "with a view to promoting greater efficiency and effectiveness through better coordination of the various bodies, mechanisms and procedures, taking into account the need to avoid unnecessary duplication and overlapping of their mandates and tasks". With regard to the assistant to the Special Rapporteur, an expert complained that he could have attended some of CERD's meetings.

“Closer and more systematic consultation, coordination and cooperation is needed between these three organs [Sub-Commission, CERD, Special Rapporteur]. It is ineffective and even counterproductive that monitoring bodies like CERD and the Special Rapporteur, as it occasionally happens, are each dealing with the same issue or the same country situation without having regard to recent findings and recommendations of the other body.”³⁹⁶

The example has already been given of the lack of consideration of relevant CERD documents by the Special Rapporteur in his mission reports.³⁹⁷ CERD has expressed its particular concern about the co-operation with the Special Rapporteur and found that since the meeting in March 1995 co-operation had “faltered”.³⁹⁸ CERD has also pointed out that the Special Rapporteur “appears completely to overlook the relevance of the International Convention on the Elimination of All Forms of Racial Discrimination and the work of the Committee.”³⁹⁹

Following an invitation from CERD, the Special Rapporteur participated, during CERD’s 57th session in August 2000, in a two-day thematic discussion on racial discrimination and the Roma people.⁴⁰⁰ The experience of Roma illustrates the need for close co-operation and co-ordination of activities, as not only the Special Rapporteur⁴⁰¹ and CERD⁴⁰² are engaged in this subject, but also the Sub-Commission, which also discussed, during its 52nd session in August 2000, a working paper prepared by its expert Yeung Sik Yuen on the human rights situation of the Roma⁴⁰³ and called for the appointment of its expert as special rapporteur to carry out a study on the human rights problems and protection of the Roma.⁴⁰⁴ The Chairperson of the Sub-Commission and two other Sub-Commission experts also participated during CERD’s two-day thematic discussion.

(b) Other activities

Besides his participation in the work of GA and Commission sessions,⁴⁰⁵ the Special Rapporteur reported the following additional activities.

During the European Year Against Racism,⁴⁰⁶ the Special Rapporteur took part in a seminar on racism and immigration, held in Venice, October 1997, and in an international colloquium on racism and the law

³⁹⁶ E/CN.4/1999/WG.1/BP.7, 5.(b), under the heading: “Areas of major concern”.

³⁹⁷ As discussed *supra* III.3.4.(a).

³⁹⁸ A/52/18, para 666.

³⁹⁹ *Ibid*, para 661. See hereto also the discussions during CERD’s 51st session, CERD/C/SR.1242/Add.1, paras 19-26, and CERD/C/SR.1243/Add.1, paras 57-64. The Chairman of CERD was also asked to send a letter to the Special Rapporteur reminding him of his promised co-operation.

⁴⁰⁰ See CERD’s press releases of 15 and 16 August 2000.

⁴⁰¹ See *supra* III.3.2.(b) and the country missions to Hungary, Czech Republic and Romania, *supra* III.3.4.(b).

⁴⁰² See, *eg*, the just mentioned two-day thematic discussion which lead to the adoption of General Recommendation XXVII on 16 August 2000, on the discrimination against Roma. See also CERD’s considerations and concluding observations on the 3rd and 4th periodic report of the Czech Republic (CERD/C/372/Add.1), CERD/C/SR.1411 and 1412; CERD/C/57/CRP.3/Add.5.

⁴⁰³ E/CN.4/Sub.2/2000/28, presented and considered during the Sub-Commission’s 19th and 26th meeting, 14 and 17 August 2000. See the Sub-Commission’s press releases of 14 August 2000. Positive to mention is that the working paper takes the work of the Special Rapporteur, CERD, and other organisations into account.

⁴⁰⁴ Dec. 2000/109 of 17 August 2000.

⁴⁰⁵ For the participation during the GA’s 50th, 51st and 52nd session, see respectively E/CN.4/1996/72, paras 3-4; E/CN.4/1997/71, paras 9-11; and E/CN.4/1998/79, para 12; and during the Commission’s 53rd, 54th and 55th session, see respectively A/52/471, paras 5-9; A/53/269, paras 3-5; and A/54/347, paras 5-21.

⁴⁰⁶ The European Year Against Racism was proclaimed by the EU as proposed by the Commission of the EC in December 1995, COM (95) 653 final, 13 December 1995, and approved by the Resolution of the Council and the Representatives of

the European Year Against Racism (1997), COM (1999) 268 final, 3 June 1999. During the European Year Against Racism, the European Council adopted a Regulation establishing a European Monitoring Centre on Racism and Xenophobia, Council Regulation No 1035/97 of 2 June 1997, OJ L 151, 10 June 1997. The EUMC was established and started its work in 1998 and was officially opened on 7 April 2000 in Vienna. On the background of the EUMC and its activities, see further EUMC, Annual Report 1998, Part I and II. For the web site of the EUMC, visit <<http://www.eumc.at>>. At the present the Commission of the EC is preparing a draft Council directive implementing the principle of equal treatment between persons irrespective of racial or ethnic origin based on Art 13 TEC. See the Commission's proposal (though still under revision), COM (1999) 566 final, 25 November 1999. See also the proposal for a Council Decision establishing a Community Action Programme to combat discrimination 2001-2006, COM (1999) 567 final, 25 November 1999.

With regard to the European Year Against Racism and the relation between the EU and UN in the field of anti-racism and anti-racial discrimination, Theo van Boven, in a lecture held at the Academy of European Law, Florence, 23 June 2000, described the relation between the EU and the UN as uncomfortable and criticised that in none of the European Year Against Racism documents reference was made to UN documents, the Third Decade to Combat Racism and Racial Discrimination, or the UN monitoring mechanisms. See also E/CN.4/1999/WG.1/BP.7, 2. and 1.: "It is also apparent that the United Nations and Europe, in particular the institutions of the European Union, follow different tracks which fail to meet each other." On racism and the EU, see further Gearty, 327-358.

organised by Paris-X-Nanterre University held in Paris, December 1997, where he described the work of the UN in the struggle against racism, racial discrimination, xenophobia and anti-Semitism.⁴⁰⁷

The Special Rapporteur further organised as part of the activities of the Institute for Human Rights and the Promotion of Democracy (“Democracy in daily life”) an international meeting of experts on “all forms of discrimination based on race, nationality, ethnic origin, religion or belief or any other factors in Africa south of the Sahara”, which took place in Cotonou, 5-6 June 1997, with financial assistance from UNESCO.⁴⁰⁸ The meeting focused on issues of concern to the mandate of the Special Rapporteur and related to the African continent. The Special Rapporteur points out in his report that, in the context of the forthcoming World Conference on Racism and Xenophobia, meetings of this kind should be organised at the sub-regional and regional levels in other parts of the world.⁴⁰⁹

From 26 to 28 May 1999, the Special Rapporteur attended the Workshop on Gender Integration into the Human Rights System⁴¹⁰ during which he demonstrated that women from national, racial or ethnic minorities, migrant women and women members of indigenous communities are the victims of particular types of discrimination and that “double discrimination” is a major factor which prevents women members of vulnerable groups from enjoying and exercising their fundamental rights.⁴¹¹

⁴⁰⁷ E/CN.4/1998/79, para 13.

⁴⁰⁸ See E/CN.4/1998/79, para 22. The institute was established by the Special Rapporteur in his home country Benin.

⁴⁰⁹ *Ibid*

⁴¹⁰ Joint initiative of the OHCHR, the Division for the Advancement of Women and the UN Development Fund for Women.

⁴¹¹ A/54/347, para 24.

3.6 Conclusions and Recommendations of the Special Rapporteur

The Special Rapporteur's reports generally close with conclusions and recommendations.⁴¹²

(a) Conclusions

The conclusions of the Special Rapporteur mirror the trends of contemporary manifestations of racism, racial discrimination, xenophobia and related intolerance and the other issues dominant in his reports.⁴¹³ The following selected aspects of his conclusions may be mentioned.

Recognised as causes of the phenomena under consideration are: the economic crisis shaking the industrialised societies; the crisis in European cultural values; the "scapegoat" syndrome;⁴¹⁴ and the current immigration crisis.⁴¹⁵

Looking at the anti-immigration legislation systematically being adopted in several countries, the Special Rapporteur observes that "one cannot help but wonder whether we are witnessing a covert institutionalisation of xenophobia, which would be nothing less than a new form of institutionalised racial discrimination."⁴¹⁶ Restrictive and discriminatory regulations were undermining freedom of movement and residence and the right to live as a family.⁴¹⁷

The Special Rapporteur recognises the spreading of racial propaganda and incitement to ethnic and racial hatred and the increasingly violent forms of racism, including physical aggression, murder, attacks on the property of immigrants or people belonging to ethnic, racial or religious minorities, the desecration of cemeteries and the destruction of places of worship.⁴¹⁸ These violent forms coexisted with new, more insidious and subtle forms of racism, racial discrimination, xenophobia and anti-Semitism.⁴¹⁹

He further regrets the rise in neo-fascism, neo-Nazism and ethnonationalism, the continuing use of the Internet for spreading racist ideologies, as well as the continuing discrimination against Roma, Gypsies or travellers and the manifestations of anti-Semitism.⁴²⁰

The reports submitted to the Commission and the GA have confirmed that the end of apartheid did not mean the end of racism and racial discrimination.⁴²¹ Manifestations of racism, racial discrimination and related intolerance were continually occurring in different regions of the world.⁴²²

⁴¹² As requested to do so by the Commission, including recommendations on more specific issues such as human rights education, CHR Res 1994/64, para 7. The GA also requested the Special Rapporteur to submit concrete recommendations concerning the World Conference and the preparations therefore, GA Res 53/132, para 35 and Res 54/154, para 38.

⁴¹³ For the conclusions in detail, see A/49/677, paras 124-129; E/CN.4/1995/78, paras 130-133; A/50/476, para 176; A/51/301, paras 55-56; E/CN.4/1997/71, para 130; A/52/471, paras 46-47 = E/CN.4/1998/79, paras 132-133; A/53/269, para 41; E/CN.4/1999/15, paras 142-143; A/54/347, paras 69-70; and E/CN.4/2000/16, paras 172-173. See also the provisional evaluation in E/CN.4/1996/72, III.

⁴¹⁴ A/49/677, para 125.

⁴¹⁵ A/51/301, para 55.

⁴¹⁶ A/49/677, para 126.

⁴¹⁷ A/51/301, para 55. See also A/49/677, para 128 and E/CN.4/1996/72, para 59: "The resurgence of the absolute sovereignty of States takes the form of the use of the law, and therefore of legislation to curb and significantly reduce immigration, the right of asylum and the free movement of persons, a subtle reflection of the xenophobia which rages in many regions, both in the north and in the South."

⁴¹⁸ E/CN.4/1996/72, para 59.

⁴¹⁹ A/54/347, para 69.

⁴²⁰ E/CN.4/1999/15, para 143. See also A/54/347, paras 69-70 and E/CN.4/2000/16, para 172.

⁴²¹ E/CN.4/1996/72, para 58.

⁴²² E/CN.4/2000/16, para 172. A single issue addressed in the conclusions of this report is the discriminatory manner in which the death penalty is applied in the USA, *Ibid*, para 173.

There are, however, also positive signs identified in his conclusions, such as the mobilisation of governments and institutions against racism and related intolerance,⁴²³ or that most of the countries the Special Rapporteur has visited had given effect to his recommendations by adopting appropriate measures to check the development of racism, racial discrimination and xenophobia.⁴²⁴

Nevertheless, despite the governmental, legislative or judicial measures taken or envisaged in some countries to combat racism and racial discrimination, the situation in this area continued to be of concern and required a more proactive approach at the national and international levels in order to stem the proliferation of these evils.⁴²⁵

(b) Recommendations

The Special Rapporteur's recommendations address the UN system in general, specialised agencies, the regions and states, as well as other non-governmental actors such as NGOs and the mass media, recommending theoretical, practical and other measures to be adopted in the struggle against racism and racial discrimination.

The general recommendations contained in his first report to the GA might be taken as a basis for discussion, as it is the most comprehensive catalogue of recommendations.⁴²⁶

The Special Rapporteur suggests in this first report to the GA⁴²⁷ that scientific research should be done on the nature and scope of the problems covered by his mandate, particularly through such projects as:

- (a) An interdisciplinary seminar on the problems of the theoretical aspects and specific manifestations of contemporary forms of racial discrimination, together with a study of the measures already taken or to be taken;⁴²⁸
- (b) Workshops (one per continent) during the next two years of his mandate;
- (c) A review conference before the expiration of his mandate.

Such scientific encounters should be organised in close collaboration with the specialised agencies concerned with human rights, NGOs and universities or networks of universities and experts working in the field.⁴²⁹

⁴²³ E/CN.4/1995/78, para 130. See also A/49/677, para 127.

⁴²⁴ E/CN.4/2000/16, para 173. But *Cf* also with *supra* III.3.4.(c).

⁴²⁵ A/52/471, para 47 and E/CN.4/1998/79, para 133.

⁴²⁶ A/49/677, paras 139-148. See also the selection of recommendations of the Special Rapporteur prepared by the Secretariat for the sessional open-ended working group to review and formulate proposals for the World Conference, E/CN.4/1999/WG.1/BP.4.

⁴²⁷ As recommended also to the Commission, E/CN.4/1994/66, paras 50-52.

⁴²⁸ See also A/49/677, para 10: "... a seminar for the purpose of bringing together specialists from several disciplines (anthropology, law, economics, history, philosophy and sociology) and persons active in combating racism and racial discrimination, ...".

⁴²⁹ A/49/677, para 140.

The Special Rapporteur mentioned in the same report that he had already proposed such a seminar in his preliminary report to the Commission. While welcoming his proposal,⁴³⁰ the Commission had not made the necessary resources available to the Secretariat for the convening of such a meeting.⁴³¹ So far, such a specific interdisciplinary seminar has not yet taken place, nor have the suggested regional workshops taken place during the proposed two-year period. However, there have been regional seminars like the one organised by himself,⁴³² seminars within the framework of the Programme of Action, and now, seminars and other activities are increasingly focussed on the forthcoming World Conference.⁴³³

As to the review conference, the Special Rapporteur had recommended to the Commission and GA that without further delay a world conference on racism, racial discrimination and xenophobia should be convened and that the question of immigration and xenophobia should be included in its agenda.⁴³⁴ As noted above, the GA decided in 1997 to convene a World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance.⁴³⁵ Thereafter, the Special Rapporteur also made recommendations concerning the preparation of the World Conference,⁴³⁶ as requested by the GA.⁴³⁷

The Special Rapporteur's recommendations further stress the importance of education and its far-reaching consequences, and therefore recommends that measures should be studied to prevent actions and behaviour giving rise to discrimination ("prevention being better than cure") and that a system of human rights teaching should be established in all states, in close co-operation with specialised agencies, IGOs, and governments. Consideration should be given to how this system can be made compulsory and effective. Through this way, cultural and social racism could be gradually checked through education.⁴³⁸ Cultural events could also be held which would enable a country's different ethnic or cultural groups to become acquainted with each other and learn about, understand and appreciate each other's cultures.⁴³⁹

The importance of education is also mentioned in his following recommendations to the GA, emphasising, *inter alia*, that the UN Decade for Human Rights Education (1995-2004) should find expression in practical programmes for the teaching of human rights and cultural pluralism, and that UNESCO, the Centre for Human Rights (now OHCHR) and UNICEF, in particular, could play a decisive role in this

⁴³⁰ CHR Res 1994/64, para 3.

⁴³¹ A/49/677, para 50. See also *Ibid*, para 7 and E/CN.4/ 1995/78, para2.

⁴³² Cotonou, 5-6 June 1997, *Cf supra* III.3.5.(b).

⁴³³ *Cf supra* II.3.

⁴³⁴ A/51/301, para 57. See already A/50/476, para 178: "Efforts must be made to mobilize the funds necessary for the holding of a world conference ...". Reiterated in E/CN.4/1997/71, para 132; A/52/471, para 48 (a); and E/CN.4/1998/79, para 134 (a): "To convene as soon as possible a world conference ...". The GA "took note" of the Special Rapporteur's recommendation in GA Res 51/79, para 3 and "welcomed" it in Res 52/109, para3.

⁴³⁵ GA Res 52/111, para 28. See also the other resolutions of the GA, Commission and Sub-Commission, *supra* II.3.

⁴³⁶ Partly mentioned in the following paragraphs. For the recommendations in detail, see E/CN.4/1999/15, para 144; A/54/347, paras 71-72; and E/CN.4/2000/16, para 174. See also E/CN.4/1998/79, para 134 (a) and A/53/269, para 41 (a). The Special Rapporteur has been unable to present the requested study on preventive measures relating to ethnic, racial, religious and xenophobically motivated conflicts to the first session of the Preparatory Committee, owing to "circumstances beyond his control", A/CONF.189/PC.1/6, para 2 (note by the secretariat).

⁴³⁷ GA Res 52/111, para 30; GA Res 53/132, para 35; and GA Res 54/154, para37. See also CHR Res 1998/26, para 53.

⁴³⁸ A/49/677, para 142. See also *Ibid*, para 143: "A group of social scientists and especially experts in the field of education could be given the delicate but not impossible task of looking into ways of ridding school textbooks and history books of racial, ethnic or religious prejudice and stereotypes."

⁴³⁹ A/49/677, para 143.

area.⁴⁴⁰ The World Conference should as well create a place of primary importance for education in the rights of human persons and the culture of tolerance, peace and non-violence.⁴⁴¹

With regard to anti-Semitic propaganda, the Special Rapporteur recommends that appropriate legislative and administrative measures should be taken by the States concerned and, where appropriate, at the international level to halt the dissemination of anti-Semitic publications.⁴⁴²

In view of the number of existing special procedures, such as those concerning forced or involuntary disappearances, torture, religious intolerance, *et cetera*, the Special Rapporteur is convinced of the need to introduce a mechanism for periodic consultation and co-ordination between special rapporteurs dealing with subjects of a similar nature. Special consideration should also be given to a mechanism conducive to active, efficient intersectoral co-operation between the various branches and sectors of the Centre for Human Rights.⁴⁴³ Systematic co-operation, in the form of periodic consultations and joint activities, should likewise be established with the specialised agencies such as UNICEF, UNHCR, ILO, UNESCO and the Commission on Human Rights.⁴⁴⁴

Since 1994, a mechanism for periodic consultations of special rapporteurs exists in form of the meetings of special rapporteurs, representatives, experts and chairpersons of working groups of the special procedures of the Commission, as discussed above.⁴⁴⁵

The Special Rapporteur further suggests that some thought might be given, at the conclusion of the Third Decade, to erecting a memorial in honour of the victims of racism and racial discrimination in order to promote an awareness of the evils of racial discrimination and to draw attention to the continuing and sustained action of the UN to combat all forms of racism and to promote human rights. Such a memorial might be set up on the *Place des Nations*.⁴⁴⁶

With regard to the victims of racism and racial discrimination, the Special Rapporteur recommends in a later report to the GA that it should explore the possibility of establishing a fund to assist ethnic or racial communities that are victims of racial discrimination and condemned to live in conditions of injustice and inequality which are unacceptable as the millennium draws to an end.⁴⁴⁷ He asks whether we could not envisage an appropriate affirmative action mechanism at the international level. The people whom the Special Rapporteur had met during his field missions were pinning their hopes on the UN and they wished to see the human rights proclaimed and reaffirmed in the International Bill of Human Rights translated into reality and made effective for them.⁴⁴⁸

⁴⁴⁰ A/50/476, para 177.

⁴⁴¹ E/CN.4/2000/16, para 174. See also A/54/347, para 71: "As part of the preparations of the World Conference ... the Special Rapporteur would like ... to prepare a programme of education on human rights, a culture for peace and non-violence in collaboration with, for example, ... (UNESCO), non-governmental organizations and governmental organizations ...".

⁴⁴² A/49/677, para 144, in particular the "Protocols of the Elders of Zion".

⁴⁴³ *Ibid*, para 145. See also A/54/347, para 72: "... in preparation for the World Conference, genuine consultations and collaboration should be established among the different bodies and mechanisms ...".

⁴⁴⁴ A/49/677, para 146.

⁴⁴⁵ See *supra*, III.3.5.(a).

⁴⁴⁶ A/49/677, para 147 and already in E/CN.4/1994/66, para 52.

⁴⁴⁷ See also CHR Res 1995/12, para 16: "Requests the Secretary-General to elicit the possibility of using existing voluntary funds and of establishing a new voluntary fund for the rehabilitation and social reintegration of victims of acts of racism, ...".

⁴⁴⁸ A/51/301, para 58.

In his first report to the GA, the Special Rapporteur further addresses states by urging those that have not yet done so to ratify all international human rights instruments. He requests states that are already parties to these instruments to take the necessary legislative and administrative measures to ensure that they are effectively implemented and applied in everyday life.⁴⁴⁹ The Special Rapporteur later also recommends that states should refrain from making reservations to the International Covenants or should withdraw those already made which are impeding the effective implementation of them,⁴⁵⁰ and if not already done so should ratify the ICERD and the International Convention on the Rights of All Migrant Workers and Members of Their Families.⁴⁵¹

Further recommendations addressing states include that states should be less restrictive and more liberal in granting of visas to nationals of countries of the South and call on their population to be more receptive to foreigners and to cultural interchange,⁴⁵² and that states which do not yet have such institutions establish human rights committees with responsibility in particular for studying the question of racism and racial discrimination and for securing adoption of appropriate measures.⁴⁵³

The issue of the media is taken up by the Special Rapporteur in his 1995 report to the GA,⁴⁵⁴ emphasising that the mass media must also be mobilised with the support of NGOs in order to ensure the periodic dissemination of human rights information. In addition, greater efforts should be made by the mass media to avoid propagating racist prejudice and stereotypes and to help the general public to form responsible critical opinions on the increasingly tragic events, which tend to be trivialised in some circles.⁴⁵⁵ He further stresses that in the short term radical measures are urgently needed to curb radio stations that promote ethnical or racial hatred and to suppress clandestine radio stations, which engage in such activities.⁴⁵⁶

Concerning the Internet, the Special Rapporteur recommends, on the one hand, to use it as a means of human rights education and to exchange experience in the struggle against racism, xenophobia and anti-Semitism,⁴⁵⁷ and on the other hand, to envisage the possibility of action at the international level by immediately beginning studies, research and consultations on the use of the Internet for purposes of incitement to hatred, racist propaganda and xenophobia.⁴⁵⁸ As part of the preparations for the World Conference, the Special Rapporteur would like concrete measures to be taken in order to promote research and consultations on the use of the Internet to combat racial hatred, racial propaganda and xenophobia.⁴⁵⁹

⁴⁴⁹ A/49/677, para 148. He also welcomes the ratification of the ICCPR by the USA.

⁴⁵⁰ A/50/476, para 179. See now also GA Res 54/154, para 9, urging states to limit the extend of any reservation they lodge to the ICERD, to formulate any reservation as precisely and as narrowly as possible, to ensure that no reservations are incompatible with the objective and purpose of the Convention, to review their reservations regularly with a view to withdraw them *etc.*

⁴⁵¹ E/CN.4/1998/79, para 134 (c).

⁴⁵² A/50/476, para 180.

⁴⁵³ E/CN.4/1998/79, para 134 (d). See also *Ibid*, para 134 (e); E/CN.4/2000/16, para 173; and *supra* III.3.4.(c) for recommendations on the follow-up to field missions.

⁴⁵⁴ A/50/476, para 178. Note already the remark in the context of culture, in A/49/677, para 143: "Today, in this 'small world' or the 'global village' of ours, the powerful impact of the media would lead ethnic, religious and cultural communities to understand each other's cultures better and accept each other to a grater extent."

⁴⁵⁵ A/50/476, para 178.

⁴⁵⁶ *Ibid*, para 181. This has to be viewed in the context of paras 118-131 of the same report, discussing the issue of "incitement to racial hatred and freedom of opinion and expression", including the extreme example of Rwanda.

⁴⁵⁷ E/CN.4/1998/79, para 134 (b). See also A/51/301, para 59: "... reports should be more widely disseminated by the most modern means, in particular the Internet,..."

⁴⁵⁸ E/CN.4/1998/79, para 134 (b); and already E/CN.4/1997/71, para 132 (b) and A/52/471, para 48 (b).

⁴⁵⁹ A/54/347, para 71.

With regard to the resurgence of neo-fascism, neo-Nazism and ethno-nationalism, recognised by the Special Rapporteur in his 1998 report to the GA, he recommends the establishment of a body to study such phenomena in close co-operation with him.⁴⁶⁰ In his following report to the Commission, the Special Rapporteur, in view of the forthcoming World Conference, concretises this idea by recommending that an observatory on these phenomena, within the OHCHR and under the HCHR's authority, should be established.⁴⁶¹

Many of the recommendations have often been repeated in annual reports by the Special Rapporteur. Few have been implemented. He complained in the 1997 report to the Commission that he had made a number of recommendations in earlier reports which had been approved by the GA and the Commission and that he would like "to see them translated into action, in particular in the fields of education in human rights, acceptance of others, and tolerance for the sake of peace."⁴⁶² However, in order to facilitate their implementation, the Special Rapporteur would need to formulate more specific recommendations in the future.

IV ASSESSMENT

The many incidents and manifestations of racism, racial discrimination, xenophobia and related intolerance cited and discussed by the Special Rapporteur prove that these phenomena persist, increase over time, are constantly assuming new forms and take on many manifestations. Intensified and more concerted efforts are clearly needed to combat these phenomena. By reporting on racist, discriminatory and xenophobic incidents and manifestations, the measures and actions taken by governments and civil society, and the situation in the countries visited, the Special Rapporteur certainly undertakes an important task in the struggle against racism, racial discrimination and xenophobia. The Special Rapporteur thereby supplies the Commission, as well as the GA, with important and necessary information, draws the Commission's attention to serious and new issues of concern, and by publishing the reports holds the world's nations to account. By undertaking field missions, the Special Rapporteur has not only the possibility to obtain first hand impressions and information, but also to inform about and promote the activities of the UN in this field and to establish a constructive dialogue with the governments concerned. Meeting, encouraging and supporting people active in the struggle against racism and racial discrimination in situ is of utmost importance, as they are the ones who contribute most to the work that needs to be done to combat these phenomena as well as promoting understanding, tolerance and friendship among nations and "racial" or ethnic groups in society. Through his activities the Special Rapporteur is not only monitoring the state's obligation not to practice racial discrimination and to combat all forms of racism, racial discrimination, xenophobia and related intolerance but he has also the possibility, by means of established dialogues and recommendations, to influence and stimulate the activities of the states concerned in this field and to help and encourage the implementation of their obligations.

Despite the unquestionably important task carried out by the Special Rapporteur, the mandate and its implementation so far has to be assessed within the framework of the existing mechanisms dealing with the subject, especially the Sub-Commission and CERD. To enhance and strengthen the overall system in the struggle against racism and racial discrimination, the Special Rapporteur has to complement and/or address issues not covered by the existing mechanisms. With regard to the latter, the mandate is framed in terms

⁴⁶⁰ A/53/269, para 41 (b).

⁴⁶¹ E/CN.4/1999/15, para 144 (c).

⁴⁶² E/CN.4/1997/71, para 131. See also A/51/301, para 59: "... and recommendations should be followed up."

widening the view by not limiting it to racial discrimination but introducing also the notions of racism, xenophobia and related intolerance. The mandate is also focused on contemporary or new forms of these phenomena. Nevertheless, the mandate does overlap with the existing machinery, especially when interpreting them in a broad and dynamic way. Consequently, to complement the existing machinery, it is important that the work of all the mechanisms and bodies is co-ordinated in such a way that duplication of work and contradictory findings and recommendations are avoided.

As has been seen, so far the co-operation and co-ordination of the work of the Special Rapporteur with the existing machinery, especially with the Sub-Commission and CERD is lacking. Much of the work done by the Special Rapporteur thereby constitutes a duplication of work and a clear distinct task seems to be lacking. The request for and collection of information on measures taken or envisaged by governments from states parties to ICERD is, for example, a duplication of work, as these states also report (or should report) such information to CERD. This is the case at least with regard to issues falling within the ambit of the Convention, which are to a great extent the same as discussed by the Special Rapporteur.

To give the mandate of the Special Rapporteur a more clear and distinct task, to avoid duplication of work, and to strengthen the mandate's effectiveness, as well as the effectiveness of the overall system, the following proposals might be taken into account for the future implementation of the mandate:

Contemporary Manifestations of Racism, Racial Discrimination, Xenophobia and Related Intolerance; Incidents and Allegations

- With regard to allegations and incidents brought to his attention, the Special Rapporteur should continue to elicit information from the states concerned and to report such incidents together with the communications received. This would ensure that there is a mechanism in place that reports upon such incidents on an annual basis, as compared to the longer intervals provided for states' periodic reports to CERD. The Special Rapporteur should not only give an account of the allegations brought to his attention together with the government replies but should also examine them and comment on them in some depth. The Special Rapporteur should integrate ICERD norms in his analysis where the state from which the complaint arises has ratified the Convention or should base his analysis on general international law prohibiting racial discrimination.
- In looking at contemporary manifestations of racism, racial discrimination, xenophobia and related intolerance reported and discussed, the Special Rapporteur should, in distinction to CERD's country by country approach, take a more regional approach to the subject and by doing so he should collaborate closely with regional bodies like ECRI and take their information gathered into account, in order to avoid also here duplication of work. The Special Rapporteur's missions to three EU countries and his regional mission to Hungary, the Czech Republic and Romania, already indicate such an approach and these missions have proven that, despite existing differences between the countries, there are regional similarities and common problems that need to be addressed. The latter regional mission has also shown that it might be advisable to adopt a theme oriented approach, focusing on one phenomenon or issue (such as the case of racist violence and racial discrimination against the Roma) during each mission. Likewise, with regard to the broad scope of the mandate, it might be profitable to focus the examination on one of the phenomena to be studied or a specific issue thereof during each year, in order to facilitate a more in depth analysis of the respective phenomenon or theme.
- When taking up specific issues, close co-ordination and exchange of views with other mandates and bodies dealing with the same issue has to take place. In such a case as, for example, the issue of the

Roma taken up also by the Sub-Commission, thought should be given to either leaving the subject to one or the other mechanism, in order to avoid duplication of work, or to exchange of information and views, in order to complement each other and to avoid differing findings and recommendations, or as a third alternative, a clear distinction between the tasks should be made. The latter might be organised, for example, by means of one mechanism concentrating on fact-finding, the other concentrating on the evaluation of such data.

- The Special Rapporteur should intensify the theoretical and conceptual aspect of his methodological approach. The factual information collected should be evaluated and lead to more general conclusions on each of the phenomena and specific topics discussed in his reports. In this regard scholarly work on the subject has to be taken into account and collaboration with other specialised bodies, such as UNESCO or academic institutions, needs to be attempted, as the phenomena to be studied involve so many issues, including social, economic and psychological aspects, that cannot be processed without referring back to other sources and help. The underlying causes of racism, racial discrimination and xenophobia should especially be examined and culminate in respective recommendations, in order to give states, as well as the UN, guidance as to what changes have to be made and what further measures have to be taken to improve their efforts to prevent and combat these phenomena.

Measures Taken or Envisaged by Governments and Other Bodies; Action Undertaken by Civil Society

- Looking at the latest reports, the Special Rapporteur seems to have discontinued reporting on action undertaken by civil society. The Special Rapporteur should continue to report on such activities, in order to gain a full picture of the issues under consideration not least so that activists in different countries might learn about the different strategies adopted.
- With regard to measures taken or envisaged by governments, legislative and judicial bodies, and other authorities, the Special Rapporteur should, in order to avoid duplication of work, on the one hand, concentrate on soliciting information from states not party to the ICERD, and on the other hand, utilise the reports already submitted to CERD by states party to the Convention. In collaboration with CERD, the Special Rapporteur could further ask for information from states party to the ICERD but who fail to submit their periodic reports, thereby complementing the work of CERD. With regard to measures taken by governments and other authorities in specific areas, the Special Rapporteur should similarly use the data collected by other bodies, such as the ILO with regard to measures taken in the area of employment and working conditions, or from UNESCO with regard to educational measures. In addition, the Special Rapporteur should also intensify his theoretical and conceptual study by evaluating the measures taken and should formulate concrete suggestions as to how to improve them.
- Concerning activities of other international and regional organisations, the Special Rapporteur could play a more active role by not only receiving information and reporting on it but by establishing close contacts which he should use as a means to create and improve the relations between the UN and regional bodies. There is a need for closer co-ordination of activities between the UN and regional organisations. The regional organisations, as well as the UN, should at least take the activities of the other more closely into account. The latter especially arises with respect to the EU.

Field Missions

- The field missions of the Special Rapporteur should concentrate on countries not party to ICERD, again in order to have an international mechanism also monitoring these states with regard to the subject. Such missions should further be used to elicit the reasons of the respective state for not ratifying or acceding to the ICERD and to recommend and promote the ratification or accession of the Convention, as the Special Rapporteur did in the case of South Africa. The universal ratification of the ICERD is an important aim to be achieved and would certainly strengthen the struggle against racism and racial discrimination.
- When visiting a country party to the ICERD, the Special Rapporteur should take the reports submitted by that state under Art 9 (1) ICERD and the Committee's concluding observations duly into account, in order to avoid not only leaving the possible impression that there were two completely separate mechanisms dealing with the same subject, but to avoid contradictory findings and recommendations, as well as to enable the Special Rapporteur during his country visit to address issues of concern also expressed by CERD. By forwarding first hand information from field missions to the Committee, the Special Rapporteur also complements CERD's work, which does not conduct country missions. Country visits should also be used to make CERD's activities better known to the general public and to promote, where it has not already been done, the making of the declaration under Art 14 ICERD, enabling communications to be received from individuals.
- Attention should also be paid to emergency situations or situations likely to become such and where every possible international support and mediation between the concerned parties might be desired and required. As emergency situations very often involve many related and other matters, such as persecution, arbitrary killings, and minority issues, such situations fall also within the ambit of other mandates. Therefore, before undertaking emergency missions, it is essential to co-operate closely with the other mechanisms involved, including CERD, since it has established its own early warning measures and urgent procedures, including good office missions in such situations.

With regard to the forthcoming World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance in Durban, it is hoped that these proposals will be taken into account. The lack of co-operation and co-ordination of the activities of the various UN mandates and bodies involved in the struggle against these phenomena in general will hopefully be addressed, and that the outcome will be a more coherent and effective approach at the UN level. It is further hoped that the member states of the UN will not only renew the necessary interest in the subject, but also allocate the personnel and financial resources required for any effective action against racism, racial discrimination, xenophobia and related intolerance.

To close with the words of the Special Rapporteur: „Racism proves to be a persistent and hardy phenomenon, with recurrent manifestations and intense attacks, like paludism or malaria, which is more deadly than any other disease. Man can achieve his full dignity only by waging relentlessly the one true battle: the battle to reduce and eradicate racism.“⁴⁶³

⁴⁶³ A/50/476, para 40.

ANNEX

Summary of the Special Rapporteur's General Observations on Contemporary Manifestations of Racism, Racial Discrimination, Xenophobia and Related Intolerance

The following is a summary of the general observations made by the Special Rapporteur under the heading of "Contemporary Manifestations of Racism, Racial Discrimination, Xenophobia and Related Intolerance". The purpose of this summary is to indicate the topics discussed and the tendencies of these phenomena as recognised by the Special Rapporteur. The summary is not exhaustive as the communications, information and "most salient facts" brought to the Special Rapporteur's attention and cited in his reports are excluded.

1994 Report to the GA

In the first report to the GA,⁴⁶⁴ the Special Rapporteur states, with regard to racism and racial discrimination in general,⁴⁶⁵ that during 1994 he had ascertained that racism and racial discrimination persist, are taking increasingly violent forms and enjoy the support of growing numbers of fringe groups in several regions, particularly in America and Europe. Ethnic hatred had brought about serious crisis in Zaire, the former Soviet Union, Rwanda and Yugoslavia. With regard to Europe, an unwholesome climate could be observed in which xenophobia and racism were flourishing. The principle victims of this situation were immigrants and refugees from "developing countries" and countries of Eastern Europe, including "Gypsies". Legislation enacted by a number of European countries and the EU would increasingly discriminate against these groups. He states that: "Some think that the legal restrictions imposed on immigration and the right to asylum in Europe encourage xenophobia."⁴⁶⁶

After reporting incidents of racism and racial discrimination against Blacks (negrophobia),⁴⁶⁷ the Special Rapporteur observes, with regard to racism and racial discrimination against Arabs,⁴⁶⁸ that persons of Arab origin, often assumed to be terrorists or Muslim fundamentalists, experienced discrimination in Europe, particularly in respect of visa and resident permit issues. They were also victims of acts of violence on the part of individuals or the police.

Considering anti-Semitism,⁴⁶⁹ the Special Rapporteur refers to communications he had received, indicating that there has been a resurgence of anti-Semitism in the past few years.

With regard to xenophobia and discrimination against migrant workers and immigrants,⁴⁷⁰ he recognises that the current wave of xenophobia and racism in Europe was hardest on migrant workers and immigrants, who experienced racial discrimination particularly in the area of employment.

⁴⁶⁴ A/49/677, III. (paras 53-110). Note also the section: "Causes and Vectors of Racism, Racial Discrimination and Xenophobia", *Ibid*, IV. (paras 111-117).

⁴⁶⁵ *Ibid*, para 53-85.

⁴⁶⁶ *Ibid*, para 58, n. 22, referring to a statement by Mr Paul Bouchet, President of the Commission nationale consultative des droits de l'homme of 22 March 1994, condemning the polarisation of French immigration policy and claiming that the legislation advocated by the Government accentuated "institutionalized xenophobia" (Europees Steunpunt Migranten en Vluchtelingen, List of Events, Utrecht, March 1994).

⁴⁶⁷ *Ibid*, para 86-91.

⁴⁶⁸ *Ibid*, para 92-98.

⁴⁶⁹ *Ibid*, para 99-101.

⁴⁷⁰ *Ibid*, para 102-105.

The last section on racial discrimination against women⁴⁷¹ contains information on incidents reported from three countries, showing possible double discrimination against women.

1995 Report to the GA

In the next report to the GA,⁴⁷² the Special Rapporteur first discusses the “persistence and spread of racism and racial discrimination”, which was intended to serve as a brief supplement to the analysis he had commenced in his previous report (to the GA), of the ideological mutations which were the source of what could be described as “contemporary racism”.⁴⁷³ In the last part of that section, entitled “Various Forms and Manifestations of Racism and Racial Discrimination”,⁴⁷⁴ the Special Rapporteur mentions that the crimes and human rights violations persisted in the former Yugoslavia in the name of “ethnic cleansing”, which had now become a commonplace term. The fire smouldering in Burundi, fed by the tension between the Hutu and the Tutsi, gave rise to fears of a new wave of ethnic conflagrations on the African continent. In Germany, the Netherlands, France, and the USA, neo-Nazi groups and parties were emerging – or re-emerging under a new name after having been banned – and were continuing to display openly their attachment to fascist beliefs. Although the racist activism of such groups was more visible and less overtly respectable than that of the traditional parties, it was important not to overlook the role played by the “institutional” racist parties in reducing racism to a commonplace. Such parties included the *Front National* in France and the *Vlaams Blok* in Belgium, whose ideas had contaminated the political platforms of other, more moderate parties, which, for purely demagogic reasons, had taken up the arguments in favour of exclusion and mistrust of foreigners, portraying immigration from outside Europe as the root of all evil.⁴⁷⁵

The following sections of the report contain mainly incidents brought to the Special Rapporteur’s attention by various sources, including the press. The topics discussed and general tendencies recognised are:

The Roma, Gypsies or travellers,⁴⁷⁶ the Special Rapporteur points out, were a minority that had been strongly affected by the racist phenomena. The incidents cited show, that they are particular victims of racist violence.

Racism and racial discrimination against Blacks (negrophobia)⁴⁷⁷ continued to exist in various forms in a number of countries.

With regard to racism and racial discrimination against Arabs,⁴⁷⁸ the Special Rapporteur observes, that recent attacks perpetrated in France, the Middle East and the USA tended to reinforce anti-Arab feelings in the West.

⁴⁷¹ *Ibid*, para 106-110.

⁴⁷² A/50/476, III. (paras 34-131). See also the “account of the facts” (country-by-country), as brought to the Special Rapporteur’s attention, in the report to the Commission, E/CN.4/1995/78, II. (paras 20-68).

⁴⁷³ See A/50/476, paras 34-56.

⁴⁷⁴ *Ibid*, paras 50-56.

⁴⁷⁵ See also *Ibid*, para 131, mentioning other “prototypes” of such parties: *Centrum Democraten* in the Netherlands; the *Republikaner* in Germany; the *Front National* and the *Parti des forces nouvelles* in Belgium; the *Freiheitspartei Österreich (FPÖ)* in Austria; and the *Movimento Sociale Italiano (MSI)* in Italy.

⁴⁷⁶ *Ibid*, paras 57-61. See also *Ibid*, paras 62-67: “Other Cases of Racism and Racial Discrimination”.

⁴⁷⁷ *Ibid*, paras 68-77.

⁴⁷⁸ *Ibid*, paras 78-86.

Anti-Semitism⁴⁷⁹ remained a problem in many countries and was particularly sensitive to geopolitical developments in the Middle East. The cited sources indicate that anti-Semitic incidents and violence still persist and have increased in some countries.

Concerned with discrimination against immigrants and migrant workers,⁴⁸⁰ the Special Rapporteur assesses that the tendency to blame foreigners for domestic problems was assuming world-wide proportions. The examples given show that immigrants and migrant workers are often victims of racist behaviour, xenophobic acts and discrimination. Especially in the employment sector migrant workers are faced with daily racist harassment and discrimination.

Under the heading of “Discrimination Against Women”,⁴⁸¹ the Special Rapporteur states three reported cases, showing the possible double victimisation of women.

With regard to racism and discrimination against children,⁴⁸² violent racist incidents perpetrated against children are reported and the Special Rapporteur observes that discrimination against children was also evident in education. For instance, many authorities refused to provide schooling for foreign children on account of their inadequate knowledge of the language in which instruction is provided or on account of the irregular situation of the parents in the territory.

The last section concerns incitement to racial hatred and freedom of opinion and of expression.⁴⁸³ The role of the media in reporting racist remarks and appeals to violence, ethnic and racial hatred and genocide, using either clandestine or legally established radio stations, was becoming increasingly a matter of concern. The Special Rapporteur mentions the hate and violence propaganda that took place in Burundi and the former Yugoslavia as extreme examples. Apart from the hate media, the “traditional media” contributed to differences of opinion with regard to immigrants, ethnic minorities and indigenous populations by propagating stereotypes and summary or tendentious analysis which helped to reinforce the prejudices on which intolerance flourished. Media coverage of events relating to immigrants and foreigners and its repercussions could help to exacerbate racist and xenophobic sentiments. The Special Rapporteur also stresses the decisive role that the media had in combating racism and in arousing an awareness of acceptance of others and the respect for the dignity of the human being. He further points out the delicate task that governments were facing of finding a proper balance between the conflicting principles of a democratic society: the obligation to recognise the freedom of expression of all its members and the obligation to protect ethnic minorities against insults and persecution. The task was all the more delicate in that language could be adapted to arrive at racist conclusions without incurring the penalties of the law. Racism could henceforth be expressed using the words of democracy.

⁴⁷⁹ *Ibid*, paras 87-97.

⁴⁸⁰ *Ibid*, paras 98-109.

⁴⁸¹ *Ibid*, paras 110-111.

⁴⁸² *Ibid*, paras 112-117.

⁴⁸³ *Ibid*, paras 118-131.

1996 Report to the GA

After the mandate was extended for another period of three years in 1996,⁴⁸⁴ the Special Rapporteur considered three specific topics in his report to the GA: the world-wide immigration crisis; racist horror and terror; and incitement to racial hatred through electronic and computer networks.⁴⁸⁵

With regard to the world-wide immigration crisis,⁴⁸⁶ the Special Rapporteur stresses that the international community had endeavoured to organise the world-wide movements of goods, services, currencies and information without taking account of the simultaneous movement of people. As a result, it was now faced with problems in regulating migratory flows from the poorest regions to the most prosperous, as well as with the settlement of immigrant populations. The problem was a world-wide one, men and women who had set out in a search of a place in the “global village” were impeded by discriminatory barriers. Their fundamental rights, such as the right to free movement, the right to leave any country, the right to marry and to choose a spouse, were increasingly subject to regulations which referred directly or indirectly to their racial identity and national or ethnic origin, or to preference for nationals. All over the world, immigrants had become easy “scapegoats” and sacrificial victims of the economic crisis. Described as illegal immigrants or seen as responsible for all the problems of the societies in which they lived, like crime and unemployment, such people had an increasingly precarious existence whether they had entered a country legally or illegally. In Asia, intra-regional migration created tensions between countries of emigration and host countries, because of the way in which the citizens of the former were treated. A great proportion of immigrants from those countries consisted of women, who were particularly subject to “double discrimination”, that was, both as women and as migrants.⁴⁸⁷ Mass expulsions of migrant workers gave rise to some concern regarding human rights, as had the severity of justice in certain countries when persons with immigrant status had been accused, rightly or wrongly, of criminal offences.

Under the heading “Racist Horror and Terror Become Commonplace”,⁴⁸⁸ the resurgence of denial of the holocaust in France and the increase in the number of cases of arson of African-American churches in the south of the USA are dealt with. The title of that section would have merited a broader analysis, however, and stating only the situation of these two countries is a bit irritating, as the list of examples also from other countries could be much longer.

In the section on electronic and computer networks,⁴⁸⁹ the Special Rapporteur states that a growing trend had been observed among racist organisations to use electronic mail or the Internet to spread racist or xenophobic propaganda.⁴⁹⁰ The control of information transmitted over the Internet posed a problem. No national legislation had any power over this world-wide network. He asks, whether international measures should be taken, for example, the immediate launching of studies, research or dialogue.

⁴⁸⁴ CHR Res 1996/21, para 9. See also the “Provisional Evaluation” in the report to the Commission, E/CN.4/1996/72, III. (paras 58-68), and the section called “Anti-Semitism Throughout the World”, *Ibid*, II. (paras 56-57), containing an extract of a communication from the Israeli government dated 13 October 1995.

⁴⁸⁵ A/51/301, III. (paras 19-46).

⁴⁸⁶ *Ibid*, paras 19-37.

⁴⁸⁷ Referring, *inter alia*, to an ILO study (International Labour Migration of Asian Women: distinctive characteristics and policy concerns, Geneva, February 1996), *Ibid*, para 20, n. 4.

⁴⁸⁸ *Ibid*, paras 38-44.

⁴⁸⁹ *Ibid*, paras 45-46.

⁴⁹⁰ Referring to newspaper articles, *Ibid*, para 45, ns. 22-24.

1997 Report to the Commission

In the 1997 report to the Commission, the Special Rapporteur mainly reproduces extracts from information (“salient facts”) that he had received from governments and NGOs on several topics.⁴⁹¹ Only the following short observations might be mentioned:

The various forms of racism, racial discrimination and xenophobia had continued to manifest themselves in 1996.⁴⁹²

With regard to discrimination against Blacks (negrophobia), the distinctive feature was the use of the Internet to spread racist messages against Blacks.⁴⁹³

Most of the information the Special Rapporteur had received on racism and racial discrimination against Arabs⁴⁹⁴ was related to the status of Arab Americans. Referring to a report of the American-Arab Antidiscrimination Committee,⁴⁹⁵ the resurgence of anti-Arab sentiment in the USA following terrorist incidents such as the 1995 bombing in Oklahoma City is mentioned and that the media tended to lump Arabs and Muslims together with terrorists and spread an unfavourable image on Arabs. The use of the Internet to spread propaganda against Arabs is also mentioned.

After a section on anti-Semitism and another section on discrimination against the Roma,⁴⁹⁶ the Special Rapporteur mentions, with regard to discrimination against migrant workers,⁴⁹⁷ that immigration, which was growing, provoking discriminatory measures and xenophobic reactions, was a world-wide phenomenon. Xenophobia was growing at an alarming rate, and most of the world’s most democratic peoples, supposedly devoted to such civilised values as the dignity of the individual, did not care. Holding camps, where aliens were dumped in often unacceptable living conditions before being expelled, were multiplying throughout the world.

1998 Reports to the Commission and GA

Of the topics discussed in the Special Rapporteur’s 1998 report to the Commission,⁴⁹⁸ only the following two might be mentioned: discrimination against migrant workers and discrimination and incitement to racial hatred on the Internet.⁴⁹⁹

⁴⁹¹ E/CN.4/1997/71, II. (paras 17-34). See also the report to the GA, A/52/471, III. (paras 13-27), mainly citing from information brought to his attention on: discrimination against immigrants and migrant workers; UN seminar on immigration, racism and racial discrimination (Geneva, 5 to 9 May 1997); human rights violations in holding areas in France; the role of the media in inciting racial violence (Internet); Roma, gypsies or travellers; and discriminatory application of the death penalty in the USA.

⁴⁹² E/CN.4/1997/71, para 17.

⁴⁹³ *Ibid*, para 22, referring to a study of the Anti-Defamation League, *The Web of Hate – Extremists Exploit the Internet*, New York, 1996.

⁴⁹⁴ *Ibid*, paras 24-26.

⁴⁹⁵ *Ibid*, para 24, n. 14: 1995 Special Report on Anti-Arab Racism, Hate Crimes, Discrimination and Defamation of Arab Americans, Washington DC, 1996.

⁴⁹⁶ See *Ibid*, paras 27-30, citing from a report that he received from the Israeli government and mentioning several reported violent incidents against Roma in Bulgaria, Romania and the Czech Republic.

⁴⁹⁷ *Ibid*, paras 31-34.

⁴⁹⁸ E/CN.4/1998/79, IV. (paras 31-52).

⁴⁹⁹ The other topics are: discrimination against Blacks (negrophobia); racism and racial discrimination against Arabs and Muslims; anti-Semitism; discrimination against the Roma. The sections consist of the “most salient facts” that had come to the Special Rapporteur’s notice.

With regard to discrimination against migrant workers,⁵⁰⁰ the Special Rapporteur stresses that one of the major problems in the last years of the century was discrimination which was increasingly affecting foreigners in general and migrant workers in particular in host countries. The globalisation of international economic relations had led many countries to take legislative and regulatory measures to protect their domestic labour force which were discriminatory and xenophobic and disregarded the principle of the free circulation of persons. Such practices were especially prevalent in industrialised and even middle-income countries. Most of these countries' legislations were applying more and more restrictions on the entry of southern nationals or persons from outside their regional unions. This policy of national preference often went hand in hand with a complementary policy of regional, if not racial preference. Thus traditional European host countries had adopted a policy of so-called "concentric circles", which consisted in allowing preferential entry to immigrants according to their origin, those from Western countries coming first, followed by nationals of Eastern Europe, *et cetera*. Persons not belonging to these two preferential categories were *de facto* excluded by the subtle system of elimination based on regional preference.

Regarding the problem of incitement to racial hatred on the Internet,⁵⁰¹ the Special Rapporteur recognises that although states had now become aware of the dangers of racist and xenophobic acts occurring on the Internet, very few efforts had been made to combat the phenomenon. The states which had adopted legislation had done so rather in isolation. While the Special Rapporteur welcomes such national initiatives, he remains convinced that only globally concerted action would be effective enough to halt the tendency to use the Internet for racist and xenophobic purposes, in view of the global, cross-frontier nature of that type of activity. Since the Internet network was only a technical medium, he asks, whether it might not be possible, in conformity with Articles 4 and 5 ICERD, to adopt appropriate legislation, on a country-by-country basis, against incitement to hatred and racial discrimination. In addition to international legislation and regulation, the international community should undertake positive action to combat the abusive exploitation of the Internet on its own ground, that was, by using the Internet itself to broadcast anti-racist and anti-xenophobic messages, and even to spread human rights education against racism. As an example of such an initiative, the CoE is mentioned which had adopted a strategy along those lines.⁵⁰²

In the report to the GA, the section on contemporary manifestations is relatively brief⁵⁰³ but contains two interesting new headings.⁵⁰⁴

The first one is "Resurgence of neo-Fascism and neo-Nazism".⁵⁰⁵ Neo-fascism and neo-Nazism were gaining ground in many countries, especially in Europe. This was reflected by the electoral victories of extreme right parties advocating xenophobia, attacks on ethnic, national and religious minorities, and racial or ethnic purity in the countries where they were active. These parties were exploiting an economic and social climate characterised by fear and despair engendered by the combined effects of globalisation, identity crisis and social exclusion. They had also made changes designed to make them look like radical right wing democratic parties, softening their image while enabling them to conceal an unchanged preference for racism and xenophobia. Thus, for purely electoral motives, classic right wing parties were increasingly embracing the slogans of extreme right wing parties. This growing increase in the power of

⁵⁰⁰ *Ibid*, paras 47-48.

⁵⁰¹ *Ibid*, paras 49-52.

⁵⁰² See ECRI's web site: www.ecri.coe.int.

⁵⁰³ A/53/269, III. (paras 17-29).

⁵⁰⁴ The other topics are: discrimination against immigrants and migrant workers; anti-Semitism; Internet and racism.

⁵⁰⁵ *Ibid*, paras 17-19.

extreme right wing parties was a cause for concern. International public opinion and NGOs and international organisations, which seemed to pay attention only to open conflicts or violent manifestations of fascism or xenophobia, should be alerted.

The second heading is “Exploitation and Manipulation of Ethnicity for Political Reasons”.⁵⁰⁶ Referring to the international meeting of experts held in Contonou on 5 and 6 June 1997, the Special Rapporteur stresses that apart from the well-known cases of Burundi and Rwanda where ethnic rivalries had resulted in tragic conflicts, ethnic groups had once again become increasingly important in many African states. Politics in many countries seemed to be based essentially on ethnic and/or regional considerations. The ethnic group was therefore a political instrument and pawn. At the government level, the ethnic group and/or region were fully taken into account in carrying out a skilful distribution of political posts as part of what was described a broad-based government of national unity, which was really more the result of attempts to achieve a balance between the regions or ethnic groups, such balance was being perceived as a means of strengthening a nation’s cohesion, solidarity and unity. This concern for regional or ethnic balance was also a factor in appointments to key state managerial positions. Ethnic groups were thus exploited and manipulated to a great extent for political purposes, something, which today should give cause for concern. Moreover, ethnic areas had always constituted, and still constituted, the electoral base of leaders and politicians in sub-Saharan African countries. Such leaders often made speeches with heavy ethnic undertones, paying occasional lip-service to national unity or integration. Thus, it was still difficult for liberal democracy based on individual rights and human dignity to take root, although some progress had been noted. The foregoing partly explained the conflicts that had recently caused bloodbaths in many African countries.

1999 Reports to the Commission and GA

In the 1999 report to the Commission, the Special Rapporteur, besides mentioning activities of the far right and neo-Nazi movements, discrimination against Blacks, racism and racial discrimination against Arabs, and anti-Semitism, discusses discrimination against the Roma, Gypsies or travellers in more detail and also takes up the question of the “untouchables” in India.⁵⁰⁷

With regard to discrimination against the Roma, Gypsies or travellers,⁵⁰⁸ the Special Rapporteur points out that the Roma populations of Europe had long been victims of some of the harshest racial discrimination on the continent, as evidenced in the large number of the Roma exterminated during the Holocaust. Since the 1989 “fall of Communism” and the subsequent liberalisation of Eastern Europe, many of the safety nets which had existed under Communism to ensure equal access to public services for the Roma had disappeared. Additionally, as low-skill jobs had become more and more scarce in the region, there had been a rise in violence directed toward the Roma populations. There were three broad categories of human rights violations confronting Roma in Europe today: police violence; racially motivated violence by skinheads and other private parties; and systematic racial discrimination. According to these three categories, the Special Rapporteur sketches the situation of the Roma in Europe. Police violence targeting Roma occurred in almost all countries of Central and Eastern Europe and there were occasional cases in Western Europe as well. Police violence took two principal forms: police raids and custodial abuse. Racially motivated anti-Roma violence by skinheads and others was widespread in the Czech Republic, Bulgaria, Poland, Slovakia and the Federal Republic of Yugoslavia. Roma suffered systematic racial discrimination in virtually all

⁵⁰⁶ *Ibid*, paras 25-28.

⁵⁰⁷ E/CN.4/1999/15, III. (paras 74-100).

⁵⁰⁸ *Ibid*, paras 80-87.

spheres of public life, education, employment, housing, access to public space and access to citizenship. For example, Roma in Europe were systematically denied entrance to pubs, restaurants, discos, sports arenas and other public places. Discrimination against Roma was of particular concern in the Czech Republic and Macedonia. The five-year criminal record requirement in the Czech citizenship law, inadequate efforts to publicise the possibility of a waiver, as well as discriminatory and inconsistent application of the law's provisions, had deprived thousands of Roma previously resident in the Czech Republic of citizenship and its attendant benefits and had exposed them to a criminal sentence of expulsion upon conviction of a crime. Similarly, in Macedonia, the 1992 citizenship law had imposed, in breach of European standards, a 15-year-residence requirement, a physical and mental health precondition, and unreasonably high administrative fees. As a result, thousands of Roma who had genuine and long-standing ties to the territory of Macedonia were currently, *de jure* or *de facto*, stateless in their own land.

With regard to the question of the Dalits or “untouchables” in India,⁵⁰⁹ the Special Rapporteur, given the complexity of the question, had consulted the Indian Government, undertaken documentary research and studied the position of CERD on the question. The basic question had been whether the age-old caste system in India, which had produced several million untouchables, could be regarded as racial discrimination. In its appearances before CERD and its communications to the Special Rapporteur, the Indian Government had consistently held that the caste system was not a hierarchical system based on race. The following paragraphs of the report, taken from a communication of the Indian government, are intended to illustrate that position. In the final paragraph of that section, the Special Rapporteur moderately concludes, taking also CERD's concluding observations on India's periodic reports into account where CERD stated that “the situation of the scheduled castes and scheduled tribes falls within the scope of the Convention [on the Elimination of all Forms of Racial Discrimination]”⁵¹⁰, that he “believes that specific attention should be given to the situation of the untouchables in India; a field mission might be envisaged for that purpose, with the agreement of the Indian Government.”⁵¹¹

The Special Rapporteur summarises three of the four topics contained in his report to the GA⁵¹² by noting that racism persisted in its violent manifestations, which were instigated both by state officials responsible for keeping the peace and by members of racist organisations such as the skinheads. Racial discrimination also took increasingly insidious and subtle forms that were difficult to perceive and to combat through legislation, particularly in the areas of access to employment and to housing. Lastly, the Internet was a powerful propaganda tool in the hands of racist groups which used it to reach a broad public, particularly young people, at little expense.⁵¹³

With regard to the fourth topic, anti-Semitism, the Special Rapporteur refers to the “Annual Report of the Government of Israel on anti-Semitic Trends in 1998”, noting that anti-Semitic propaganda and violence had increased considerably in 1998 compared with 1997. The Israeli government and many Jewish organisations believed that the denial of the Holocaust was one of the main common manifestations of anti-Semitism.⁵¹⁴

⁵⁰⁹ *Ibid*, paras 88-100.

⁵¹⁰ CERD/C/304/Add.13, para 14.

⁵¹¹ *Ibid*, para 100.

⁵¹² A/45/347, III. (paras 30-61).

⁵¹³ *Ibid*, para 32.

⁵¹⁴ *Ibid*, paras 58-59.

With regard to the Internet,⁵¹⁵ the sources cited by the Special Rapporteur indicate, on the one hand, the increase of racist propaganda on the Internet⁵¹⁶ (“wave of cybernetic racism”) and the praise hailed by racist authors and organisations for this uncensored medium and its enormous use for racist organisations, and on the other hand, the efforts of some governments, NGOs and Internet service providers to combat the misuse of the Internet by racist organisations and to use this medium for anti-racist and educational purposes. The Special Rapporteur points out that neo-Nazis did not have the monopoly on the use of the Internet for purposes of racist propaganda, incitement to hatred, racist violence and anti-Semitism. There were other racist movements and organisations using the Internet to disseminate their messages of hatred. Anti-Arab and anti-Muslim sites are mentioned.

The figures cited under the heading of “Racist Violence and Activities of the far-Right and neo-Nazi Organizations” show that violent forms of racism and xenophobia still persist, although in some countries violent incidents seem to decline.⁵¹⁷ In some countries of Latin America, however, racist and xenophobic organisations had stepped up their activities. The Special Rapporteur intended to undertake a more detailed study of the neo-Nazi scene in Latin America, which was emerging as one of the areas of the world where racist organisations were expanding.

The Special Rapporteur mentions under the heading of “Insidious and Subtle Forms of Racism and Racial Discrimination”⁵¹⁸ that unlike the violent manifestations of racism, anti-Semitism and racial propaganda, which were visible forms of racism, there were hidden, insidious and subtle forms of these phenomena that were not always subject to the law. The contents of that section is somewhat disappointing, however, as it is limited to extracts of a circular from the French Minister of Justice, mentioning, *inter alia*, that daily incidents of discrimination, for example in connection with admission to discotheques or with the renting of departments, had become commonplace and that incidents of discrimination in recruitment and in the workplace were much more widespread than it appeared.

2000 Report to the Commission

In the 2000 report to the Commission, the Special Rapporteur takes up the issues of discrimination against Blacks (negrophobia); anti-Semitism; and discrimination against the Roma.⁵¹⁹ The latter issue has already been discussed in connection with the Special Rapporteur’s mission to Hungary, the Czech Republic and Romania.⁵²⁰

With regard to discrimination against Blacks, the Special Rapporteur mentions again the discriminatory application of the death penalty in the USA. Referring to a report of Amnesty International,⁵²¹ the Special Rapporteur points out that he had been informed that the legal system in the USA was still heavily biased as a result of racial prejudices, the consequence of which was discrimination in the application of the death penalty to African-Americans.⁵²²

⁵¹⁵ *Ibid*, paras 33-46.

⁵¹⁶ *Eg*, in the USA the number of extremist web sites rose from 163 in 1997 to 254 in 1998 and in Germany the number of far-right web pages had increased by 500 % in two years; *Ibid* para 34, with further reference.

⁵¹⁷ *Ibid*, paras 47-57.

⁵¹⁸ *Ibid*, paras 60-61.

⁵¹⁹ E/CN.4/2000/16, III. (paras 24-35).

⁵²⁰ See III.3.4.(b) of the main pArt

⁵²¹ United States of America. Killing with Prejudice: Race and the Death Penalty in the USA, May 1999.

⁵²² E/CN.4/2000/16, para 24-26.

As in his report to the GA, the Special Rapporteur mentions the increase of anti-Semitism in 1998. By citing parts of the conclusions of a research carried out by the University of Tel-Aviv, the Special Rapporteur indicates that anti-Semitism has increased or intensified around the world.⁵²³ The anti-Semitic rhetoric used by politicians and political parties, especially in Russia, is a sad and dangerous example thereof.

⁵²³ *Ibid*, paras 27-34.

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World Conferences

Third World Conference

A/CONF.189/PC.1/21, issued on 16 June 2000, Report of the Preparatory Committee on its first Session.

A/CONF.189/PC.1/19, issued on 14 March 2000, Discrimination against migrants - migrant women: in search of remedies - Contribution by the Special Rapporteur on the Human Rights of Migrants.

A/CONF.189/PC.1/17, issued on 28 March 2000, Note by the Secretary-General transmitting reviews and recommendations concerning the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance received from specialised agencies, other international organisations, concerned United Nations bodies and regional organisations.

A/CONF.189/PC.1/13/Add.1, issued on 6 March 2000, Proposals for the work of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance: working paper submitted by Mr Paulo Sérgio Pinheiro, member of the Sub-Commission, in accordance with Sub-Commission resolutions 1998/6 and 1999/6.

A/CONF.189/PC.1/13, issued on 23 February 2000, Contribution of the Sub-Commission on the Promotion and Protection of Human Rights.

A/CONF.189/PC.1/12, issued on 25 February 2000, Contribution of the Committee on the Elimination of Racial Discrimination to the preparatory process for the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance.

A/CONF.189/PC.1/10, issued on 8 March 2000, Report of the Consultation on the World Conference against Racism, Racial Discrimination, Xenophobia and Related Forms of Intolerance held at The Rockefeller Foundation's Study and Conference Center Bellagio, Italy (24-28 January 2000).

A/CONF.189/PC.1/9, issued on 15 March 2000, Report of the Expert Seminar on Racism, Refugees and Multi-Ethnic States (Geneva, 6-8 December 1999).

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