# OAS Working Group to Prepare a Draft Inter-American Convention against Racism and All Forms of Discrimination and Intolerance

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I am very pleased to have been invited to address this meeting of the Working Group concerned with preparation of an inter-American legal instrument to more effectively combat racism and all forms of discrimination and intolerance in the Hemisphere. I am here on behalf of the Open Society Justice Initiative, which is engaged in the search for legal remedies for racial and ethnic discrimination through litigation and advocacy in many parts of the world.

I should note at the outset that I don't pretend to know intimately the problems confronting racial and ethnic minorities in the Americas. Over the years I have undertaken human rights work or pursued justice reform in a number of countries in the Hemisphere, including in El Salvador, Guatemala, Honduras, Mexico, Nicaragua, and Peru. In addition, I come from the United States, which has endured a long and continuing struggle for civil rights for racial and ethnic minorities.

Nonetheless, my principal expertise stems from nearly a decade of advocacy, research and litigation in the field of anti-discrimination in another part of the world - Europe. I propose to contribute to this discussion by summarizing briefly the development of European regional standards concerning racism and racial discrimination and drawing upon this experience to suggest a number of considerations to be borne in mind in preparing a convention for the Americas.

Let me begin by stating the obvious. In drafting a regional convention, you have an advantage - you don't start from a blank slate. A host of national, regional and international standards and mechanisms already exist to fight racial discrimination. These standards offer useful guidance, but I would respectfully submit that they in no way vitiate the need for a thematically-specific regional instrument. Other presentations will no doubt address some of the specific gaps in the existing normative framework that a regional anti-discrimination convention might fill. For present purposes, I wish simply to underscore that, while the problem of discrimination is as old as humanity, the use of legal tools in combating it is relatively new. We are still learning a great deal about how most effectively to tackle these problems. Thus, while many anti-discriminatory norms adopted in the past half-century are useful, it should not be surprising that they don't always speak as precisely to certain problems – or take account of some of the deficiencies in practice – as a more focused instrument developed by this working group could. For these reasons, a regional convention would provide positive reinforcement – but would not duplicate or substitute – for existing standards.

Second, I won't attempt to address the existing jurisprudence of the Inter-American Court and Commission of Human Rights with respect to non-discrimination, except to note the significance that these bodies have attached to the principle. Indeed, the Court recently had occasion to do in one case what a regional convention would accomplish more generally – that is, to refine and give greater definition to existing standards. Thus, in its judgment this past October in the case of Dilcia Jean and Violeta Bosico v. Dominican Republic, the Court advanced helpfully the evolution of anti-discrimination law by articulating – for the first time clearly and unequivocally – that racial discrimination in access to nationality is a breach of international human rights law. For four decades the principle of non-discrimination in access to nationality had been embedded – some would say hidden - in Article 5(d)(iii) of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD). To my knowledge, October's judgment by the Inter-American Court was the first decision by a regional or international judicial body to give that principle life. A regional convention on racial discrimination could accomplish similar goals more systematically.

Finally, drafters will have to consider how specifically to phrase the legal obligations imposed by a convention. Conventions often use rather general language. This may be the price of inter-governmental consensus, and it may also be desirable to afford states some latitude in determining how best to carry out particular mandates. Still, I would suggest that the field of discrimination may warrant somewhat more specificity to reflect both the complexity of the phenomenon and our cumulative experience in learning – by trial and error – how difficult it can be to craft legal remedies.

With that preface, let me offer a short history of the rise of anti-discrimination law in Europe.

Across the Atlantic, discussion of racism and discrimination often turns to the crimes of the Nazi era, when racist ideology was taken to the extreme of wholesale extermination. Hitler, it has been said, gave racism a bad name. The universal revulsion against the Holocaust was one of the important factors which following the Second World War helped to undermine official support for racism and racial or ethnic classifications.

And yet, throughout Europe racial discrimination persisted after the War. In the East, racism against the Roma or Gypsy minority was frozen in the grips of communism – denied by official ideology, even as it was tolerated in practice. In the West, racism was the common response of previously homogenous societies to increasing immigration. But for most of the 20th century, the memory of where racism had led in Germany, encouraged a tendency to avoid confronting racist manifestations, or even acknowledging that racism continued to exist.

For most of the post War era, Europe's legal protection against discrimination on grounds of racial or ethnic origin was confined to Article 14 of the 1950 European Convention of Human Rights. Though Article 14 prohibits discrimination "on any ground such as [inter alia] race, colour, language, religion … national or social origin,

association with a national minority …. or other status," it is of limited application, insofar as it offers only subsidiary protection in the enjoyment of the civil and political rights explicitly recognized in the rest of the Convention. It does not address discriminatory treatment in housing, employment or the many other spheres of social and economic life where much discriminatory treatment takes place. The Council of Europe has recently adopted a Protocol (No. 12) to the European Convention, which creates a free-standing non-discrimination guarantee in all areas of public life. This Protocol entered into force earlier this year, but to date has been ratified by only about a quarter of the Council's membership.

The other principal regional body in Europe, the European Union, focused for many years on discrimination on grounds of gender to prevent social dumping within Europe's common economic market. But the EU was for most of its history essentially inactive with respect to race or ethnicity.

For many years there was virtually no jurisprudence at European regional level addressing racial or ethnic discrimination. This began to change with the fall of the Berlin Wall in 1989. Three parallel developments helped. In the East politicians in post-communist societies exploited racial prejudice for political ends, giving rise to the phenomenon of "ethnic cleansing" and provoking the concern of Western powers. In the West, a grassroots movement concerned with xenophobia campaigned for a Europe-wide norm against racial prejudice. And all over, the opening of political space following 1989 created the opportunity for a nascent movement for Roma rights to stake its claim on the European agenda.

In 1997, perhaps moved by all these trends, European leaders for the first time inserted into an EU treaty authority for the EU's executive arm to legislate on issues of racial discrimination. Thus, Article 13 of the Amsterdam Treaty empowered the European Council – the EU's governing body – to combat discrimination on grounds of racial or ethnic origin.

Even then, this treaty provision merely authorized – it did not mandate – legislative action. It took a political accident - the electoral success of the openly racist Jorg Haider and his right wing Freedom Party in Austria's 1999 elections - to goad European leaders into making use of their new powers. In 2000, the European Commission adopted a legislative directive on racial discrimination – a rule binding all EU member states. The race directive, as it is known, transformed race discrimination law in Europe. For the first time, the law prohibited discrimination on grounds of racial or ethnic origin in employment, housing, education, healthcare, and the provision of social services. It expressly prohibited both direct discrimination – where the ground at issue is obvious – and indirect, or de facto, discrimination. And it prescribed a reversed burden of proof for the resolution of discrimination claims, once a prima facie case is made out. Under the standard of the Race Directive, discriminatory intent – which has played such a problematic role in equal protection jurisprudence in the US – has no relevance.

Against this backdrop of popular activism from below and normative transformation from above, the European Court of Human Rights has in recent years expanded the boundaries of legal protection for racial and ethnic minorities in cases of violence – including unlawful killing and physical assault.

On the one hand, the Court has held that governments must not only refrain from affirmative harm, they must also investigate thoroughly and effectively credible allegations of abuse. In grafting procedural requirements onto what were previously understood to be substantive rights – the right to life, the right not to be subjected to torture or inhuman and degrading treatment – this consistent line of authority has effectively amended the European Convention to impose substantial new obligations on law enforcement officers and protect victims of police misconduct.

And this year, for the first time ever, the Court in two cases found a violation of the non-discrimination clause of the European Convention on grounds of race. One case concerned the racially-motivated failure to compensate Roma victims of a violent pogrom in Romania.[1] The second case arose from the racially-motivated shooting death of two Bulgarian Roma.[2]

Finally, a new wave of cases challenging non-violent acts or patterns of racial discrimination is now pending before the Court. In one case in which I am involved, Roma students from the Czech Republic are challenging their assignment to special schools for the mentally disabled in numbers more than 25 times their proportion in the population.

What does the European experience suggest for the drafting of a convention to prohibit racial discrimination in the Americas?

Most immediately, the example of Europe demonstrates the possibility for a region which long lacked significant anti-discrimination law and action in a relatively short period of time to adopt legal norms and develop jurisprudence that are among the most progressive in the world. At the same time, Europe's present underscores the reality that securing an adequate legal framework is only the first step in the fight against racial discrimination – implementation remains a constant challenge.

Beyond this, there are a number of issues of relevance to a race discrimination convention – too many to discuss in any depth here. But let me briefly list ten points for consideration by the convention drafters.

First, any *guarantee of non-discrimination should be free-standing* and should apply, like Article 26 of the ICCPR, to all areas of public life. This would be consistent

[1] *Moldovan v. Romania*, Eur. Ct. H. Rts., Judgment of July 12, 2005.
[2] *Nachova v. Bulgaria*, Eur. Ct. H. Rts, Judgment of July 6, 2005.

with the Inter-American Court's own jurisprudence, which has underscored the *jus cogens* nature of the prohibition against discrimination.[3]

Second, consideration should be given to the question of *horizontal application*. Common experience, buttressed by the reports of numerous monitoring bodies, suggests that much racial discrimination occurs in the private sphere – for example, in employment, in housing, and in access to bars, restaurants and other public accommodations. A legal norm which limited its application only to government action would fail to address some of the most important problems that racial and ethnic minorities face. The ICERD recognizes this by obliging States Parties, not only to refrain from racial discrimination themselves, but also to "prohibit and bring to an end … racial discrimination by any persons, group or organization…."[4] Similarly, the EU Race Directive explicitly applies to discrimination in both the public and private spheres.[5] Drawing on this principle, drafters may want to give consideration to language which not only forbids states from actively discriminating, but also requires that states take steps – including adopting and enforcing legislation – to prevent and punish discrimination by private parties.

Third, *the definition of discrimination* – This is an area of crucial importance where European experience may be especially helpful. A regional convention should make clear that both direct and indirect forms of discrimination are prohibited, and should give clear guidance as to how both forms of discrimination are to be understood. In general, direct discrimination is less favorable treatment on the basis of prohibited grounds such as race.[6] Indirect discrimination occurs when a practice, rule, requirement or condition is neutral on its face but impacts particular groups disproportionately, absent objective and reasonable justification.[7] This would be in line with both ICERD and the

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[3] See, e.g., *Juridical Conditions and Rights of the Undocumented Migrants, Advisory Opinion OC-18/03 of September 17, 2003*, Inter-Am. Ct. H.R. (Ser. A) No. 18 (2003), para. 101 ([T]he principle of equality before the law, equal protection before the law and non-discrimination belongs to *jus cogens*, because the whole legal structure of national and international public order rests on it and it is a fundamental principle that permeates all laws. Nowadays, no legal act that is in conflict with this fundamental principle is acceptable, and discriminatory treatment of any person, owing to gender, race, color, language, religion or belief, political or other opinion, national, ethnic or social origin, nationality, age, economic situation, property, civil status, birth or any other status is unacceptable. This principle (equality and non-discrimination) forms part of general international law. At the existing stage of the development of international law, the fundamental principle of equality and non-discrimination has entered the realm of *jus cogens")*.

[4] ICERD, Art. 2(d).

[5] EU Race Directive, Art. 3(1).

[6] See, e.g., EU Race Directive, Art. 2(a) ("direct discrimination shall be taken to occur where one person is treated less favourably than another is, has been or would be treated in a comparable situation on grounds of racial or ethnic origin").

[7] Article 2(b) of the European Union's *Directive implementing the principle of equal treatment between persons irrespective of racial or ethnic origin* ("EU Race Directive"), provides that "[i]ndirect discrimination shall be taken to occur when an apparently neutral provision, criterion or practice would put persons or a racial or ethnic origin at a particular disadvantage compared with other persons, unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary."

jurisprudence of UN treaty bodies,[8] as well as the caselaw of the Inter-American judicial organs.[9]

Fourth, the question of *proof* is traditionally where the rubber hits the road when it comes to discrimination cases. Thus, consideration should be given to including in the Convention provisions with respect to proof that are sufficiently detailed to provide useful guidance. Because the most compelling evidence of discriminatory treatment is often in the hands of the alleged discriminator – i.e., how other persons have been treated – the law in many jurisdictions effectively *reverses the burden* of proof in cases of indirect discrimination once a prima facie showing has been made that application of the rule at issue has produced disproportionately negative effects for members of a particular group.[10] The Convention could provide useful clarity to governments, courts and

[8] The Race Convention terms as "racial discrimination" all specified actions which have "*the purpose or effect* of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms." Race Convention, Article 1(1) (emphasis added). See CERD, *General Recommendation 14: Definition of Discrimination (Art. 1, par.1) 22/03/93* (1993), para. 1 ("A distinction is contrary to the Convention if it has either the purpose or effect of impairing particular rights and freedoms"); *L.R. v. Slovak Republic, Communication No. 31/2003, (CERD Views of 10 March 200*5), UN Doc. CERD/C/66/D/31/2003 para. 10.4 ("the definition of racial discrimination in article 1 [of the Race Convention] expressly extends beyond measures which are explicitly discriminatory, to encompass measures which are not discriminatory at face value but are discriminatory in fact and effect, that is, if they amount to indirect discrimination"). See also UN Human Rights Committee, *General Comment 18: Non-Discrimination 10/11/89* (1989) (using similar language to interpret "discrimination" under Articles 2 and 26 of the ICCPR). This test has been applied in decisions of the UN Human Rights Committee in respect of individual complaints. See, e.g., *Althammer v. Austria*, *Communication No. 998/2001*, UN Doc. CCPR/C/78/D/998/2001, para. 10.2; and *Simunek et al v. Czech Republic*, *Communication No. 516/1992*, UN Doc. CCPR/C/54/D/516/1992, para. 11.7.

[9] Articles 1(1) and 24 of the American Convention explicitly prohibit direct discrimination. The Inter-American Commission has expressly held that "[s]tatutory distinctions based on such criteria, such as, for example, race or sex…necessarily give rise to heightened scrutiny." *Maria Eugenia Morales de Sierra v. Guatemala, Report Nº 4/00 Case 11.625*, Inter. Am. C.H.R. OEA/Ser. L/V/II.111 Doc. 20 rev. at 929 (2000), para. 36. The Inter-American Court has held that they also bar indirect discrimination. Thus, "States must abstain from carrying out any action that, in any way, directly or indirectly, is aimed at creating situations of *de jure* or *de facto* discrimination." *Juridical Conditions and Rights of the Undocumented Migrants, Advisory Opinion OC-18/03* of *September 17, 2003, supra* note 8, para. 103.

[10] Once a *prima facie* case is made out, the burden of proof shifts to the defendant to show either (a) that there is in fact no discriminatory impact, or (b) that the discriminatory impact is objectively and reasonably justified. For the United Nations organs, see: UN Human Rights Committee, *Chedi Ben Ahmed Karoui v. Sweden, Communication No. 185/2001*, U.N. Doc. A/57/44 at 198 (2002), para. 10 ("substantive reliable documentation" will shift the burden of proof to the Respondent State); UN CERD, *Conclusions and Recommendations of the Committee on the Elimination of Racial Discrimination: United Kingdom of Great Britain and Northern Ireland 10/12/2003*, U.N. Doc. CERD/C/63/CO/11 (2003), para. 4. For the European Court of Justice, see *Case 170/84 Bilka-Kaufhaus GmbH v. Weber Von Hartz,* 1986 E.C.R. 1607, [1986] 2 C.M.L.R. 701 (1986), para. 31; *Case C-33/89 Maria Kowalska v. Freie und Hansestadt Hamburg*, [1990] ECR I-2591, para. 16; and *C-184/89 Nimz v. Freie und Hansestadt Hamburg* [1991] ECR I297, para. 15; *Case C-109/88 Handels-og Kontorfunktionærernes Forbund i Danmark v. Dansk Arbejdsgiverforening, acting on behalf of Danfoss,* [1989] *ECR 3199* [1989], para. 16. For a number of national jurisdictions, see, for example, the Netherlands (*RK Woningbouwvereniging Binderen v. S. Kaya, 10 December 1982, NJ 1983/687*); Canadian Human Rights Act, section 15; *Canada (British Columbia (Superintendent of Motor Vehicles)) v. British Columbia (Council of Human Rights)*, [1999] 3 S.C.R. 868 [Grismer], at para. 20; *McDonnell Douglas Corp. v. Green*, 411 U.S. 492 (1973). See also *South African Promotion of Equality*

potential litigants by mandating a similar rule and by specifying that all forms of evidence consistent with national legislation and rules, including but not limited to *statistics*, may be used to prove discrimination.[11] In this regard, it will be important for national legislation to authorize the use (with appropriate safeguards) of *racial or ethnic data*, without which measuring - and hence combating – discriminatory patterns is often impossible.

Fifth, related to the challenge of proof is the reality that victims of discrimination are often not well-situated to pursue legal remedies on their own. Building a discrimination case is often expensive and time-consuming. A convention should seek to avoid articulating rights in name that can not be vindicated in practice. Hence, it should provide for liberal *rules of standing*, or victim status, that permit NGOs to vindicate rights on behalf of victims who for a variety of reasons may not have the means or ability to do so themselves. In addition, governments should be mandated to establish *politically independent bodies* with the resources to carry out various activities – including public education and the provision of legal advice – in support of the convention's aims.

Sixth, with respect to the question of effective *redress*, the rights set forth in a race discrimination convention should be *individually enforceable* by the principal regional judicial organs. And too, the convention should require that ratifying states ensure *effective, proportionate and dissuasive sanctions* – including civil, criminal and administrative measures - for discriminatory acts. Here, Europe provides a cautionary counter-example. Europe's Framework Convention on National Minorities establishes important minority rights protections. To date, however, its influence has been less than many have hoped, in part because it gave rise to an advisory committee which reviews state compliance on a periodic basis, but has no power to adjudicate individual complaints of violation.

Seventh, the Convention should endorse the principle of *positive action* – what in some contexts is referred to as affirmative action, or special measures to ensure full and effective equality for disadvantaged groups. Positive action is authorized under international law for so long as conditions which contribute to unlawful discrimination warrant.[12] Moreover, courts in Europe and the United States have largely agreed that,

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*and Prevention of Unfair Discrimination Act of 2000*, section 13 and section 54A; *New Zealand Human Rights Act 1993*, section 92F; *United States Civil Rights Act 1991*, section 105(a).

[11] This would be in accord with the observations of the Inter-American Court of Human Rights that international human rights courts particularly should "enjoy substantial flexibility in the assessment of evidence submitted to them regarding the respective facts, to establish the international responsibility of a State, in accordance with the rules and logic and based on experience." *Bulacio v. Argentina, Judgment of September 18, 2003*, Inter-Am. Ct. H.R., (Ser. C) No. 100 (2003), para. 4.

[12] See, e.g., ICERD, Art. 1(4) ("Special measures taken for the sole purpose of securing adequate advancement of certain racial or ethnic groups or individuals requiring such protection as may be necessary in order to ensure such groups or individuals equal enjoyment or exercise of human rights and fundamental freedoms shall not be deemed racial discrimination, provided, however, that such measures do not, as a consequence, lead to the maintenance of separate rights for different racial groups and that they shall not be continued after the objectives for which they were taken have been achieved"); id., Art. 2(2) ("States Parties shall, when the circumstances so warrant, take, in the social, economic, cultural and other fields, special and concrete measures to ensure the adequate development and protection of certain racial groups

while fixed quotas that involve automatic preferential treatment are to be avoided, membership in a racial or ethnic minority may be considered as one factor within a general policy fostering diversity within a particular institution.[13]

Eighth, one area where Europe has fallen short in the effort to combat racial and ethnic discrimination is in the failure to make clear that *nationality* may not be used as a pretext for ethnicity.[14] Where many ethnic minorities are simultaneously non-citizens, the questions of nationality and ethnic origin are often blurred. It can be hard to know, let alone prove, which forms the basis of a discriminatory act. A race discrimination convention in the Americas should avoid this problem by clarifying that non-citizens enjoy all the same protections against racial discrimination as do citizens with respect to all fields of endeavor except the rights of entry and, in certain cases, political participation (such as voting or holding public office). This principle is consistent with the guidance of the UN Committee on the Elimination of Racial Discrimination.[15]

Ninth, it may be particularly important in these times to make clear that the prohibition against racial discrimination contained in a convention must apply even in the course of efforts to combat terrorism. The significance of such a bright line prohibition is

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or individuals belonging to them, for the purpose of guaranteeing them the full and equal enjoyment of human rights"); UN Human Rights Committee, General Comment 18 on non-discrimination (1994), para. 10 ("the principle of equality sometimes requires States parties to take affirmative action in order to diminish or eliminate conditions which cause or help to perpetuate discrimination prohibited by the Covenant…. Such action may involve granting for a time to [a certain] part of the population … certain preferential treatment in specific matters as compared with the rest of the population"). EU Race Directive, Art. 5 ("With a view to ensuring full equality in practice, the principle of equal treatment shall not prevent any Member State from maintaining or adopting specific measures to prevent or compensate for disadvantages to racial or ethnic origin").

[13] In Europe, see, e.g., decisions of the European Court of Justice, such as Case C-450/93 *Kalanke v. Freie Hansestadt Bremen* [1995] ECR I-3029; Case C-409/95 *Marschall v. Land Nordrhein-Westfalen* [1997] ECR I-6363; Case C-158/97 *Badeck v. Hessischer Ministerpreasident* [2000] ECR I-1875; Case C-407/98 *Abrahamsson and Anderson v. Fogelquist* [2000] ECR I-5539. In the U.S., see, e.g. *Grutter v. Bollinger*, 539 U.S. 306 (2003) (To be narrowly tailored and surpass constitutional scrutiny, a race-conscious university admissions program cannot establish quotas for members of certain racial or ethnic groups or put them on separate admissions tracks, but may consider race or ethnicity as a "'plus' in a particular applicant's file"; *i.e.,* it must be "flexible enough to consider all pertinent elements of diversity in light of the particular qualifications of each applicant, and to place them on the same footing for consideration, although not necessarily according them the same weight").

[14] See, e.g., EU Race Directive, Art 3(2) ("This Directive does not cover difference of treatment based on nationality and is without prejudice to provisions and conditions relating to the entry into and residence of third-country nationals and stateless persons on the territory of Member States, and to any treatment which arises from the legal status of the third-country nationals and stateless persons concerned").

[15] See, e.g., UN CERD, *General Recommendation No. 30* (Discrimination against Non-Citizens) (2004), para. 3 ("Article 5 of the Convention incorporates the obligation of States parties to prohibit and eliminate racial discrimination in the enjoyment of civil, political, economic, social and cultural rights. Although some of these rights, such as the right to participate in elections, to vote and to stand for election, may be confined to citizens, human rights are, in principle, to be enjoyed by all persons. States parties are under an obligation to guarantee equality between citizens and non-citizens in the enjoyment of these rights to the extent recognized under international law"). Thus, CERD recommends that States Parties "[e]nsure that legislative guarantees against racial discrimination apply to non-citizens regardless of their immigration status, and that the implementation of legislation does not have a discriminatory effect on non-citizens." (Id., para. 7).

only underscored by reports that certain governments may be engaging in profiling of persons on the basis of race or ethnic or national origin. Such practices are as objectionable as they are counter-productive, and this convention should make clear that they are unlawful. This would be consistent with recommendations of inter-governmental monitoring bodies within the United Nations system,[16] and at regional level, including in Europe.[17]

Tenth, even as a convention focused on racial discrimination is prepared, it may be useful to recall that the fight against discrimination must cut across all grounds, that many persons are victims of discrimination on more than one ground, and that it would be a mistake to pit one vulnerable group against another in a competition for scarce resources of legal protection and state enforcement power. In Europe today, the standard of what constitutes discrimination is somewhat stronger when it comes to race than with respect to gender – an anomaly that creates an unnecessary lack of uniformity, and potential for misunderstanding. This parallels the differential levels of constitutional protection in the United States afforded to women and racial minorities. But ultimately discrimination for any arbitrary reason is unlawful and must be remedied. It is thus to be hoped that this race discrimination convention provides an impetus for states in this hemisphere to bolster their legal protections against discrimination of all kinds.

[16] In its General Recommendation No. 30 (2004), the UN CERD recommends that states parties "[e]nsure that any measures taken in the fight against terrorism do not discriminate, in purpose or effect, on the grounds of race, colour, descent, or national or ethnic origin and that non-citizens are not subjected to racial or ethnic profiling or stereotyping."

[17] The Council of Europe Guidelines on human rights and the fight against terrorism (adopted July 11, 2002) state, "All measures taken by states to fight terrorism must … exclude[e] any form of arbitrariness, as well as any discriminatory or racist treatment…." (Guideline II). And General Policy Recommendation N°8 of the European Council against Racism and Intolerance on combating racism while fighting terrorism (adopted March 17 2004) specifically recommends that governments "pay particular attention to guaranteeing in a non discriminatory way the freedom… of … movement and to ensuring that no discrimination ensues from legislation and regulations - or their implementation - … governing [inter alia] … checks carried out by law enforcement officials within the countries and by border control personnel."