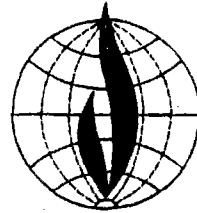


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on Human Rights*
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TABLE OF CONTENTS

INTRODUCTION

Adama Dieng, ICJ Secretary-General 3

ARTICLES

The Universality of Human Rights
Fali S. Nariman 8

Conditionality
Kofi Kumado 23

International Human Rights Mechanisms
Helena M. Cook 31

A System of International Criminal Prosecution
Is Taking Shape
Christian Tomuschat 56

Women's Human Rights
Florence Butegwa 71

The Human Rights of the Child
Joaquín Ruiz-Giménez 81

Non-Governmental Organizations and the UN World
Conference on Human Rights
Fateh Azzam 89

COMMENTARIES

New Models of Human Rights Protection:
Preventive Peacekeeping
Bertrand G. Ramcharan 101

The Global Campaign for Women's Human Rights
Charlotte Bunch 105

DOCUMENTS

ICJ Preliminary Evaluation of the UN World Conference
on Human Rights 109

Appeal by Nobel Peace Prize Laureates 112

BASIC TEXT

Vienna Declaration and Programme of Action 114

Introduction

A quarter of a century has elapsed between the first United Nations Conference on Human Rights in Tehran in 1968, and the second, held in Vienna in 1993. Over these 25 years there have been as many historical breakthroughs in human rights as genuine disappointments. From a positive point of view, this quarter of a century has seen the end of the Cold War, the sudden demise of the USSR and of its system, the rebirth of countries such as Lithuania, Ukraine and Armenia, the return to democracy and to the Rule of Law in the Philippines, Argentina, Chile and Uruguay, as well as in Greece, Spain and Portugal, the emergence of a strong pro-democratic current in many African countries, the abandoning of *apartheid* in South Africa, and the possibilities of peace in the ancient land of Palestine. These 25 years have been the helpless witnesses of genocide in Cambodia, cruel wars in Mozambique, Angola, Somalia and Afghanistan, inter-ethnic massacres in the ex-Soviet Caucasus and Central Asia, the continued occupation of Palestinian territories, and bloody coups d'Etat in Burma, Haiti and Burundi.

The UN World Conference on Human Rights held in Vienna in June 1993 took place against a background of unimaginable violence in Bosnia and Herzegovina as well as Somalia. The shadow of Sarajevo and Mogadishu hovered above Vienna.

UN Advances

The proclamation, in the Conference's Final Document, of the principles of universality, indivisibility and interdependence of human rights represents an extremely important, if not historical, element in the process of reinforcement of the values desired by the International Commission of Jurists (ICJ). This Consensual affirmation originates from an international community in which some of the member States had always and openly contested either one or several of these principles. The universality of human rights which transcend frontiers and cultural differences, and the indivisibility and interdependence of civil and political rights and of economic, social and cultural rights were solemnly reaffirmed despite immense political obstacles. The Conference, hence, succeeded in a controversial area where many feared that there would ultimately be a backward movement. At the same time, the Conference succeeded in obtaining a consensus on the affirmation to the right to development.

The Conference also recognized and vigorously encouraged the growing participation of the individual, both as the direct victim of violations of human rights and as the plaintiff within the framework of international conventions. This direct access to the institutions created under

the aegis of the UN, which has been made possible by the optional protocols to a number of existing conventions, allows the victim to make her or his case and grievances against a government known if the latter has infringed a right recognized by the convention. By adopting a position on these optional protocols, the Vienna Conference, hence, encouraged the States which had not yet ratified the Conventions in question to do so without delay. A particular emphasis was placed on the necessity of elaborating protocols to the Convention on the Elimination of all forms of Discrimination Against Women and the International Pact on Economic, Social and Cultural Rights.

There was also great success obtained in the field of women's rights, although it is regrettable that it is only after decades of omission that the subject of the world-wide occurrence of violence against women and girls was seriously recognized by the UN in the Programme of Action elaborated in Vienna. This document calls on States to do everything possible to ensure that women will, in the near future, enjoy the same rights as those of men. This appeal was accompanied by concrete propositions for the promotion and protection of the rights of women, such as the designation of a Special Rapporteur on Violence Against Women, the integration of the rights of women throughout the UN programme, the adoption by the General Assembly of the draft Declaration on Violence Against Women, the ratification by all States of the Convention on the Elimination of All Forms of Discrimination Against Women, and the rejection of any registered reservations made by States which would be incompatible with the goals of the convention. Here, as elsewhere, the NGOs were, as we shall see, the real motive

power of the Conference, as it was at their prompting that the debate on universality was broadened to include the principle that neither culture nor religion may be invoked in order to justify the innumerable violations committed against women, who represent more than half of the world's population.

Some Disappointments

The sometimes condescending ambiguity of certain governments with respect to NGOs was revealed in the phraseology used in the Final Document. Indeed, a paragraph of the document declares that the NGOs which are *genuinely* involved in human rights should benefit from the protections and liberties deriving from the Universal Declaration of Human Rights. But who can set himself up as the arbiter of the genuineness of NGOs? The glaring subjectivity of these words made for a degree of discomfort which was the more marked because it could most probably have been avoided. The same cynical touch shows up further in the document, where it is said that the NGOs could act freely within the framework of the national law of the member States and not within that of international law, which is often more liberal. As it is known that certain legal systems do not adequately guarantee the freedoms of expression and of association, one may indeed ask whether certain States have exerted their will successfully in order to set up tangible limits to the activities of human rights activists, or even to take revenge on assertive NGOs.

This same reference to the national law of the States, accompanied by the same omission with respect to international law, was used for the media. From

this point on, the document of the Conference opened wide the doors to all forms of abuse and restriction of the freedom of expression in which certain governments have shown themselves to be skilled. The question of religious intolerance, of which the resurgence at the end of this century is a major worry for all those whose mission it is to promote and protect human rights, was treated in the same way. The Vienna Conference did not ask, as one might have expected, that the States put up barriers against the present waves of religious intolerance and religious fanaticism, whether Moslem, Jewish, Christian or Hindu, but rather requested them to act within the framework of their national laws, some of which include discriminatory articles.

The repetition of references to the national law of the States, and the strange absence in these paragraphs of references to international law, is only one of the paradoxes of the Vienna Conference, the paradox of a world-wide meeting where, as we saw above, the concept of universality was affirmed with resounding conviction and consensus in the Declaration of Principles, and then contradicted by several important sections in the Programme of Action. This apparent dichotomy of intention will certainly appear as the reflection of the conflicts of interests which usually arise during any international forum – and the Vienna Conference did not prove an exception to this rule.

Another occurrence which marked and revealed the political interests which ordinarily underlie large international meetings was the fact that, except for Angola and Bosnia and Herzegovina, for which resolutions were adopted, no other country was mentioned by name. Did this mean that no consensus was possible with respect to equally serious situations

in other countries? Whatever the case, this deafening silence did show the essentially abstract character of the discussions. Is it possible to avoid and remedy human rights abuses without providing concrete examples? In the long run, the lag between abstract discussions and reality will only have served to water down further some of the vital sections of the Final Declaration – in other words of the very substance of those June days which, it had been hoped, would change the world by reinforcing the efficiency of the mechanisms created by the UN.

Countering Impunity

The fact that several paragraphs of the Final Document and Programme of Action of the Conference referred to the problem of impunity was particularly encouraging. The ICJ acclaimed the double appeal made by the Conference for the abrogation of those laws which allow impunity for perpetrators of serious violations of human rights, and for the judgment of perpetrators of these heinous crimes.

The end of dictatorships and the advent of democracy in Latin America, Africa and Eastern and Central Europe have brought to the forefront the issue of impunity for crimes against human rights committed under previous regimes. The ICJ participated in the Vienna Conference in order to help eliminate this impunity not only so that the guilty should be prosecuted and punished by an independent and impartial legal body without the interference and intimidation of individuals nostalgic for the old regime – who have so often known how to turn to their advantage the outcome of such legal proceedings at the national level – but also so that the victims of their abuse

will at last receive compensation. With this in mind, the ICJ lobbied governments during the months preceding the Conference and during the Conference itself in order to place the issue of a permanent international penal court in good position on the official agenda of the governmental meeting. The governmental quasi-consensus which emerged with regard to this proposition was reflected in the Final Declaration and Programme of Action of the Conference. In view of the fact that the ICJ advocated that this court be established by an inter-governmental treaty, the almost unanimous agreement obtained in Vienna was certainly the best of omens.

The quarter century which separates the Tehran Conference from that of Vienna witnessed a genuine and encouraging multiplication of international norms for the promotion and protection of human rights. However, while a vast range of international law now exists, it has become increasingly obvious that there is no organism which ensures that they are observed and that they have real meaning. The proposition of the ICJ regarding the creation of an international penal court was consequently within the framework of an international and desirable reinforcement of the practical application of the international norms already existing in the field of human rights. The ICJ approached the Vienna Conference with the deep conviction that it was preferable to ensure the respect of States for already existing international laws rather than create even more new norms. The ICJ's position was based, in large part, on the observation that a great number of States knowingly chose to ignore their duty to present reports to the convention bodies established under the terms of the relevant treaties and that only a few governments had, until now, accepted the

optional complaint procedures. Thus, the Commission concentrated all its energy on the reinforcement of the UN mechanisms. A study, entitled *Towards Universal Justice*, which details the UN mechanisms responsible for ensuring respect for international laws in human rights, as well as their activities, and which presents the proposal for an international penal court, was published by the ICJ just before the Conference. This document had been prepared in order to provide a discussion basis in Vienna.

Assertive NGOs

NGOs played a vital and constructive role all through the Conference. Nevertheless, apart from certain advances which represented a number of victories for their ideas, the NGOs were poorly rewarded when the Final Document was formulated since, in response to heavy pressure by certain governments, these organizations were excluded from the Drafting Committee. This was the vital organ of the Conference, responsible for the formulation of the Final Document. Behind closed doors and away from the critical consideration of the NGOs, these same repressive governments in conclave had given themselves *carte blanche* to try to attenuate the scope and essence of the key propositions submitted to the Conference by the NGOs. Indeed, beyond this particular event, the issue as a whole of the freedom of access and transparency of the UN system was brought into question in this way. This incident will long be considered by the NGOs as an example of atavistic over-sensitivity blocking the path towards the democratization of a system whose limitations had become far too obvious, in view of the urgency of

the situation of human rights.

Never within the memory of human rights activists had the NGOs organized themselves to such an extent. Because they were the true core of the Conference, the NGOs contributed decisively to its relative success. Most of the major propositions, such as that of Amnesty International for the establishment of the post of High Commissioner for Human Rights, were actively prepared and supported by these organizations. The ICJ stood out in particular by organizing two seminars on the eve of the Conference, one on women's rights and the other on its proposition to combat impunity by establishing a permanent international pe-

nal court, as we have seen above.

At all events, the Vienna Conference will have marked the beginning of an era and of a process where new synergisms will develop. However, much work remains to be done and some of the subjects discussed at the Conference have been left open. It will also be necessary to ensure that the universal principles which were supported by the Conference will, indeed, be used as the reference base and that the Plan of Action which was formulated will be respected and applied both internationally and nationally.

It is in this spirit that the ICJ will continue to work for the Rule of Law and human rights.

Adama Dieng
Secretary-General

ARTICLES

The Universality of Human Rights

Fali S. Nariman*

I Introduction

The belief that each human being has certain rights, which all governments (and all other human beings) have a duty to respect, owes little to the influence of theorists and philosophers; it is the instinctive response to a feeling of revulsion occasioned by acts of political, religious or economic repression. The consciousness that human rights are universal is, in essence, a feeling of moral outrage, not of philosophical conviction. This consciousness draws on the moral resources of Man's belief that there is an underlying universal humanity, that it is possible to achieve (or at least to strive for) a type of society which ensures that basic human needs and reasonable aspirations of human beings all around the world are effectively realized. To adapt a familiar saying of Justice Holmes: the life and vitality of human rights has not been logic; it has been experience.

II Some Individual Experiences in the Last Fifty Years

The first lesson of the sages of the *Upanishads*¹ to their select pupils was the inadequacy of the intellect. Not that the intellect is useless – it has its modest place and serves us well when it deals with tangible things; it falters before the Eternal, the infinite and the elementally real. Human rights are about the elementally real. Their universalization can be achieved through the hearts of men and women: through their experiences. That is what the wise and the illustrious have always believed. To illustrate, I offer four instances: from different continents, at different times.

a In the year 1947, the United Nations Commission on Human Rights was engaged in the preparation of the Universal Declaration of Human Rights. To contribute to its work, the United Nations

* Senior Advocate, Supreme Court of India; President, Bar Association of India; Member, ICJ Executive Committee.

1) One of the various metaphysical treatises in Sanskrit literature. The theme of the *Upanishads* is about the mysteries of the unintelligible world.

Education Scientific and Cultural Organization (UNESCO) carried out an enquiry into the theoretical problems raised by such a Universal Declaration. A questionnaire was circulated (in 1947) to various thinkers and writers of the Member-States of UNESCO; they were asked, as individual experts, to give their views. One of them was Mohandas Karamchand Gandhi. He responded, in a brief letter to the Director of UNESCO (Dr. Julian Huxley). The letter was written in May, 1947, in a train (those were troubled times – the days before India's independence). This is what Gandhiji wrote:

"I learnt from my illiterate but wise mother that all rights to be deserved and preserved came from duty well done. Thus the very right to live accrues to us only when we do the duty of citizenship of the world. From this one fundamental statement, perhaps it is easy enough to define the duties of Men and Women and correlate every right to some corresponding duty to be first performed. Every other right can be shown to be a usurpation hardly worth fighting for."²

Gandhi was assassinated on 30 January 1948, and, with his passing, India lost its Mahatma.

b Till the advent of another "living saint", Mother Teresa. She did not preach Human rights but showed how one could strive to achieve them. She was conferred the Nobel Peace Prize in 1979. In her acceptance speech at Oslo in February 1980, she mentioned the right to live as the most universally fundamental of all

human rights, and she recalled an incident in Calcutta, which showed how anxious were the poorest and the lowliest to protect the Right to Life, not for themselves alone, but also for others. She spoke simply and with compassion, as she always does:

"I had the most extraordinary experience with a Hindu family who had eight children. A gentleman came to our house and said: 'Mother Teresa, there is a family with eight children: they have not eaten for so long; do something.' So I took some rice and went there immediately. I saw the children – their eyes shining with hunger. I don't know if you have ever seen hunger. But I have seen it very often. She took the rice, she divided the rice, and she went out. When she came back I asked her: 'Where did you go, what did you do?' She gave me a very simple answer: 'They are hungry also.' What struck me most was that she knew – and who are they? A Muslim family – and she knew. I didn't bring more rice that evening because I wanted them to enjoy the joy of sharing." (*Nobel Peace Prize Acceptance Speech 1979 – Oslo, Norway: unpublished*).

Mahatma Gandhi and Mother Teresa, have emphasized the need, not just to universalize human rights, but to universalize respect for the human rights of others.

c Very recently, Mrs Rigoberta Menchu of Guatemala spoke at a conference in New Delhi (the Fourth Indira Gandhi Con-

2) The full text of the letter is reproduced on page 18 of "Human Rights – Comments and Interpretations", prepared by UNESCO and published in 1949 by Allan Wingate.

ference: "Redefining the Good Society.") She spoke in Spanish and straight from the heart about human rights. Her translated speech was reported the next day in the national press:

"We must believe in values of humanity because otherwise we as parents do not leave any point of reference for children to put their faith in... We talk of human rights, development and democracy, but they are just dead words... A very large population, the silent section of humanity, is beyond this exercise in conceptualization... History shows us that mankind has made several mistakes in achieving dignity and sovereignty... The time has come for the world to underline the true values of human rights. To me, human rights are the aspiration of the common people for peaceful co-existence."

She then went on to say that:

"Religious fundamentalism is not human rights – "It is one of the worst crimes in the annals of mankind. It degenerates and divides the base of society. In many countries this cancer has been introduced by the State or by political parties. Fundamentalism stops the process of social consciousness." (*Hindustan Times* – 22 November 1993).

The youngest Nobel laureate for Peace has lived through much pain and horror; the tyrannical regime in Guatemala killed her father, her mother, her brother. What she has to say has the credibility of suffering and sacrifice.

d Professor Carlos Nino is a Professor of Law at the University of Buenos Aires.

He is not as exalted as the first three, but he too speaks from the heart in his book "Ethics of Human Rights" (Clarendon Press 1991). It is based on his practical experiences whilst living through, and helping to bring about, Argentina's transition from a brutal dictatorship to democracy. He offers two simple arguments for the universality of human rights – first, their practical value as a tool for avoiding or limiting human suffering; second, sheer intuition: we simply know that humans have basic rights which inhere in them as human beings!

The importance of all these experiences is obvious, they have a ripple-like effect. Aristotle said that people in positions of influence or power exercise a teaching function: the people see what they do – and do likewise. Also, the *Bhagavad-Gita* says that whatsoever a great man thinks and does other men follow; whatever standards he sets up, the generality of men observe the same. Four men and women do not make a universe. But the experiences and the commitment of the great and the wise do help establish what may otherwise be difficult to comprehend in the abstruse realm of philosophical controversy.

Besides, Man's innate dignity has been an ideal nurtured and cherished since the dawn of civilization: it shows that "human rights" are not just a modern fad.

III Human Rights in Antiquity

In the time-frame of the universe measured in millenniums, the systematic proclamation of declarations of human rights (emphasizing their universality) is recent; its beginnings can be traced to the English 'Bill of Rights' (1688); the American Declaration of Independence (1776); and the French Declaration of the Rights of

Man (1789). They set forth principles recognized as part of what is appropriately called Modern Human Rights Law. These principles have been admirably summarized by the late Paul Sieghart (International Law of Human Rights – Clarendon Press 1983):

- (i) **“The principle of universal inheritance:** every human being has certain rights, capable of being enumerated and defined, which are not conferred on him by any ruler, not earned or acquired by purchase, but which inhere in him by virtue of his humanity alone.
- (ii) **The principle of inalienability:** no human being can be deprived of any of those rights, by the act of any ruler or even by his own act (or, in a democracy, even by the will of the majority of the sovereign people.)
- (iii) **The Rule of Law:** Where rights conflict with each other, the conflicts must be resolved by the consistent, independent and impartial application of just laws in accordance with just procedures.”

Though “Modern Human Rights Law” goes back no more than three centuries, the history of the dignity of Man (and his common citizenship in Society) goes back thousands of years.

The architectural beauty of ancient Persepolis is renowned. A magnificent column there bears the following inscription of Darius (521-485), King of the Persian Empire:

“I am of such a sort that I am a friend to the Right. I am not a friend to the Wrong. It is not my desire that the

weak man should have wrong done to him by the mighty, nor is it my desire that the mighty man should have wrong done to him by the weak. What is right, that is my desire.”

On this carving (at Persepolis) is also shown the image of the King slaying a monster symbolizing evil, inspired, presumably, by the tenets of Persia's religion, the religion of Zarathustra.

Zarathushtra³, the prophet of ancient Iran, was born more than six hundred years before Christ, and taught that life was a struggle between the forces of Good and Evil, with Good eventually vanquishing Evil. He declared that Man could be God's own ally in the struggle against evil, and in doing so Zarathushtra bestowed upon the humblest peasant a sense of dignity that no Emperor could deprive him of. It is, therefore, not surprising that the World's First Bill of Human Rights was discovered on a clay tablet dating from the reign of Darius' successor, Cyrus the Great (555-529 BC). It is now housed in the UN building in New York and is Iran's gift to the World Community of Nations.

Man's quest for human rights dates almost from the beginnings of humanity. The quest had little to do with reason and much to do with what was instinctively felt to be right and good.

But, social practices of human rights in the Ancient World did not assume a universalistic pattern. Aristotle, while adhering to the universality of *Nomos*, created a sub-sect of non-Greek humans who were not fully free citizens. And the early Christians treated non-Christians differently, all the while claiming adherence to natural law and declaring that

3) Zoroastrianism is believed to be the world's oldest monotheistic religion.

they (the non-Christians) were also God's creatures! In modern times too, despite its universalistic claims, the American Declaration of Independence and the United States Constitution (as enacted) did not apply to black slaves, indigenous Americans and women.

IV First Steps in the Legal Process Towards Universalization

Before the First World War some writers had expressed the view that international law guaranteed to individuals, at home and abroad, whether State – nationals or stateless, certain fundamental rights referred to as the rights of mankind. Such rights were said to comprise the right of life, liberty, freedom or religion and conscience and the like. But leading authorities in International law (such as Professor L.F.L. Oppenheim and Sir Robert Jennings) have doubted whether this view represented the actual practice of States. As a matter of fact, for many centuries, one proposition remained without challenge, *viz.* that based on the doctrine of national sovereignty, the Law of Nations could not and did not recognize any right vested in any individual against any sovereign State – his own or another.

But all this rapidly changed after the ravages of the Second World War. The ruthless trampling on human rights by the Axis Powers, the holocaust in the gas chambers of Auschwitz and Dachau, and the use of the Atom Bomb on the defenceless city of Hiroshima, helped hasten a consensus on the universality of human rights and the need for their international declaration, recognition and protection.

The legal process in the universalization of human rights effectively commenced with the Universal Declaration

of Human Rights (UDHR) of 1948. The very first instrument – the Charter of the United Nations (1945) – did contain the reaffirmation of “faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small.” A major achievement of its draftsmen was the emphasis of the importance of social justice and human rights as the foundation of a stable international order. But the Charter was intentionally vague on encouraging respect for human rights. At the San Francisco Conference, the proposal that the UN should ensure not only “the promotion” but also “the protection” of human rights was not accepted. Three years later, on 10 December 1948 the UN General Assembly ultimately adopted the UDHR. The voting was 48 for, and none against. Eight States abstained: the former Byelorussian SSR, the former Czechoslovakia, Poland, Saudi Arabia, the former Ukrainian SSR, the former USSR, the Union of South Africa and the former Yugoslavia.

The abstentions did not add up to much; the voting on the UDHR, and on subsequent resolutions of the General Assembly established, on paper at least, the universalization of basic human rights. In 1960, the General Assembly adopted the Declaration on the Granting of Independence to Colonial Countries and Peoples; Article 7 of that Declaration said that: “all States shall observe faithfully and strictly the provisions of the Charter of the United Nations, the Universal Declaration of Human Rights and the present Declaration...” With the exception of South Africa, all the countries that abstained in 1948, voted for that article.

In April/May 1968, when the UN International Conference on Human Rights met at Teheran, representatives of 84

Member States represented there, adopted the Tehran Proclamation which affirmed that the UDHR constituted an obligation for members of the international community.⁴

The Constitutions of nation-States throughout the civilized world have freely borrowed from the UDHR – that instrument has acquired the status of *jus cogens* in international law and the Universal Declaration now forms part of the customary law of nations (see Oppenheim's International Law 9th Ed. Part I – p.1004).

Mrs. Eleanor Roosevelt's prediction has come true. The UDHR has become ("it might well become" she had said in 1948) "the international *Magna Carta* of all mankind." The tenth of December is celebrated each year as Human Rights Day all over the world.

The relevant instruments brought into existence after 1945 – the Universal Declaration, the International Covenants, the large number of Conventions – have helped to individualize human rights; more than this, they have given the concept of universalization of human rights a legal status in the Law of Nations. The eminent Professor and Judge, Sir Hersch Lauterpacht has underscored this point, in felicitous prose (*in his book: International Law and Human Rights – pages 4 and 159*):

"The individual has acquired a status and a stature which have transformed him from an object of international compassion into a subject of interna-

tional right... [The Charter and the UDHR] have transferred the inalienable and natural rights of the individual from the venerable but controversial orbit of the law of nature to the province of positive law."

Probably at no other time in the history of humankind have more human beings believed that they are entitled to the enjoyment of human rights than today.⁵ That is a tribute to the power of words and to the ideas that the words embody.

V Criticisms of the Universal Declaration – from the Left and from the Third World

Those who have cavilled at the universality of human rights have been the most frequent critics of the Universal Declaration. Prominent amongst them was Professor Harold Laski of the British Labour Party who turned a Marxist in his effort to interpret "the crisis in democracy" in Britain in the thirties. Laski had gone on record to say: "what use is freedom of speech to a starving Indian peasant? It is only when the economic conditions of liberty are established that liberty in the orthodox sense can be more than bourgeois indulgence."⁶

But it was Professor Laski, who was one of the distinguished members of the UNESCO Committee (on "The Theoretical Basis for Human Rights") who drew up a list of Fundamental Rights, which

4) See also the Helsinki Declaration, 1975 – Article VII – adopted by High Representatives of participating States in Europe and North America, which contains a similar provision.

5) This is the view expressed by Professor Thomas Buergenthal in an article headed "International Human Rights Law and Institutions" published in 1988 in Volume 63, Washington Law Review, p. 1.

6) Introduction to the Second Edition of "Liberty in the Modern State" by Harold J. Laski.

he and the Committee were convinced "all men are agreed"! These rights were no "bourgeois indulgence": they comprised the right to live, the right to protection of life, the right to work, the right to maintenance, the right to property, the right to education, the right to Free Inquiry and freedom of thought, the right of self-expression, the right to justice, the right to political action, freedom of speech, assembly, association, worship and the Press, the right to citizenship, the right to rebellion and revolution, and the right to share in progress: all these "fundamental rights" were formulated by the UNESCO Committee in Paris in July 1947. They pre-date the Universal Declaration (1948).

And as for 'the Left', the great bastion of false hopes has fallen. The dismantling of the Berlin Wall, the dismemberment of the Soviet bloc of States and of the Soviet Union itself, has put paid to the long-held belief that civil and political rights are only an "artefact of modern Western civilization."⁷

One of the criticisms of the Universal Declaration is that Third World participation in its drafting was negligible. There is some basis for this, though the criticism has been frequently overstated. Indians can look back to the Universal Declaration (adopted after three years of the signing of the UN Charter) with some pride. In the earlier sessions of the Commission on Human Rights (chaired by Mrs. Roosevelt) which was entrusted with the work of drafting the Declaration, India (which had just then become independent) played an active part, and

at the General Assembly in December 1948 the two new Dominions of India and Pakistan were amongst the 48 countries that voted in favour of the principles embodied in the Universal Declaration.

It is also sometimes suggested that the doctrine of human rights embodied in the Universal Declaration is not relevant to societies with a non-Western cultural tradition or, those subscribing to a socialist ideology. Some developing countries feel that the period of colonialism has imposed upon them cultural systems and development methods which are completely alien. They wish to get rid of these and to adopt traditional and self-reliant approaches to development, as well as human rights.⁸ Whilst accepting that there may be rights which are not relevant in a particular society – or in a society in a particular state of development, there cannot be any controversy about the universality of basic human rights – such as the right to live, the right not to be enslaved, the right not to be tortured or arbitrarily arrested, the right to be suitably employed, the right to an adequate standard of living, the right to education, and so on.

As for the theory that human rights and ideas of liberty are not attainable in countries which have not solved the problems of poverty and want, I would recall the words of a great human rights activist of the Third World, José Diokno, the leader of the Philippine grassroots movement FLAG (who, alas, is no more with us). At the Fifth LAWASIA Conference in Colombo (1979), he delivered a stirring keynote address, in which he cat-

7) So described by Jack Donnelly in an article in the *American Political Science Review* (June 1982), p. 303.

8) "The Organization of African Unity" a two-part essay by Kéba Mbaye and Birame Ndiaige in the *International Dimensions of Human Rights*, edited by Karel Vasak and Philip Alston (Greenwood Press, Connecticut).

egorically rejected (what he called) the "currently fashionable justification for authoritarianism in Asian developing countries." He said:

"One [justification] is that Asian Societies are authoritarian and paternalistic and so need governments that are also authoritarian and paternalistic; that Asia's hungry masses are too concerned with providing their families with food, clothing, and shelter, to concern themselves with civil liberties and political freedoms; that the Asian conception of freedom differs from that of the West; that, in short, Asians are not fit for human rights... [This] is racist nonsense... Authoritarianism promotes repression not development – repression that prevents meaningful change and preserves the structures of power and privilege. Authoritarianism is not needed for development; what it is needed for is to maintain the *status quo*." (*Proceedings of the Fifth LAWASIA Conference, 1979*).

José Diokno led the movement against the insolent might of his one-time friend, Ferdinand Marcos. It was the people of the Philippines – the poor and hungry and downtrodden – who offered mass non-violent civil disobedience that resulted in the ultimate overthrow of Marcos and the restoration of democratic rule in that country. In Bangladesh, too, after seven years of dictatorship President Ershad was compelled to resign (at the end of 1990) by a popular upsurge of public opinion; the people, exasperated by a regime of repression, wanted a restoration of human rights.

The experience on the entire Asian Continent, whether in the Philippines or in South Korea, in Bangladesh or in China, shows that the aspiration for self-respect,

self-expression and for a better life ("the pursuit of happiness", as the American Declaration of Independence aptly put it) is universal, and the fight against abuse of power is a constant factor. The concept of human rights, as expressed in the UDHR, is increasingly inspiring the mind and action of all peoples, especially the peoples of the developing countries.

The African experience is no different. The distinguished Judge Kéba Mbaye pointed out in an essay written 10 years ago that human rights were not universally respected but that "the African people will tend asymptotically towards the ideal common to all mankind: the Universal Declaration of Human Rights." He was not wrong. The African Charter on Human and Peoples Rights (1981) recognizes that "fundamental human rights stem from the attributes of human beings which justifies their international protection." The Charter (the "Banjul Charter" as it is popularly known) follows the pattern of previous major, human rights instruments; though framed by Africans it is West-oriented (to use a familiar pejorative term!)

As for Latin America, the upsurge of interest in human rights, their translation from theory into practice, their perception as a fundamental precept and their strategic base for building a better society, were all the result of a proliferation of savage dictatorships, e.g. the boundless and seemingly endless despotisms in Argentina, Bolivia, Chile, Uruguay, Salvador, Guatemala and Paraguay. Latin American societies developed new forms and instruments of struggle to recover human dignity. The *Madres de Plaza de Mayo* and the *Ageles de Plaza de Mayo*, who demonstrated in Argentina with the simple request to know about the fate of their missing children and grandchildren were the most genu-

ine expression of those forms. The fact that the protesters were mothers and grandmothers highlighted the female dimension. In Latin America the experience has been that it is only human rights that can limit the abuse of power... Of any kind of power. The wounds we bear, say those who have suffered, are the freedoms we lack.⁹

It was Franklin Roosevelt's Four Freedoms, freedom of speech, freedom of worship, freedom from fear and freedom from want, that inspired and formed the basis of the UN Charter and the subsequent Universal Declaration. When taken together these freedoms are universal in appeal and application: only the emphasis is different in different countries.

In 1986, *The Economist* compiled a *World Human Rights Guide*; in it various countries were assessed according to their respective human rights record. The yardstick was the UN Charter (1945) the Universal Declaration (1948) and the two International Covenants (1966). The publishers acknowledged that opposition to the Guide centred on the fact that human rights were perceived to have a Western liberal bias. "The human rights treaties of the United Nations", they said (in the introduction), "reflects Western liberal traditions and values because, apart from the major contributions by those countries in the formation of the World Organization, the European heritage is fundamental to its basic principles. It would be dishonest to pretend otherwise." *The Economist* then went on to say that all 159 member States of the

UN, whatever their reservations, had "nevertheless voluntarily chosen to join it!" – that is to join the European heritage. Most, if not all, of the constitutions of the developing nations have borrowed human rights concepts from the West.

But many of those who have voluntarily chosen to join the "European heritage" have shown considerable reluctance to accept the universality of ideas developed out of liberalism.¹⁰

Yet, despite all this, there is progress. A continuing progress towards universalization. There is perceptible change in the hearts and minds of men and women. *The New York Times* gave expression to this sentiment when looking back 40 years at the UDHR.

"Hardly anybody now dares say that how a Government treats its people, especially dissenters, is purely an 'Internal matter...'. Brutal rulers will continue to jail, deport, torture and murder but they must reckon with scrutiny, exposure, condemnation and loss of aid – and that is good news." (*New York Times*, 10.12.1988).

This piece of journalism was endorsed last year on a higher political plane. At the first summit meeting in 1992 of the Members of the UN Security Council, it was declared (unanimously) that the international community "no longer can allow advancement of fundamental rights to stop at national borders." (*New York Times*, 1 February 1992, Sec. A5: "Excerpts from Speeches by Leaders, of Permanent Members of the UN Council").

9) See Article with this heading in "Peoples' Rights", edited by Georges Kutukalgian and Antonio Papsica, at pages 87-94.

10) The disappointing outcome of the UN World Conference on Human Rights, held in June 1993 in Vienna, amply demonstrates this.

VI Impediments to Universalization of Human Rights

a The Role of Judges and Lawyers

Declarations and written constitutions are not magic potions: they have to be applied and interpreted. They require independent advocates and brave judges. The world has seen bad laws and Courts have promoted the goals of the Third Reich and protected the political power structure in the former Soviet Union. The Courts have also protected and institutionalized the system of *apartheid*.

Twenty seven years ago, the practice of *apartheid* was challenged before the International Court of Justice, in what is known as the South West Africa Case, 1966.

The charge was that South Africa had violated her international obligations by observing a system of *apartheid* in the mandated territory of South West Africa and had denied to its inhabitants the universal human right of equality before law and the right not to be discriminated against on account of colour or race – rights, recognized in the UDHR. In that case, the Court, by the casting vote of its President, failed to deal with the merits of the submission of the applicant States (Ethiopia and Liberia). This was unfortunate. It furnishes an instance of how lawyers and judges miss the opportunity to right the wrongs of the times. Half of the Court's members (including the Japanese member Judge Tanaka) were prepared to deal with the issue of substance raised by the Applicant States. Judge Tanaka's judgment contains the best exposition in legal literature of the Universality of human rights and of the concept of equality. The purple passages in that judgment have been reproduced in an Ap-

pendix, in Ian Brownlie's *Compilation of Basic Documents of Human Rights* (2nd Ed.- 1981) pp 441-470. About the universality of human rights Judge Tanaka wrote:

"The principle of the protection of human rights is derived from the concept of man as a person and his relationship with society which cannot be separated from universal human nature. Then existence of human rights does not depend on the will of a State; neither internally on its law or any other legislative measure, nor internationally on treaty or custom, in which the express or tacit will of a State constitutes the essential element."

"A State or States are not capable of creating human rights by law or by convention; they can only confirm their existence and give them protection. The role of the State is no more than declaratory."

"Human rights have always existed with the human being. They existed independently of, and before, the State."

- 1 "The principle of equality before the law requires that what are equal are to be treated equally and what are different are to be treated differently. The question arises: what is equal and what is different.
- 2 All human beings, notwithstanding the differences in their appearance and other minor points, are equal in their dignity as persons. Accordingly, from the point of view of human rights and fundamental freedoms, they must be treated equally.
- 3 The principle of equality does not mean absolute equality, but recognizes relative equality, namely different treatment proportionate to

concrete individual circumstances. Different treatment must not be given arbitrarily; it requires reasonableness, or must be in conformity with justice, as in the treatment of minorities, different treatment of the sexes regarding public convenience, etc. In these cases, the differentiation is aimed at the protection of those concerned, and it is not detrimental and therefore not against their will.

4 Discrimination, according to the criterion of 'race, colour, national or tribal origin', in establishing the rights and duties of the inhabitants of the territory, is not considered reasonable and just. Race, colour, etc., do not constitute in themselves factors which can influence the rights and duties of the inhabitants as in the case of sex, age, language, religion, etc. If differentiation be required, it would be derived from the difference of language, religion, custom, etc., not from the racial difference itself. In the policy of *apartheid* the necessary logical and material link between difference itself and different treatment, which can justify such treatment in the case of sex, minorities, etc., does not exist.

5 Consequently, the practice of *apartheid* is fundamentally unreasonable and unjust. The unreasonableness and injustice do not depend upon the intention or motive of the Mandatory, namely in *mala fide*. Distinction on a racial basis is in itself contrary to the principle of equality which is of the character of natural law, and accordingly illegal."

If Judge Tanaka's dissent had been the majority view of the International

Court of Justice in 1966, pressures, which the nations of the world had begun to exercise against South Africa in the eighties, would have been exerted much earlier. The practice of *apartheid* may well have been discontinued many years before, without the oppressed turning to the streets for redress. It may have kept Mr. Nelson Mandela on the path which he first chose – of non-violent resistance – which, as a policy, he later abandoned after the Sharpeville shootings of 1960. If Judge Tanaka's dissent had been noticed and considered in the case dealing with the suspension of Article 21 of the Indian Constitution during the period of the Emergency imposed in June 1975, Chief Justice Ray may not have given expression to the facile view "that liberty itself is the gift of the law, and may by the law be forfeited or abridged" (ADM Jabalpur v. S. Shukla AIR 1976 SC 1206 at p.1223).

b Emergency Provisions in a Written Constitution – The Indian Experience

A written constitution can be sometimes dangerous – an impediment to the realization of universal basic human rights. The citizens of India discovered this during the State of Emergency of June 1975. When drafting the Constitution of India in 1948, a Chapter on Fundamental Rights was included (Part III), any law that abridged any of the fundamental rights in Part III was declared unconstitutional and absolutely void. One of the fundamental rights so guaranteed was contained in Article 21 (the Life and Liberty Clause). It read:

"No person shall be deprived of his life or personal liberty except according to procedure established by law."

It was admonitory in form and not declaratory. The article had been borrowed not directly from the West, but from the post-war Japanese Constitution (of 1946), which had, in turn, taken it from the UN Charter. Another part of the Indian Constitution – Article 352, made provision for a Proclamation of Emergency and provided for the suspension of the rights guaranteed under Article 21 during the period of that Emergency. When Mrs. Indira Gandhi (then Prime Minister) was held guilty of corrupt electoral practices by the High Court of Allahabad in May 1975 and her election to the *Lok Sabha* (the House of the People) was set aside, she filed an appeal (as she was entitled to) in the Supreme Court of India. She asked for a stay of the judgment of the High Court – which was granted but on terms applicable to all members of Parliament who had been non-seated in Election Petitions, viz. that she could participate but could not vote as a member of the *Lok Sabha*. This was anomalous for a person who was a Prime Minister. The Opposition demanded her resignation – and there was also a move in her own Congress Party that she should quit office until her appeal in the Supreme Court was allowed. She then invoked Article 352 and a Proclamation of Emergency was promulgated by the President of the Republic of India (the constitutional Head of State).

Drastic preventive detention laws were enacted and all her political opponents (including some members of her own party who had demanded that she quit) were detained. The political detainees challenged the detention orders. A Constitution Bench of the Supreme Court of India (overruling the judgment of nine different High Courts in the country) held, by majority (4:1), that the suspension of Article 21 precluded the Court from con-

sidering the constitutional validity of any preventive detention laws and all detention orders. Chief Justice Ray, said that liberty was the gift of the law (i.e. of Article 21) and could by the law be abridged or suspended. The argument about the universal inherence and inalienability of the basic human right to life and liberty was just passed over, Judge Tanaka's spirited dissent notwithstanding. (Judge Tanaka's dissent was not cited before the Supreme Court nor referred to in its decision). The result was that the specific enumeration of the basic human rights of life and liberty in the fundamental rights chapter of the Constitution proved a hindrance to Indian citizens, and not a protection as was intended. After a change of government in March 1977 (as result of the general election of February 1977), the State of Emergency was lifted, but the law declared by the Court remained. It was public pressure that influenced the passing of a constitutional amendment (the 44th Amendment of 1978). That amendment provided that even during an emergency Article 21 could not be suspended! The 44th Amendment stands as the Parliament of India's recognition of the universality of the basic human rights to life and liberty. In retrospect, the 'phoney' emergency (of June 1975 – March 1977) was a mixed blessing – for it was influential in activating genuine concern for human dignity, and for strident supportive action by Indian Courts (especially by the Supreme Court), since March 1977.

c National Sovereignty and the Nation State

In January 1985, Niall MacDermot, CBE, QC, the Secretary-General of the ICJ, when accepting the award (to the ICJ) of the Wateler Peace Prize said:

"Lawyers did not serve mankind well when they formulated the concept, or should I say, the fiction of the sovereign nation-State. A great obstacle to peace is the immense concentration of power in the nation-State especially when fed by fanatical nationalism. The task before us is to find ways to diffuse power."

Is there a way? I believe there is – an enlightened public opinion, which means meaningful education: a role for the NGOs of the world.

Will Durrant with his monumental work (the Story of Civilization in XI vols.) has shown the way. He has educated us in what he calls "the technique of transmitting civilization." We all need to be, and particularly State Governments (the bureaucracy and Ministers), educated about the advantages of a humane public administration.

The actions of all governmental agencies need close monitoring by the media (where it is free) and through it by public opinion. Governmental actions also need to be supervised and corrected by the Judiciary (where it is independent). A free Press and an independent Judiciary are, therefore, essential to good governance in every State. The Court and the media (where free from influence and Governmental control) are the bulldozers on the path of universalization of human rights. They help remove the roadblocks on the way.

But governments and their agencies are not the only perpetrators of (human) wrongs. Intolerant groups of people (ethnic and racial) are often as guilty. They too need to be better informed by NGOs; their grievances ventilated; and attempts made to have them redressed in time. Tragic recent events in the former Yugoslavia show what happens when expect-

tations and anxieties of ethnic, racial and religious minorities are neglected.

d Terrorism

Increasing terrorist violence, a manifestation of the eighties and nineties, has presented to the human rights world a problem of Himalayan magnitude. It has been a great setback to the movement towards increasing universalization. Terrorism violates the human rights of innocent victims. The human rights of innocent people require to be protected; hence, suspected terrorists cannot claim to be dealt with according to human rights standards. That is the intellectually plausible argument of the proponents of 'State Rights.' The argument, though specious, has been gaining acceptance – even amongst the (so-called) right-thinking.

A few months ago, the Bar Association of India organized a seminar on the topic of "Combating Terrorist Violence Without Sacrificing Human Rights." I chaired the session and said (amongst other things) that humanism transcends nationalism, which I believe. But although we had many old stalwarts, speaking on the subject, nothing concrete emerged. How can the balancing feat be achieved?

At the Triennial Meeting of the ICJ with National Sections held, in Geneva (20-23 January 1992), ICJ Commissioner Param Cumaraswamy of Malaysia raised this question and suggested that, whilst upholding the Rule of Law, the ICJ should also commiserate with victims of indiscriminate terrorist violence in order to gain credibility with the public. In Malaysia and in India (in our area of the world) public response to indiscriminate terrorist activity (bombings, the gunning down of entire families who have had

nothing to do with politics or political activity) is almost as ferocious as terrorist activity itself. NGOs and human rights organizations achieve greater credibility amongst "right-thinking" citizens when they first suggest ways and means of appropriately combating terrorist activities (without sacrificing human rights), and then proceed to criticize governments and local authorities for their often merciless treatment of the suspected terrorists. Of course, the whole problem becomes more complicated because of individual reactions. For instance, there was the case of a businessman from the Punjab who complained to the police when terrorists demanded a large sum of "protection money" from him. The next time, they came determined to extract the money, which he was compelled to part with. Months later, this person was himself arrested under the dreaded TADA (the Terrorist Act) for "harbouring" and assisting terrorists! A writ petition challenging his detention failed in the High Court, but fortunately he was released by the Supreme Court. The suspect is never innocent in the eyes of the authorities; and, thus, do individual freedoms get sacrificed on the altar of "collective security." As terrorist violence mounts, the options become harder and responsible public opinion does not take too kindly to platitudinous assertions of upholding human rights and the Rule of Law and giving the suspected terrorist the benefit of the doubt. The problem is compounded because of the suborning of witnesses who are afraid to depose against those whom they know to be terrorists but will not speak for fear of reprisals. This, in a nutshell, is the conundrum that terrorism in India poses.

Not long ago, the Bar Association of India filed a petition in the Supreme Court of India for directions that the constitu-

tionality of TADA and other preventive detention laws be taken up at the earliest possible opportunity and that some ground rules be laid down (both for the Supreme Court and the High Courts) for earliest possible disposal of *Habeas Corpus* Petitions. It met with some success. But judges in this region read newspapers. And some of them still hold fast to the facile plea that "group security" is more important than individual human rights. Nudging them out of this belief requires cogent and logical argument, supported by experience; again, a task for the NGOs.

When Mr. Javier Perez de Cuellar laid down office as Secretary-General of the UN he expressed his "dismay at the barbaric realities of the world in which we live arising from the indiscriminate use of power to brutalize populations into submission." The mind boggling reality is that often the "power" is used both by terrorist groups within the State, as well as by the State itself. Terrorism is met with repression, which results in more terrorism, and still more repression... And so the vicious circle goes on. But what is alarming is the public response, one of increasing acceptability of governmental brutality, in the name of saving the "security and integrity of the nation." Terrorism has become the greatest single menace to the universalization of human rights, not only because of the violence its engenders but also because it helps make terrorism the State's ally – the more the terrorism, the greater the public acceptability of State repression!

VII Conclusion

When the historian Edward Gibbon completed the first volume of his classic his-

tory ("The Rise and Fall of the Roman Empire") he was permitted to present it to the Duke of Gloucester, brother of King George III. He was well received. When, a few years later, he presented his second volume, of almost equal length, the Prince received the author with considerable affability, saying to him, as he laid the heavy volume on the table "Another damn, thick square book! Always scribble, scribble, scribble! Eh! Mr Gibbon?"¹¹

Not only academicians and politicians but a good many "intellectuals" around the world have harboured similar sentiments about the proliferation of documentation in the area of human rights – declarations, conventions, resolutions, treaties... Words, words, words... The UN, is long on instruments relating to human rights (they say), but its member States are significantly short on performance. Universalization of Human Rights may well have been achieved – but only on paper; effective implementation is lacking. There is much truth in this criticism. Sovereign nation States often impede the quest for universalization. What governments profess around the world and what they practice within the State hardly ever coincides. The most important single factor in the implementation of human rights is not documentation, but the spirit of the people.

I conclude with some words of hope. Not mine. They come from the pen (and the heart) of the wise and compassionate Dalai Lama. A few months ago, he contributed an article to the *Times of India* (24 July 1993).

In it he said:

"There is a growing awareness of people's responsibilities to each other and to the planet we share. This is encouraging even though so much suffering continues to be inflicted in the name of nationalism, race, religion, ideology and history. A new hope is emerging for the downtrodden, and people everywhere are displaying a willingness to champion and defend the rights and freedoms of their fellow human beings.

Brute force, no matter how strongly applied, can never subdue the basic human desire for freedom and dignity. It is not enough, merely to provide people with food, shelter and clothing. The deeper human nature needs to breathe the air of liberty.

I, for one, strongly believe that individuals can make a difference in society. Every individual has a responsibility to help guide our global family in the right direction and we must each assume that responsibility. As a Buddhist monk I try to develop compassion within myself, not simply as a religious practice but on a human level as well. To encourage myself in this altruistic attitude, I sometimes find it helpful to imagine myself as a single individual on one side and on the other a huge gathering of all other human beings. Then I ask myself, "whose interests are more important?" To me it is quite clear that, however, important I may feel I am, I am just one individual while others are infinite."

Words to ponder over, words to live by.

11) Oxford Book of Literary Anecdotes, p. 109.

Conditionality

An Analysis of the Policy of Linking Development Aid to the Implementation of Human Rights Standards

*Kofi Kumado**

Introduction

It is undeniable that the most significant concern of the international community since the end of the Second World War has been human rights. This concern has occupied the energies of many ordinary people as well as statesmen globally, especially since the mid-1970s.

The United Nations was established to intensify the search for the common good of humankind through the international elaboration of norms for the supranational protection of human rights. The UN World Conference on Human Rights, held in Vienna, underlines the international character of human rights. The conference emphasized the obligation of the international community to collectively intensify its examination of strategies for their promotion and protection.

This increased interest in human rights at the international level and the many international human rights instruments elaborated under the auspices of the UN have led to a major change in our conception of international relations. It is now accepted that the human rights situation in a particular country is not just a matter of the government of that country. Taking an interest in it is not interference in the internal affairs of that country. Human rights, thus, provide the in-

ternational community with an entry point through which to influence the establishment, everywhere on this globe, of conditions which enable human beings to live in decency, peace and security.

Right from the onset, human rights were perceived as linked to development by organizations such as the International Commission of Jurists (ICJ). However, non-intrusive methods for persuading or encouraging leaders everywhere to respect the rights and freedoms of their people were emphasized. The linkage was also obscured by the "balkanization" of initiatives for the promotion of human rights. Properly appreciated, however, this "balkanization" should have been understood merely as instituting a system of division of labour at the international level for purposes of operational efficiency rather than expressing the essence of human rights. For human concerns are indivisible and universal.

It is also wrong to place undue emphasis on what has been called deep geographical, cultural or historical differences. This differentiation is a red herring designed to distract. What unites us human beings, wherever we may happen to live on this globe, is our humanity. It is, therefore, gratifying to note that, in spite of earlier fears, the UN World

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Conference at Vienna was able to bring the international community back on course by reaffirming the indivisibility and the universality of human rights.

The mid-70s witnessed some of the worst violations of human rights in world history. Horror stories emerged from Latin America, Africa and Asia. At the same time, development models which favoured economic factors at the expense of the human and social ones, and which then influenced international relations, were seen to fail. People began to organize, to pressurize their governments to give greater recognition to the linkage between human rights and development and to shape their policies accordingly. The cry, everywhere, was that people mattered.

As a result of this people's pressure, there developed a greater understanding of the profound interaction between international and national factors in the development process. The emphasis came increasingly to be placed on human beings as both the means and the ultimate end of the development effort. The need for economic growth was no longer seriously considered as incompatible with aspirations for equity.

It is not surprising, therefore, that since the mid-80s many countries make respect for human rights and the establishment of the conditions and the environment which foster their due observance a cornerstone element in the formulation and operation of their external relations and development assistance policies. The use of this new strategy, referred to in the jargon as "conditionality" has been useful in at least disturbing the conscience of government leaders everywhere. It has also produced some dramatic shifts in attitudes.

One may recall the announcement of the Meeting of the Consultative Group

for Kenya, in November 1991, that continued aid to that country would be conditional on political reforms and the progressive improvement in the human rights situation there. Some 10 days later, President Moi, until then one of the most intractable opponents of political pluralism among all African leaders, caused Section 2a of the Kenyan Constitution to be repealed making room for the re-emergence of multiparty democracy in Kenya.

Of course, conditionality in one form or another has always been present in development cooperation. What seemed new was the extent to which it was sought to use conditionality overtly and vigorously to achieve an integrated approach between human rights and development. It is for this reason, that this new conditionality has attracted a lot of controversy in both the donor and recipient communities.

Questions abound. Should conditionality be reactive only? Or may a State take other more positive steps to encourage the kind of climate which would justify its development assistance? Should sanctions be main instruments of conditionality? Is linking human rights with development assistance a distortion of the concept of cooperation? Or perpetuation of existing inequities in the world trade patterns? Is this a new phase of colonialism? To what model of democracy is the development assistance linked? Are there, indeed, different models of democracy? In the absence of agreed criteria for determining the elements of this linkage, where a State receives assistance from more than one donor country, does conditionality not place it in a *Catch 22* situation? Is conditionality just a case of judging others by one's own standards, using one's own value system to evaluate the human rights situation in other places? What about re-

gional and cultural specificities? Does sovereignty not matter any more in the determination of internal policies simply because a country happens to be poor?

These, and many others, are indeed weighty and troubling considerations, and yet conditionality seems undoubtedly the way forward if we are to continue to affirm that people matter. As noted earlier in this introduction, our collective experience of development up to the mid-1980s has shown that the organized pursuit of development solely in terms of economic growth does not automatically lead to freedom, justice, human dignity and civility. These values have in fact fallen victim to the development effort, the so-called success stories in South East Asia notwithstanding.

Often the violations of human rights have arisen from the failure to manage both the pursuit of economic growth and the societal changes necessary to broaden and make permanent the achievement of the policy goals. Responsibility for this failure must be placed equally on the donors and the beneficiary countries. The strategies for fashioning more perceptive policies must, therefore, target both, not just the one. Therefore, conditionality should be more than an attempt on the part of donor countries to cleanse their consciences of the guilt of knowing that they had got it all wrong in the past.

The purpose of this article is to examine the theory and practice of conditionality as well as the issues it raises in the effort to underscore the linkage between human rights and development. The writer assumes that it is universally accepted that there can be no development without democracy and conversely no democracy without development. Democracy is both the midwife to the safe delivery of human rights and an indis-

pensable condition for the development effort to achieve its true objective of creating the environment and the wherewithal for the human being to realize its full potential. Thus, human rights describe a product in the manufacturing of which democracy and development are intertwined.

The Linkage of Human Rights and Development Cooperation

The main stages in the development of the linkage between human rights and development assistance are not difficult to trace. We may start with the Joint Declaration in 1977 by the European Parliament, the Commission and the Council of Ministers stressing the importance they attached to the protection of fundamental rights as derived from the constitutions of the Member States and the European Convention on Human Rights and declared to respect these rights in the exercise of their powers. In 1986, the Foreign Ministers of the European Community (EC), meeting in the framework of the Council and the European Political Cooperation, adopted a human rights declaration. The declaration, after reviewing the principles of the human rights policy of the EC and its Member States, stated that, henceforth, respect for human rights would be one of the cornerstones of European cooperation and an important element in the relations between third countries and the EC. The declaration asserted that denunciations of violations of human rights could not be considered interference in the affairs of a State and pledged action against violations in any part of the world.

These developments in the EC led to discussions within the Lomé Convention

which links the EC with certain ACP (Africa, Caribbean and Pacific) countries. These discussions culminated in Article 5 of the Lomé IV Convention. This article accepts that cooperation must be directed towards development centred on the human being. Human beings are therein conceded to be the protagonists and the beneficiaries of development. Development is declared to depend upon and promote all human rights. The critical part of the Article states that development policy and cooperation are closely linked with respect for, and enjoyment of, fundamental human rights. In the absence of a definition or description of human rights in the Convention and in the light of the fact that we are dealing with a multilateral framework, we are entitled to assume that the expression is used to refer to those rights accepted by the international community and elaborated in the international human rights instruments, as well as regional mechanisms.

In Europe, long before the collective decisions were made under the umbrella of the EC, individual countries had established advisory or consultative bodies to advise government on issues of human rights in relation to foreign policy. We may note the Netherlands, France and Norway in this context. Note must be taken also of the Molde Declaration of 1990 by the Nordic Ministers for Development Cooperation. This declaration stated bluntly that Nordic aid would, in future, be affected by the lack of progress in the democratization process in the recipient countries.

The link between human rights and US aid began with the creation of the Sub-Committee on International Organizations and Movements of the House Foreign Affairs Committee. The hearings of the Sub-Committee led to the enactment in 1975 of the Tom Harkin Amendment

to the International Development and Food Assistance Act. The amendment prohibits outright economic assistance to gross violators of human rights unless the assistance would directly benefit the recipient country's needy. Further legislation required the State Department to provide annual reports on the human rights situation in the recipient countries of American aid. Thus, it can be said that, by the dawn of the 1990s, the countries which constitute the major donors of development assistance had firmly integrated the linkage between human rights and development in their policies.

The justification for linking human rights and development in this way can be found in numerous international human rights instruments. The UN Charter, the Universal Declaration of Human Rights of 1948, the International Covenant on Economic, Social and Cultural Rights, the recent UN Declaration on the Right to Development – to mention but a few – all place on States, individually and collectively, the obligation to take steps to eliminate obstacles to development resulting from failure to observe human rights. These instruments merely underscore the fact that conditionality legitimately arises from the universality of human rights norms. It is an admission that the failure of aid to raise living standards, which we all now acknowledge, was caused by the lack of this linkage in earlier development assistance strategies.

What are the main objectives and elements of this new conditionality? From the several instruments, declarations and the pronouncements of leading politicians and policy-makers, the following may be distilled: responsible leaders; transparent use of public funds; the involvement of the people at large in every stage of economic, social and political activity and decision-making; accountability within

government. Towards the achievement of these objectives, the linkage should tackle the ways and means through which the process of interaction between several organizations and groups that might be regarded as stakeholders in the policy process can be improved. Conditionality must encourage and promote an interplay between the State and the representative professional and other occupational bodies. These bodies would include trade unions, universities, women's organizations, cooperatives, chambers of commerce, the law societies and independent judiciaries, the press and other media. The linkage must aim at developing the institutional arrangements necessary for effective interaction in policy-making, implementation and monitoring throughout the whole society. In other words, the linkage requires the building of genuine pluralistic institutional infrastructures. This focus on the institutional rather than the political dimensions of democratization has a function. It can lead to the creation of more effective mechanisms, greater consultation and communication between central government and the several sectors and interest groups in the society.

The world is now a global village. People in both rich and poor countries turn on their television sets and see what is happening in other places. Therefore, politicians have to be sensitized, sometimes rudely, to the fact that their enemy is poverty, not the opposition political parties. This is what the linkage between human rights and development should be about. No one obliges a country to ratify an international treaty such as UN, OAS and OAU Charters or an international human rights instrument. Thus, holding a country to the obligations it has accepted cannot be illegitimate interference in its affairs.

Objectives in the Long Term

If, as has been implicit in this article so far, conditionality is justified, how can the achievement of its objectives be made permanent? To be successful, long term and systematic linkages require some minimum conditions. First, unified criteria for responding to human rights violations should be established by donors. At the moment this is lacking. Conditionality looks, in such a situation, like merely a mask behind which old style strategic interests are pursued. The UN and its specialized agencies, by their ostrich-like operations, are the worst offenders in this regard.

They tend to see cooperation only in terms of their individual mandates. Thus, UNICEF may be seen in cahoots with a repressive regime as long as the regime is willing to collaborate on children's programmes, or UNCHR as long as the dictator is willing to house and clothe the refugees of another dictator. This leaves the repressed democratic forces outflanked and confused, as they see the dictator basking in the "sunshine" of UN respectability. Since the international human rights instruments constitute universal scales of values for human dignity, it would be helpful if, in formulating the criteria, these could be used as bench-marks.

Secondly, there must be coherence and coordination within the donor community in the promotion and implementation of human rights measures. To be politically credible, the initiatives taken in the context of conditionality must be (and must be seen to be) free of any particular political or economic interests or preferences. It would help greatly if the multilateral lending agencies such as the World Bank and the IMF would be brought into this process. The World

Bank and the IMF have often strangled the economies of recipient countries in their structural adjustment programmes, increased poverty and societal tension and provided excuse and justification for strong arm tactics from the governments, thus undermining democracy and human rights. It is, therefore, not surprising that the two financial institutions are considered by many citizens in the countries of the South as enemies of an open and democratic society.

Thirdly, in fashioning strategies for making conditionality operational, donors should aim more at positive and practical promotional measures and not the merely reactive. Negative actions such as sanctions are themselves signs of failure of development assistance. So conditionality policies must emphasize technical and advisory services. Realities must be faced. There are States which have no experience in the management of the democratic process. They have no money to build voting booths, to print ballot papers, to train electoral officials or to develop electoral rules which make the electoral process transparent. We must, therefore, recognize that taking these steps is just as important as building airports, or controlling inflation, or the money supply, or enhancing the export capabilities of these developing countries.

Fourthly, the linkage of development assistance to human rights should be seen as introducing a new concept of world partnership. Thus, donor policy should assist recipient countries to break out of the cycle of dependency. Where a country has been impoverished by the looting of its assets by corrupt leaders, the linkage should help these countries to retrieve their capital stashed away in Switzerland, Luxembourg and other bank accounts around the world. In other words, a major objective of conditionality

should be to render development assistance unnecessary in the long term.

Conditionality and Realism

This new concept of world partnership has another side which must be kept constantly in mind. Development assistance strategies must recognize that the economic policies necessary to improve efficiency and sustainable development in the long run would entail short term hardships for the citizens of the recipient countries. That is to say democracy and economic wisdom may not necessarily be bedfellows. This is why heed must be paid to the point the Secretary-General of the OAU, Dr. Salim Ahmed Salim repeatedly makes, namely that without assured markets at fair prices for specific quantities of the primary products on which the economic well-being of the recipient countries are founded, the linkage between human rights and development cannot achieve its goals.

Lastly, but not least in importance, development assistance that is intended to enhance the linkage between human rights and development must include education in its strategies. A component for educating and supporting education programmes which aims at conscientizing the people and their leaders, in recipient countries, to the merits of a democracy is a *sine qua non* for success. This is not an argument for implanting a particular model of democracy. If, indeed, there are different models of democracy then it should be clear that the reference is to constitutional democracy. The main elements of this democracy would include governments that are limited in their powers, political pluralism, tolerance, an independent judiciary, an environment that is hospitable to the Rule of Law,

participation by the people in all decision-making processes, transparent electoral processes, collaboration between government and opposition forces, fair world trade terms, etc. Of course not all may agree with what is listed here. But then the right to disagree is itself one of the most important elements of constitutional democracy.

As we move slowly but surely towards Year 2000, the single most important and troubling challenge which faces the human race is undoubtedly poverty. The truth is that humiliating poverty, in all its aspects, remains the lot of many of the peoples of our contemporary world. Our television sets bring images of poverty into our houses daily. The World Bank predicts in its 1992 *World Development Report* that the situation, far from improving, might worsen, at least for some countries. This is clearly an issue of human rights. It is a development issue as well. Therein lies the justification for conditionality. Its key principles are interdependence, indivisibility and universality. The main components must be social progress, stability and development. One of the recurring arguments in the present article is that we require international cooperation and solidarity in development strategies to achieve a lasting victory over poverty.

A further argument of this article is that, to some extent, effective development at the national level requires a partnership with external forces. This, in turn, requires a harmonization of all forums and contexts in which the main elements contained in the external factors are determined. Given the fragmented nature of the donor terrain, there is the need to find a common ground, a more or less level playing-field. A democratized UN should be able to provide such a platform.

If the UN is to play this role, perhaps there can be room for adding one more plank to the existing elements in the linkage between human rights and development. Many international human rights instruments have been elaborated and adopted by the UN. A good number of these instruments have not been ratified by many members of the UN, especially countries of the South. They should be assisted to do so. To this end, we propose that the Commission on Human Rights be empowered to hold a special session each year on the issue of ratification. At this session governments which have not yet ratified a minimum of the basic international human rights instruments, and those which have introduced invidious reservations, would be encouraged and assisted to ratify them. A country's continued membership of the UN, or at least the exercise of its full membership rights and, ultimately, its eligibility for development assistance should depend on its ratification of the minimum instruments already referred to. Otherwise we risk derision from the peoples of this world when we establish standards ostensibly for their benefit, but which are useless to them because they are not binding on their governments.

Conclusion

However controversial the policy of linking development assistance to human rights, the international community, it can be argued, has come to accept it. The most recent recognition of the linkage is to be found in the final report adopted by governments at the UN World Conference at Vienna. First, the Conference recommends that "priority be given to national and international action to promote democracy, development and human

rights." In this connection, special emphasis is to be given to measures to assist in the strengthening and building of institutions relating to human rights, strengthening of a pluralistic civil society and the protection of groups which have been rendered vulnerable.

Secondly, and more critically, the World Conference called on actors in the field of development cooperation to bear in mind "the mutually reinforcing inter-relationship between development, democracy and human rights." To this end, governments, competent agencies and institutions were called upon by the Conference to increase considerably the resources devoted to building well-functioning legal systems able to protect human rights.

Thirdly, and most significantly, in order that the pursuit of human rights and development may not be used as a new neo-colonialist weapon, the Conference also states that development cooperation should be based on dialogue and transparency. This emphasis on dialogue and transparency was perhaps a diplomatic strategy which ensured that the linkage,

so brazenly structured into the conference report, would be acceptable to all. Care should be taken, however, that, in practice, dialogue does not provide the anti-democratic governments of the South with a weapon for vetoing or delaying the human rights and democracy components in specific cooperation packages.

Finally, it is worth reminding ourselves that various epochs in human history have been associated with, or remembered by, certain major advances or the pre-eminent role of certain causes. It is the view of the present writer that we, in the post-Second World War and post-Cold War periods, would be judged by the extent to which we pursue the realization and due observance of human rights. The achievement of full worldwide respect for human rights remains distant, particularly in view of the Gulf War, the racial wars in the former Yugoslavia, Somalia and Sudan, the political uncertainties in Russia and South Africa, drug trafficking, poverty and disease. But we have to continue the struggle. In that endeavour, conditionality, appropriately reined in, should prove an invaluable tool.

International Human Rights Mechanisms

The Role of the Special Procedures in the Protection of Human Rights The Way Forward After Vienna

Helena M. Cook*

As the first high-level global conference for 25 years devoted solely and explicitly to human rights, the 1993 United Nations World Conference on Human Rights offered a unique opportunity to undertake a comprehensive overview of the UN's human rights machinery and to formulate measures to rationalize and strengthen it. Various historical and political factors have resulted in the piecemeal development of the human rights machinery in an uncoordinated and sometimes inconsistent way. The Conference could have provided a forum for reviewing this *ad hoc* development and for linking the various components together within a coherent and efficient structural and administrative framework endowed with adequate financial and other resources. Yet, the Vienna Declaration and Programme of Action, the final outcome of the Conference adopted by consensus, is a loose and uneven document that contains very few concrete recommendations in respect of the existing human rights mechanisms and certainly nothing in the way of a comprehensive programme aimed at unravelling, rationalizing and reinforcing the labyrinth of the human rights machinery.

One group of mechanisms which are in particular need of a more solid institutional base within such a framework, in order to coordinate, develop and strengthen their work, are the so-called "special procedures." These are the range of special rapporteurs, representatives, experts and working groups established not under the terms of a treaty but appointed by the UN's main human rights body, the Commission on Human Rights, to address particular human rights concerns or specific country situations and, in these various contexts, to seek ways to secure and improve the protection of human rights. The special procedures constitute a main component of the UN's human rights machinery, yet they were largely ignored during the World Conference. Their participation in the process was only grudgingly acknowledged and certainly not sought or encouraged. The Conference took little account of their role or functions and made only passing references to them in the final document. There was certainly no attempt to reinforce them, either as individual mechanisms or as an integral component of the wider system of human rights protection at the UN.

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Yet, a thorough review and reform of all the machinery was a primary objective of this Conference. The General Assembly resolution convening the Conference noted that the time was ripe for a review of the achievements of the UN human rights programme and what still remained to be done and this primary aim was also reflected in four of the Conference's six objectives: (i) to review and assess progress in the field of human rights since 1948 and to identify obstacles and ways to overcome these; (ii) to evaluate the effectiveness of the UN's methods and mechanisms in the field of human rights; (iii) to formulate concrete recommendations for improving the UN human rights activities and mechanisms; and (iv) to make recommendations to ensure the necessary resources for UN human rights activities.¹ In short, it was a rare opportunity for the UN to step back and survey the human rights forest rather than the trees and to decide how the programme could be re-shaped and strengthened to meet present-day challenges.

However, from the earliest days of the preparatory process, it was clear that some governments saw Vienna as an occasion, not only to rein in the burgeoning human rights programme, but also a way to re-write, in a more restrictive way, some of the fundamental human rights principles which constitute its very foundation stones. It quickly became clear that the rallying cry of some governments, during the preparatory discussions, of the need for streamlining, rationalization and the avoidance of duplication within the current system, was in

fact synonymous with an attempt to curtail and constrain the programme and especially the work of the special procedures, which are viewed, by these governments, as particularly intrusive. Others saw the Conference as a means to push their particular priorities to the top of the human rights agenda, priorities which certainly did not include strengthening the UN's protection activities. Those governments, which may have genuinely supported improving the machinery, were fearful of opening up debate on the existing system for fear that hard-won gains would be lost and that current structures, such as the special procedures, might actually be weakened or even eliminated from the programme.

Although the World Conference did not seize the opportunity to re-shape the human rights programme structurally or substantively, it did, however, set in motion a process which has culminated in the ground-breaking recent decision by the UN General Assembly to create a new high-level post in the field of human rights – a High Commissioner for Human Rights.

This is an extraordinary achievement given the resistance of so many governments to strengthening the UN's role in the field of human rights. There was no consensus at the World Conference on the desirability of establishing such a post, and it was only at the eleventh hour, on the very last day, that it was finally agreed to include, in the Vienna Declaration, no more than a call to the General Assembly to begin consideration of the question at its next session. The General Assembly has not conceived the post of

1) General Assembly Resolution 45\155 of 18 December 1990. The other two objectives set out in that resolution were (i) to examine the relationship between development and the enjoyment of all human rights and (ii) to examine ways and means to improve the implementation of existing human rights standards and instruments.

High Commissioner as an integral part of any coherent plan to rationalize and strengthen the UN's institutional human rights framework and its resolution, setting out the functions and mandate of this new post, does not go nearly as far as many would have wished in giving the High Commissioner an explicit activist and catalytic role, particularly in the area of human rights protection. It has, however, created a principal human rights post of much greater status and authority within the UN system which certainly has the capacity, if the right person is appointed, to reinforce and revitalize the existing mechanisms institutionally and politically.

This article examines some of the key aspects of the work and methods of the special procedures. While they may have been bypassed in the World Conference process, the following survey points to ways in which these mechanisms need to be strengthened and made more effective and concludes with a brief discussion of the characteristics of the newly established post of High Commissioner for Human Rights and how this might impact positively on their work.

The Special Procedures

The special procedures fall into two main groups – those set up to address human rights issues on a global basis by theme, such as torture or religious intolerance,

and those which focus on the overall human rights situation in individual countries. Yet, they share a common basis; in a Joint Declaration issued on behalf of all the special procedures and submitted to the World Conference on Human Rights² they pointed out that their primary task is to:

“render the international norms that have been developed more operative. We do not merely deal with theoretical questions, but strive to enter into more constructive dialogues with Governments and to seek their cooperation as regards concrete situations, incidents and cases. The core of our work is to study and investigate in an objective manner with a view to understanding the situations and recommending to Governments solutions to overcome the problem of securing respect for human rights.”

These procedures were never conceived as a “system” within a comprehensive institutional framework, but have developed on a piecemeal basis over the years. A combination of different factors have prompted the establishment of the various mechanisms, including: pressure to act on a situation generating widespread public abhorrence;³ action in response to studies and recommendations by the Commission's expert sub-body, the Sub-Commission on Prevention of Discrimination and Protection of Minorities;⁴

2) UN Doc. A/CONF.157/9.

3) The Working Group on Enforced or Involuntary Disappearances was set up in 1980 in response to the growing public awareness and international outcry at the horrific scale of the practice of disappearances under a number of military dictatorships, particularly in Argentina.

4) The Working Group on Arbitrary Detention and the new Special Rapporteur on Freedom of Opinion and Expression were the outcome of extensive studies on these topics by the Sub-Commission.

concerted lobbying by non-governmental organizations (NGOs) aiming to get a particular country or a particular human rights problem onto the UN agenda;⁵ and as a means by which governments can secure greater attention to their priority issues and even exert political pressure on other governments.⁶

Notwithstanding the different factors which have led to their establishment and the variations in the ways in which they function, the special procedures have, over the years, become a recognized and essential component of the framework of international mechanisms for the protection of human rights. In the Joint Declaration for the World Conference it was stated that:

"this broad range of procedures constitutes a unique and crucial element in the implementation of the body of specific standards that have been adopted by universal consensus through the General Assembly. While it may never have been conceived as a 'system', the evolving collection of these procedures and mechanisms now clearly constitutes and functions as a system of human rights protection."

The Theme Mechanisms

The so-called "theme mechanisms" now extend to cover a wide range of specific

rights and themes. They are by no means a static phenomenon; new thematic mechanisms have been steadily established by the UN Commission on Human Rights over the past 13 years, with the newest ones set up in 1993 and another likely to be established at the Commission's forthcoming session in February 1994. It should be noted that there are quite significant differences between the thematic mechanisms, their methods of work and the extent to which they can, or do provide, a protective role in respect of victims of human rights violations. The observations which follow are most directly pertinent to the longest-standing mechanisms working on disappearances, summary or arbitrary executions and torture but may also be relevant to some or all of the others.

The first of the thematic mechanisms – the Working Group on Enforced or Involuntary Disappearances – was established in 1980 and was closely followed by the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions and the Special Rapporteur on Torture, established in 1982 and 1985 respectively. Next in line were the Special Rapporteurs on Religious Intolerance (1986), on Mercenaries (1987) and on the Sale of Children, Child Prostitution and Child Pornography (1990). In 1991 the Working Group on Arbitrary Detention was set up and, at its 1993 session, the Commission established no less than three new theme

- 5) NGOs played a key role in the eventual establishment of the Special Rapporteur on Torture and the exposure by NGOs of gross violations in individual countries, coupled with concerted NGO lobbying, is typically the impetus for the appointment of new country rapporteurs.
- 6) Attempts, by the USA in particular, to intensify pressure on the former Communist regimes of Eastern Europe was the catalyst for the establishment of the Special Rapporteur on Religious Intolerance, while the new Working Group on Development was an initiative of the governments predominantly of the South, in the midst of the battles around the World Conference, to give greater prominence to the right to development and to counter the perceived over-emphasis at the UN on civil and political rights.

mechanisms – a Special Rapporteur on Contemporary Forms of Racial Discrimination, Xenophobia and Intolerance; a Special Rapporteur on Freedom of Opinion and Expression; and an unusually large 15-member Working Group on the Right to Development. The Commission also agreed to consider the establishment of a Special Rapporteur on Violence Against Women at its 1994 session, a move which was supported in the Vienna Declaration and Programme of Action and which looks likely to go ahead. An expert, mandated at the Commission's request in 1992 to examine issues relating to the internally-displaced, is functioning in much the same way as a theme mechanism but, as a Representative appointed by the Secretary-General with only a two-year mandate and a reporting function to the General Assembly as well as to the Commission, is set somewhat apart from the other mechanisms.

It is clear that the focus of the Commission, in the development of the thematic mechanisms, has tended to be weighted towards civil and political rights. Indeed, the combination of taking up individual cases of victims of such violations, the examination of specific country situations and the study of the larger issues of these phenomena and generic preventative recommendations, which characterize, to a greater or lesser extent, the work of many of these mechanisms, may be particularly well-suited to the protection of such rights. While there is certainly a need for the Commission to

pay closer attention to the full range of universally-recognized rights, and particularly to measures to secure the implementation of economic, social and cultural rights, the answer may not lie in the continued expansion of a system of individual thematic mechanisms, each working on different rights. While it may be appropriate for a larger group of experts to be working on a vast and largely unexplored topic such as the right to development, the sheer size of the new Working Group on the Right to Development puts it into a quite different category from the more "traditional" theme mechanisms and raises acute logistical and resource problems which, particularly if replicated in respect of other themes, threatens to unbalance the entire system and undermine the existing mechanisms. More conceptual and practical thinking is needed by human rights experts, governments and NGOs as to the nature and mandate of the types of mechanisms which may be better suited to addressing economic, social and cultural rights.

The mandates of the theme mechanisms tend to be quite open-ended, generally calling on the mechanism to examine questions relating to the particular theme, such as torture, and to respond effectively.⁷ Differences in the wording of the mandates have not tended to be determinative and have become blurred in practice. Indeed, not being bound by the strict terms of a detailed mandate or by formal rules of procedure has enabled

7) Although many of the theme mechanisms have developed the technique of taking up individual cases of violations with offending governments, the Working Group on Arbitrary Detention is unique in having been given a quasi-judicial mandate explicitly to investigate cases. It has interpreted this to involve an in-depth examination of individual cases followed by a determinative finding by the Group as to whether the facts of the case constitute arbitrary detention. The other mechanisms have so far not attempted to draw firm conclusions in individual cases.

these mechanisms to develop their methods of work flexibly and creatively. A number of them have developed similar core functions which include: taking up individual cases of reported violations with the government concerned, often as a matter of urgency by facsimile; carrying out investigative missions to countries where these violations are reported to be occurring and making recommendations to the government concerned on measures to address the problems and to prevent further violations; and a broader examination of the phenomenon of these violations and the formulation of generic observations and recommendations, directed at all governments, about ways to eradicate these. NGOs constitute their primary source of regular information. Although, initially, their mandates had to be renewed annually, their position is now strengthened and all have three-year mandates with an annual reporting obligation to the Commission on Human Rights.⁸

There are a number of factors which distinguish the theme mechanisms from the treaty-monitoring bodies.⁹ The theme mechanisms can take up cases or country situations within their mandates, in respect of any country in the world. Since

they derive their authority from the Commission, there is no prior requirement that individual countries have to accept their competence before they can act on a case (although they can only carry out a fact-finding mission with the consent of the government). They can act immediately in cases of extreme urgency – sometimes within a matter of hours of receiving information. Although their urgent response may be restricted to sending a facsimile to the government concerned, the mere fact of putting a government on notice that a particular individual's case is under international scrutiny by a UN mechanism can sometimes be a protective measure in itself and may prevent the victim suffering a worse fate. Even the Working Groups, which carry out their work in regular periodic meetings, have developed urgent procedures enabling them to act on cases between formal sessions.

Their field missions contribute to more in-depth scrutiny of the human rights situation in individual countries and keep the spotlight on a wider range of countries at the UN than could be expected to be taken up on the initiative of the member governments of the Commission. Also, by focusing on a particular viola-

- 8) The annual renewal of their mandates, rendering them vulnerable to termination at each Commission session, reflected the reluctance of many governments to institutionalize these mechanisms. The Working Group on Disappearances functioned for six years before being the first to get a two-year mandate. Eventually the 1990 discussions on the "enhancement" of the Commission's work, at the time when its membership was increased from 43 to 53 governments, led to a recommendation by the Economic and Social Council that all theme mechanisms should generally be given three-year terms.
- 9) The treaty bodies are the supervisory committees set up under the terms of the human rights treaties to monitor the implementation of the treaty. The treaty-bodies can only act in respect of States which have ratified the treaty. Some, but not all, of these treaties have an individual complaints procedure under which the relevant committee can examine individual cases of violations of the treaty, but this procedure generally requires specific and separate acceptance by the State party before it is operative in respect of that State. There are admissibility and procedural requirements to be followed in the examination of a case, and it can take a considerable time for a finding to be made.

tion, the mechanisms are in a position to examine common elements of the phenomenon of these different violations, such as torture or disappearances, and formulate general observations and recommendations, recommend and contribute to the development of new international standards in these areas and play a supervisory role in respect of the implementation of such standards by governments. This is particularly useful in respect of non-treaty standards for which there are no other bodies charged with the systematic monitoring of their implementation world-wide.¹⁰

The effectiveness of the theme mechanisms must be measured in large part by the extent to which governments, singled out by them, feel under pressure and are responsive to their requests for information and recommendations. By themselves they lack political authority and status within the UN system and are ultimately dependent on the Commission to take action in respect of governments which violate the rights they seek to protect. Without much greater support for their work from the Commission and tougher action on their findings, there is little political cost to a government in being the subject of action by a theme mechanism. Their reports should be used much more actively by the Commission to assist it in identifying situations involving serious violations which would merit a country-specific resolution or even appointment of a country rapporteur. In other situations, their expertise and findings could assist in the setting up of a

programme of advisory services and technical assistance, but there is, presently, no real interaction between their work and that of the advisory services programme.

Governments frequently provide inadequate responses on individual cases and some simply ignore requests for information altogether. The practice, instituted by the Working Group on Enforced or Involuntary Disappearances, and increasingly followed by other theme mechanisms which take up individual cases, to keep their sources informed on government responses on a case and to seek further information and observations from the source, is welcome and should enable them to investigate cases more fully, to maintain pressure on a government and to draw conclusions in their reports. The fact remains, however, that their individual case-work has not proved to be a very effective means of generating significant political pressure on governments – there are plenty of governments which feature heavily in several theme reports year after year but which have never yet been censured by the Commission. The Commission should identify and be more critical of governments which persistently fail to respond to the theme mechanisms. It ought also to examine the theme reports as a whole rather than only taking up each one in isolation. Countries where a large number of cases have been reported, where new cases are reported successively over several years indicating a pattern of continuing violations, or those countries which appear simultane-

10) The Special Rapporteur on Extra-Judicial, Summary or Arbitrary Executions plays a key role in making known and seeking government compliance with the UN Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions and the Working Group on Enforced or Involuntary Disappearances now has a similarly important role in respect of the newly adopted Declaration on the Protection of All Persons from Enforced Disappearance.

ously in several reports, should all serve as indicators of serious problems which the Commission should address.

Field missions by the theme mechanisms, involving a more detailed investigation and analysis of a particular situation, are a more effective means of focusing attention and generating pressure on a country. Yet, the recommendations of these mechanisms following a mission are also often disregarded, or the government simply provides no information on what has been done to implement them. The Vienna Declaration called for follow-up measures to their recommendations to be a "priority matter" for the Commission.¹¹ The mechanisms should develop criteria as to what constitutes an adequate response to their country-specific recommendations following a visit. For example, merely sending copies of legislation is not sufficient without details of how this is being implemented in practice. Governments which have been visited by a theme mechanism should be required to provide information, in writing, of the steps they have taken to implement any recommendations made, and scrutiny of these responses (or the lack of them) should be maintained by the mechanism and reviewed by the Commission, at each session, until a satisfactory and complete response has been received. Second, and subsequent visits by a theme mechanism, should be accepted by governments as a routine follow-up measure, as long as violations persist and recommendations are not implemented.

Another difficulty, which these mechanisms face in respect of field missions, is the need for a government's prior consent, although, of course, government co-

operation is essential if they are to have a positive impact. Even after consent is obtained, they are faced with a dilemma. A strong and critical report which generates the necessary attention to serious human rights problems at the Commission may forfeit further cooperation of the government, perhaps for a follow-up visit, and may scare off other governments from issuing invitations. In the early days, the first governments to invite the theme mechanisms may have thought that this gesture of cooperation and openness would head off more condemnatory action by the Commission. However, the increasingly critical reports from some of the theme mechanisms has led to a marked reluctance, by some governments, to agree to a visit – in some cases a theme mechanism has tried unsuccessfully, for a number of years, to secure a visit to a particular country.

In their Joint Declaration, the special procedures placed a strong emphasis on field missions, which, they noted, inform them first-hand of the objective reality of a situation "vital to accurate assessments and reporting, which also serve the best interests of the Governments concerned." They urged that missions and appropriate follow-up be accepted as a natural component of all their mandates. Again, it is incumbent upon the Commission to give formal recognition and firm political support to initiate and follow-up field missions, as an essential element of the work of the theme mechanisms, and to provide them with the necessary resources to carry these out. The Commission should be ready to put pressure on reluctant governments to agree to a first or follow-up visit and also pay much greater attention to their mission reports and rec-

11) Vienna Declaration and Programme of Action, Part II.A, para. 15.

ommendations. Commission resolutions on the work of the theme mechanisms have never yet mentioned individual countries, with the result that their mission reports gather dust and their recommendations to individual countries are not endorsed or used by the Commission. There is no practical reason why a resolution, on the work of a theme mechanism, could not refer to countries visited by the mechanism, or even country situations identified by it as particularly grave. Thematic resolutions referring to several countries, rather than focusing on a single country, may prove easier to have adopted by the Commission, especially in the early days of developing such a practice.

If this aspect of their work could be developed and reinforced, their mission reports could help to focus attention on a particular country at the Commission without the inevitable tough political battle – which often fails – of trying to have a new country taken up under the more confrontational agenda item which refers to violations in any part of the world. In some cases, the Commission has already begun to use these mechanisms more effectively to assist in the scrutiny of country situations. In 1992, the threat of a resolution on Sri Lanka, following the strong report by the Working Group on Disappearances, on its mission to the country, led to the government consenting to a follow-up visit. This agreement was recorded only in a statement by the Chairperson of the Commission but nonetheless ensured that Sri Lanka remained on the Commission's agenda. This was repeated in 1993, this time with a com-

mitment by the government to a visit by the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions. At an early stage, statements by the Chairperson, instead of a resolution, may be a useful means to secure the consent of a country to a visit by one or more of the theme mechanisms, which, at least, would ensure that the Commission has a report on the situation before it the following year. However, there is also a risk that a government will invite a theme mechanism to visit as a hollow gesture to avoid censure in a formal resolution and will make no attempt to implement recommendations made to it; the Commission should not, therefore, indefinitely postpone tougher action by resorting to Chairperson's statements if it is clear that there is no real change in the situation.

Each theme mechanism is, of course, mandated to investigate only one type of violation on a visit. This can lead to a rather unbalanced assessment, especially in situations involving a range of human rights violations, the causes and effects of which may be deeply interlinked. One might hope that UN human rights experts would not adopt an unduly narrow approach, particularly in the face of grave and flagrant abuses which they may confront on a visit but which may be outside their mandate.¹² At the very least, a theme mechanism could make a public statement and call on the relevant UN bodies to address these other abuses, including recommending that the appropriate theme mechanism urgently investigate and act. In the longer-term, this limitation could be better addressed by joint or successive visits by different

12) Many observers would have hoped for a much stronger immediate response by the (former) Special Rapporteur on Torture to the November 1992 massacre in Dili, East Timor which occurred while he was actually in East Timor on mission.

theme mechanisms. This requires close cooperation between the mechanisms to present a comprehensive and consistent overview; assessments of the same country that are too divergent in substance or in presentation can be played off against each other, as the Philippines attempted to do in 1991 when the Commission had before it reports from the Special Rapporteur on Torture and the Working Group on Disappearances of their separate visits to that country which were rather different in tone, although not, in fact, in their assessment of the gravity of the situation.

Joint visits, which have also been called for by the mechanisms themselves in their Declaration to the World Conference, have been pioneered quite successfully in the case of the former Yugoslavia. When the Commission appointed its country rapporteur on the former Yugoslavia at its first ever special session in 1992, it actually called on the relevant theme mechanisms working on torture, summary or arbitrary executions, arbitrary detention and the internally-displaced to undertake joint missions with the rapporteur. This not only marked the first joint missions by the theme mechanisms but was also the first occasion when the theme mechanisms had worked so closely and directly with a country rapporteur. Before this, theme mechanisms had tended not to visit countries under special scrutiny by a country rapporteur (although they have taken up individual cases in those countries). The work on the former Yugoslavia has broken down these somewhat artificial divisions of labour and demonstrated that the theme mechanisms can be a valu-

able source of special expertise and can facilitate a more in-depth investigation of the situation. It is to be hoped that the theme mechanisms can collaborate more closely with each other and with the country rapporteurs in this way in future.

Theme mechanisms should also be given the human and financial resources to carry out serious investigations on field visits. This should include incorporating into the mission, as they deem necessary, specialist expertise such as forensic or medical experts or those with experience of treating and counselling victims of rape and other trauma. Again, in the case of the former Yugoslavia, the mechanisms have drawn on specialized medical and forensic experts in their on-site investigations.

In some cases, the theme mechanisms can assist the Commission in addressing a wider range of issues relevant to human rights protection in the context of their mandates. For example, when the Commission first took up the issue of reprisals taken against individuals and groups seeking to use UN procedures or to contact UN representatives, the theme mechanisms were requested to take steps to prevent such acts and to give special attention to this question in their reports.¹³ The Working Group on Disappearances has even developed a special urgent procedure for dealing with such cases. More recently, the theme mechanisms have been requested to pay particular attention to violations of human rights directed specifically against women;¹⁴ to ensure that the protection of women's rights is fully integrated into the whole human rights programme, it

13) Commission Resolution 1990/76.

14) Commission Resolution 1993/46.

will be important that all theme mechanisms continue to do this even if a new Special Rapporteur on Violence Against Women is appointed. The Commission must, however, avoid creating a situation where the mechanisms become overloaded with special issues and subsidiary tasks which could end up detracting from their core functions and the issues they determine to be their priorities. Special tasks must also always be matched by adequate financial and human resources to accomplish them.¹⁵

The generic recommendations formulated by the theme mechanisms on measures to be taken by all governments to address and to prevent the recurrence of violations of the rights within their mandates, have also, over the years, come to constitute an important body of practical measures and safeguards for the protection of these core rights which should serve as guidelines for all governments. At its last session, the Commission on Human Rights requested the annual publication of all the generic conclusions and recommendations of the theme mechanisms.¹⁶ Such a publication would be an additional source of practical safeguards for the protection of certain rights to supplement the norms and standards already adopted by the UN, and it could provide useful expert guidance on ways to implement more effectively these existing norms and standards. It could be used by the UN in its advisory services and technical assistance programmes, including in the training of law enforcement

and other public officials, as well as in the context of the training of UN personnel such as those serving in the civilian components of peace-keeping operations. It could also be valuable for other UN experts, such as country rapporteurs or the treaty-monitoring bodies, in their work.

Country-Specific Mechanisms

The pioneer of these mechanisms was the *Ad Hoc* Working Group of Experts on Southern Africa set up in 1967 to address the multiple problems of apartheid. This is the only one of these procedures which relates to a region rather than a single country and it remains somewhat set apart from the other country rapporteurs and experts dealt with here. The *Ad Hoc* Working Group was followed, in 1975, by a Working Group on Chile, which was subsequently transformed into a single special rapporteur. No other country-specific working groups currently exist and the general practice in respect of the special procedures dealing with particular countries has been to appoint single individuals as rapporteurs or experts.

In the mid-1980s there was a marked reluctance to appoint new country rapporteurs. This was broken in 1989 with the appointment of a Special Rapporteur on Romania which was, at that time, still under the grip of President Ceausescu and very isolated as political change gathered momentum in Eastern Europe. Since

15) An initiative of Peru and Colombia in 1990 has also resulted in a regular call by the Commission to the special procedures to pay particular attention to the activities of armed groups and drug traffickers on the enjoyment of human rights. Some governments protested that the task of these mechanisms should be to focus on compliance by States of their international obligations and it has been feared that an over-emphasis on non-State entities would detract from this.

16) Commission Resolution 1993/47.

then, the Commission has been more willing to use this technique, and a number of new country rapporteurs have been appointed, although some of the gravest human rights situations still escape this form of scrutiny. Currently, in addition to the Working Group on Southern Africa, there are country rapporteurs or experts appointed in respect of Afghanistan, Cuba, El Salvador, Equatorial Guinea, Haiti, Iran, Iraq, the Israeli-Occupied Territories, Myanmar, Sudan and the former Yugoslavia.

Country rapporteurs and experts are generally appointed by resolutions adopted under the so-called public procedure of the Commission on Human Rights, established by ECOSOC Resolution 1235 (XLII), under which situations involving violations of human rights in any country in the world can be publicly debated. The appointment of these country experts is by no means an impartial and objective response by the UN to grave human rights situations throughout the world. It is a highly politicized process which the governments under scrutiny fight desperately to avoid and often results in the appointment of experts in respect of countries which have relatively little international influence and few powerful allies. The Commission turned a blind eye, for years, to human rights violations on the most brutal and massive scale in Iraq but, in 1991, following widespread international condemnation of Iraq's invasion of Kuwait, it proceeded to appoint, at one session, a Special Rapporteur on Iraq and a separate Special Rapporteur on violations by the

Iraqi Government in occupied Kuwait. The overt politicization of this process is one of its greatest weaknesses. It prevents the appointment of country rapporteurs on situations which cry out for international attention; it can lead to apparently absurd decisions to drop countries from this form of scrutiny in the face of continuing violations; and equally, it can result in country rapporteurs being maintained in post when some other form of action may be more appropriate. All of this discredits the Commission and the UN in the public eye and contributes to a lack of confidence in its ability to address human rights concerns effectively.

The apparent arbitrariness of the appointment of rapporteurs under the public procedure is exacerbated by the fact that the public procedure does not, in fact, indicate the full range of countries in respect of which the Commission may have appointed rapporteurs. The public discussion of country situations runs parallel to the confidential "1503" procedure under which other country situations are examined by Commission member States in a confidential session, usually with a representative of the country under examination present to respond to direct questioning. The Commission has a range of options open to it for further action under the "1503" procedure which has sometimes also included the appointment of a country rapporteur, generally after the situation has been pending for some time with no improvement in the situation and no serious cooperation by the government concerned.¹⁷ Although it often quickly becomes common knowledge

17) Under the "1503" procedure, the Commission considers countries referred to it by its Sub-Commission on Prevention of Discrimination and Protection of Minorities which, in the Sub-Commission's view, reveal "a consistent pattern of gross and reliably attested viola-

(Cont. p. 43)

that a rapporteur is to be appointed under the "1503" procedure, strictly speaking this is a confidential step. It is not publicly announced by the Commission, the identity of the expert is not formally revealed by the UN and the expert's reports remain confidential documents.¹⁸ This leads to a ludicrous situation where NGOs, which generally know all about the expert, can establish no formal relationship with him or her, cannot officially submit valuable information or brief the expert prior to on-site missions to the country and cannot have access to the country reports. If a situation is serious enough to warrant the appointment of a country expert, then the Commission ought always to transfer consideration of the country to public session under the 1235 procedure and make this an open and public appointment.

In some cases, the Commission has transferred countries pending under the confidential procedure to its public agenda which is generally perceived as a measure of intensified international criticism of the country's human rights performance. As in the case of Albania, transferred to the public agenda in 1988

after four years under the "1503" procedure, such a move need not necessarily be accompanied by the appointment of a country rapporteur. However, where a country rapporteur has already been in place under the confidential procedure the move to the public 1235 procedure would be expected to be accompanied by the continuation of the rapporteur's mandate (whether or not the same person continues to undertake the task), as was the case when Myanmar and Sudan were transferred to the public procedure in 1992 and 1993 respectively.

Although these experts appointed in respect of particular countries under the 1235 procedure may be called special rapporteurs or special representatives or even independent experts, these differences in terminology reflect little more than the political sensitivities regarding the initial decision to appoint a country expert, which is perceived by governments, at least, as one of the toughest and most confrontational steps the Commission can take in response to human rights violations in a particular country. The terms have been intended to indicate a varying degree of seriousness in

17) (Cont.)

tions of human rights requiring consideration by the Commission". After consideration, the Commission can decide to drop a country from the procedure, to keep it pending for further review the following year or to take further steps. ECOSOC Resolution 1503 (XLVIII), which sets out the procedure, only envisages two options - transferring the file to the public procedure enabling a "thorough study" of the situation or appointing an *ad hoc* committee to carry out a confidential investigation with the consent of the State concerned. In practice, however, the Commission has employed a range of responses which have included the confidential appointment of a country rapporteur to make an investigation and report back to the Commission or requesting the UN Secretary-General to establish contacts with the government concerned.

- 18) At each Commission session the Chairperson announces the full list of countries which have been considered at that session by the Commission under the confidential "1503" procedure and also specifies those countries which have been dropped from the procedure. From this, it is easy to see which countries remain pending under the procedure but otherwise no public announcement of any additional measures taken by the Commission in respect of these situations is made.

the situation under scrutiny, but in practice the distinction is meaningless.¹⁹ Country experts have also been appointed under the agenda item on advisory services, which does represent a more substantive distinction in the mandate and tasks of the expert. This practice, which is discussed further below, is also increasingly blurring the demarcation between the critical investigation of gross human rights violations under the 1235 procedure and the provision of advisory services and technical assistance in the field of human rights.

With the notable exception of the new Special Rapporteur on the Israeli-Occupied Territories,²⁰ it has always been traditional for country rapporteurs to be appointed on a one-year basis only, although in some cases their mandates have been repeatedly renewed for years (the Special Rapporteurs on Afghanistan and on Iran have been in place since 1984). Unlike the thematic mechanisms, the renewal of whose mandates has become progressively automatic, this has left the country rapporteurs far more vulnerable to the prevailing political climate each year and has led to some odd shifts and premature termination of their mandates even in countries where the human rights situation remains extremely grave or at least remarkably fragile. For example, the expert on Haiti was only

finally upgraded in 1990 from an advisory services expert to one with a full investigatory function under the 1235 procedure. The following year the expert was downgraded when Haiti was put back under advisory services, seven months before the coup which toppled President Aristide, only to be upgraded again in 1992 to a special rapporteur.

Like the thematic mechanisms, the mandates of the country rapporteurs are generally rather broadly worded and follow similar lines requiring the rapporteur to carry out a thorough study of the situation in question. Despite some differences in the formulation of their mandates, in practice the basic tasks of a rapporteur are similar. Although they may be requested to pay special attention to violations which have been reported to be of particular concern in the country (the mandate of the Rapporteur on the former Yugoslavia is one of the most detailed and specific to date), the country rapporteurs are expected to investigate and report on the overall human rights situation in the country concerned and to make recommendations to the government about ways to address human rights concerns and prevent further occurrence of violations. However, there are significant differences in their approach and their reporting. There is no effective quality control to ensure basic consist-

19) The appointment of a "rapporteur" on a country has been understood to indicate the highest degree of gravity in respect of a human rights situation, with the appointment of country "representatives" and "experts" respectively usually suggesting a descending degree of seriousness. The appointment of new country rapporteurs and experts is almost always very difficult, with many governments wholly opposed to such a step, either to protect an ally or out of an objection in principle lest they be the next victims singled out for censure in this way. These distinctions in terminology do not, therefore, reflect the objective reality of the human rights situation in question but are rather the outcome of the delicate negotiating process required to reach consensus or at least a majority vote in favour of the appointment of a new country expert.

20) This Special Rapporteur, appointed in 1993, exceptionally has a mandate expressed to continue "until the end of the Israeli occupation of that territory."

ency of methods and there have been great differences in the capabilities of the rapporteurs as well as in their impartiality and independence. The Commission has not proved willing to address these discrepancies objectively and, in fact, it is generally the most competent rapporteurs who are criticized precisely for being too effective (i.e. critical). Basic guidelines on the approach to be taken, the scope of their task, methodology and reporting should be drawn up and applied consistently and the Commission should be willing to address more directly any problems of a lack of independence or lack of competence among its rapporteurs.

The rapporteurs carry out their work by receiving and analyzing information from a wide range of sources, primarily non-governmental, and by carrying out field missions during which they may meet not only with government officials but also with NGOs, victims of human rights violations, representatives of churches, the legal profession, the judiciary and others. It is increasingly common for these rapporteurs to be asked to make an interim annual report to the General Assembly as well as a full report to the Commission on Human Rights. This assists in building pressure on a government by focusing international attention on the situation in question, including in the form of a country-specific UN resolution, twice a year.

Field missions to the country concerned, generally twice a year to enable the preparation of the most up-to-date reports to the General Assembly and the Commission respectively, have long been

accepted to be an essential element of their working methods. Yet, although countries such as Cuba, and more recently Iran, which have denied the rapporteur access for such missions, have been criticized at the General Assembly and the Commission, otherwise these bodies have not taken any other steps to address this flagrant lack of cooperation with the UN. Apart from field missions information-gathering by rapporteurs tends to be passive and based largely on written materials. Although some of them have held briefing sessions in Geneva with NGOs and others having relevant information, they do not generally have the resources themselves either to bring potential contacts to Geneva or to visit refugee or exile communities which could be valuable sources of first-hand information. Widening their information base is particularly important when they are denied access to a country or when contacts based in a repressive country may be too afraid to speak openly to them on a field mission. The reality of this problem is illustrated in the recent report of the Special Rapporteur on Sudan which drew attention to reprisals and harassment against some of the people he met with on his first visit to the country.²¹

The country rapporteurs have not generally or systematically taken up individual cases and, therefore, have not developed any kind of urgent action procedures, although they may report on cases by way of illustration. There have been one or two exceptional circumstances when a rapporteur has been willing to take up particularly grave cases with a government in the exercise of a type of

21) UN Doc. A/48/601, November 1993 at para. 55 et seq. He reports the case of a priest who, after meeting with the rapporteur, was held for five hours at the Security Headquarters in Khartoum and was told "be careful, the Special Rapporteur is now still here, but he will leave in two weeks and you will remain here."

"good offices" function, but this has never been developed or publicized. It could be useful for the country rapporteurs to take up this kind of "good offices" approach more often in serious cases, particularly since they will often have much more frequent contacts with the government than the theme mechanisms which are working globally.

Most governments which are under this form of international scrutiny tend to direct their energies into having the rapporteur's mandate terminated. It is extremely rare to find a government that is genuinely committed to implement seriously the rapporteur's recommendations. Like the theme mechanisms, the rapporteurs are largely dependent on the Commission to exert political pressure on recalcitrant governments. Yet, too often the Commission's response is far more influenced by factors other than the content of the country reports. Furthermore, the day-to-day protective function provided by a country rapporteur who is only in the country for a few weeks every year and who is not actively investigating individual cases is necessarily extremely limited. The effectiveness of the system of country rapporteurs for the protection of human rights lies rather in keeping the particular country situation under close scrutiny on the agenda of the Commission and the General Assembly. This maintains publicity, international pressure and censure which, over time, may contribute to political or other changes which may have a remedial effect on the human rights situation.

With the rapid developments of UN on-site operations in the context of peace-keeping activities, a number of which have included a human rights monitor-

ing component, some of the country rapporteurs have, themselves, begun to formulate proposals for on-site monitors and staff based in the field as a means of developing a more direct and effective protective component to their work as well as a more comprehensive means of gathering information. The Special Rapporteur on the former Yugoslavia has a team of field staff based in the territory and both the General Assembly and the Commission have endorsed the call by the Special Rapporteur on Iraq for on-site monitors, but Iraq has repeatedly made clear its absolute opposition to such a proposal and the UN has made no progress in deploying these. The development of such on-site monitoring operations to work with a Commission rapporteur, managed by the Centre for Human Rights outside of a Security Council-authorized peace-keeping initiative, is likely to be extremely slow in coming although the seeds may have been planted. In their Joint Declaration these mechanisms called for the support of field monitors but a proposal to include in the Vienna Declaration and Programme of Action a recommendation that UN human rights officers be placed as necessary in the field, was radically watered down. The recommendation which emerged provides that such officers might be assigned to regional UN offices but only for the purpose of disseminating information or offering technical assistance and only on the request of the State concerned. No monitoring, information-gathering or investigative functions are envisaged in this recommendation.²²

So far, the most extensive and innovative UN human rights field operations to date have not been developed in the con-

22) Vienna Declaration and Programme of Action, Part II.A, para. 7.

text of the human rights programme at all. They have been authorized by the Security Council or the General Assembly either as part of a larger peace-keeping operation, such as those in El Salvador (ONUSAL) and Cambodia (UNTAC), or as civilian observer missions such as those set up for Haiti (MICIVIH) and South Africa (UNOMSA). In fact, these human rights operations have been established and have functioned without reference to or any direct involvement of the UN's human rights programme, its existing experts or even the Centre for Human Rights. Not only should the human rights bodies of the UN be much more centrally involved in the planning and execution of the human rights components of peace-keeping operations, but they also have a particularly important role to play in the aftermath of a peace-keeping operation when the political and human rights situation may still be extremely fragile and when measures to build and strengthen institutions for the protection of human rights may need to be taken. The special procedures pointed out in their Joint Declaration that they could be a valuable source of information and experience "in proposing overall solutions, particularly in negotiating processes concerned with situations of internal strife." It was with considerable difficulty, however, that the World Conference finally recognized the important role of human rights components in peace-keeping operations and recommended that the Secretary-General "take into account the reporting, experience and capabilities of the Centre for Human Rights and human rights mecha-

nisms..."²³ There remains, however, great resistance within the UN's political bodies to according a meaningful role in peace-keeping operations to the human rights bodies.

The Commission is still very uncertain itself of its role in respect of these operations but it has begun to call for the appointment of UN human rights experts to work alongside some peace-keeping operations while remaining outside the formal structures of the operation. In respect of El Salvador and Somalia, in 1992 and 1993 respectively, the Commission requested the Secretary-General to appoint an Independent Expert to work alongside the on-going peace-keeping operations in those countries. In Cambodia, the Commission had to consider steps to maintain human rights supervision as the main peace-keeping operation was preparing to leave following the planned elections. It did not appoint a Special Rapporteur, even though such a move had been expressly contemplated in the agreements which led to the establishment of UNTAC, but again called on the Secretary-General to appoint a Representative to coordinate a UN presence and for the Centre for Human Rights to develop a programme of advisory services there. The Commission's Special Rapporteur on Haiti continued his work in 1993 even as the unprecedented on-site civilian human rights monitoring mission, set up by the General Assembly, went into operation.²⁴

Although these measures do not adequately address the need for the UN's human rights bodies and the Centre for Human Rights to be much more closely

23) Vienna Declaration and Programme of Action, Part II.E, para. 97.

24) This operation had to be withdrawn in October 1993 as the human rights and security situation deteriorated and the political agreements began to disintegrate.

involved at the outset in the human rights aspects of new peace-keeping operations and in the design and delivery of the human rights components of such operations, they do mark an important first step in bridging the gap and particularly in providing a means to continue to focus international attention on the human rights situation after the main UN operation has come to an end. Although the Commission seems to favour experts appointed by the Secretary-General rather than traditional rapporteurs appointed by the Commission itself, the linkage is established through their reporting function to the Commission and the involvement of the Centre for Human Rights. However, the reports of both the Experts on Cambodia and on Somalia are to be taken up under the advisory services programme²⁵ and the thrust of both Commission resolutions calling for their appointment was very much in the area of provision of assistance, rather than monitoring and investigation, although the Commission did recommend the setting up of a human rights office as part of the Somalia operation, UNOSOM II. In respect of El Salvador, where a Commission rapporteur had previously been functioning, it is interesting that the expert does have a general supervisory mandate over the way in which the parties are implementing the recommendations of ONUSAL and other bodies involved. In the case of Somalia it has been the Secretary-General who proposed a more direct monitoring role for the expert. In his August report on UNOSOM II, the Secretary-General set out a number of new measures to

strengthen the protection of human rights in Somalia and proposed that the expert could act as an ombudsman in connection with programmes to re-establish the judicial system, the prisons and the police. However, the implementation of these measures has hardly begun and the first report of the expert, who had not yet visited Somalia, suggested that he was somewhat at a loss to know what his role should be. He recommended a team of human rights monitors be sent to the country and concluded it was premature to propose advisory services activities in the present climate. If this does not improve, he suggested that his mandate be terminated or changed.²⁶

Much more conceptual thinking, clarifying of objectives and practical planning needs to go into formulating the role and mandates of these experts attached to peace-keeping operations at the request of the Commission. There needs to be good coordination and cooperation between the operation and the expert. It is important that the experts avoid merely duplicating the investigative role of the operation itself or, where this does not exist, that they are used as a substitute for an on-site human rights monitoring component that should be an integral part of the formal structures of the operation. However, the Commission must not ignore the need for a monitoring function as part of their mandate where this is necessary, particularly after the main operation is terminated. Being independent of the main operation, these experts may have a useful role to play in training and monitoring of UN personnel; for ex-

25) The Commission has proved unable to agree on whether the report of the Expert on El Salvador should be considered under advisory services or the item on violations; this issue remains open for decision at the 1994 session.

26) UN Doc. A/48/510, October 1993.

ample, serious questions – which require investigation – have been raised recently about the use of lethal force by UN troops in Somalia and about UNOSOM's actions in holding detainees without any legal or other safeguards. Oversight and management of advisory services and technical assistance by the experts may also very well be needed, but this is more likely to be in the later stages of an operation, or even after it leaves, when country experts might formulate and provide the continuity for an appropriate post-conflict UN role.

The blurring of protection and the provision of assistance, now potentially problematic in the peace-keeping context, has, for some time, generated confusion in the traditional role of country rapporteurs. The advisory services programme, which is aimed at offering advice and technical assistance in the field of human rights, is premised on cooperation and a willingness by a government to introduce reforms and improvements for which it is seeking advice and help. It is perceived as non-confrontational and non-condemnatory and as something for which a requesting government is to be commended and encouraged. As a result, in respect of certain country situations where it has appeared to be impossible to generate sufficient political support at the UN for stronger measures, such as the appointment of a country rapporteur, the Commission has sometimes resorted to appointing a country expert under this programme with a mandate only to advise and assist the government in its efforts. Increasing criticism of this practice in respect of countries with very serious human rights problems led to a compromise option whereby an advisory services country expert was simultaneously given a wider human rights monitoring and reporting mandate. These hybrid

mandates which have been used would appear to be inherently incompatible – requiring the expert to act simultaneously as critical investigator and friendly adviser. It is also an option which encourages governments to request advisory services, not from any genuine commitment to improving human rights protection but simply to avoid stronger condemnation by the Commission in the form of a country rapporteur appointed under the 1235 procedure.

This technique has been used at various times in the case of Equatorial Guinea, Guatemala and Haiti. The appointment of an expert with an investigative function has meant that the Commission has had before it extensive and often very grim reports of the human rights situation in these countries – reports that, in the case of Haiti and Equatorial Guinea, at least, were instrumental in having those countries finally moved out of the advisory services programme and taken up under the more appropriate 1235 procedure with a traditional country rapporteur appointed. Guatemala, on the other hand, has remained under the advisory services programme, although, for the past few years, the Commission has left open at the end of each session the agenda item under which the expert's report on Guatemala might be considered next time. It is, certainly, important that full account is taken of the human rights situation when advisory services and technical assistance are to be offered. However, such an evaluation should be done before assistance is offered. It should be carried out by a country expert with a clear investigative mandate to report on the full human rights situation and the appropriateness or not of providing advisory services in those circumstances. If it is evident that the human rights situation is sufficiently seri-

ous to warrant continued monitoring, that should be continued by a country rapporteur whose role and functions should be kept distinct from any advisory assistance that it may also be appropriate for the UN to provide.

Future Development of the Special Procedures

The World Conference took little account of the system of special procedures but, given the negative political climate which overshadowed this Conference from the outset, this was almost certainly advantageous from their point of view. The Vienna Declaration and Programme of Action contains only the briefest pedestrian paragraph, ignoring all the new elements referred to in their Joint Declaration with the exception of a qualified endorsement of regular periodic meetings:

"The World Conference on Human Rights underlines the importance of preserving and strengthening the system of special procedures, rapporteurs, representatives, experts and working groups of the Commission on Human Rights and the Sub-Commission on Prevention of Discrimination and Protection of Minorities, in order to enable them to carry out their mandates in all countries throughout the world, providing them with the necessary human and financial resources. The procedures and mechanisms should be able to harmonize and rationalize their

work through periodic meetings. All States are asked to cooperate fully with these procedures and mechanisms."²⁷

There was no clearer indication of the determination of many governments, particularly those that feature in their reports, to avoid at all costs any steps towards strengthening them, endorsing more flexible and effective methods of work or placing them on a firmer institutional basis within the UN system. Furthermore, by bringing to the fore the deep and fundamental tensions surrounding international action for the protection of human rights and throwing a spotlight onto the human rights machinery, the World Conference may actually have fomented attempts to undermine these mechanisms. It was certainly no accident that it was at the 1993 Commission session, which took place immediately before the final difficult and divisive preparatory debates of the Conference, that a resolution was adopted drawing attention to the proliferation of international mechanisms making demands on member states for information and reports.²⁸ It called for a report to be presented to the 1994 session detailing *inter alia* all the original mandates of the treaty-based and non-treaty mechanisms; the international standards on which the non-treaty mechanisms base their work; their procedural rules and admissibility criteria; and full details of their methods of work. This move may foreshadow a more serious attack on the special procedures and recalls earlier attempts to rein them in. It was accompanied by another resolution²⁹

27) Vienna Declaration and Programme of Action, Part II.E, para. 95.

28) Commission Resolution 1993\58, introduced by Cuba and adopted by 33 votes in favour, 16 against and 3 abstentions.

29) Commission Resolution 1993\94.

criticizing the present geographical imbalance in the selection of rapporteurs and recalling that their reports should not exceed 32 pages and should be available six weeks in advance of the Commission sessions, which, if strictly enforced, could preclude the common practice of the country rapporteurs at least of carrying out a second field mission in December, after presenting their interim report to the General Assembly, in order to provide the Commission with the most up-to-date picture of the situation.

There are, however, elements in the Vienna Declaration and Programme of Action which are important for the special procedures and which reinforce their work in more oblique ways. These include the reaffirmation of the principle that human rights protection is a priority objective of the UN and a legitimate concern of the international community (by implication endorsing the role of international protection mechanisms); the call for increased coordination in respect of human rights issues within the whole UN system; the general demand for substantially increased resources for the human rights programme, the Centre for Human Rights and specifically for the special procedures; the need for the Commission to give priority to following-up on the recommendations of the special procedures; recognition of the need for improving UN response to human rights emergencies; the insistence that States must implement international standards; the focus on the problems of impunity and other specific violations; and the call for a more active role for the UN in protecting human rights in armed conflict.³⁰ The longer

section on torture particularly reinforces the role of the Special Rapporteur on Torture and includes a call for full cooperation by States with this rapporteur.³¹

There are, however, a number of issues which still must be addressed more directly in order to give the special procedures a secure foundation, to enable them to carry out effective work and to provide a measure of protection against the political slings and arrows that may be directed at them from time to time by disaffected governments.

They need a coherent structural and administrative framework within which to operate and to facilitate closer cooperation and coordination amongst themselves, as well as between these procedures, the other human rights machinery and other UN bodies. In their Joint Declaration they called for their institutional integration into the overall work of the UN and for improved coordination between the mechanisms themselves, as well as between them and the treaty-based bodies and the rest of the UN system. Regular periodic meetings, called for in their Declaration and one of the few concrete proposals supported in the Vienna Declaration and Programme of Action, would be a first step, enabling them to share information, to discuss methods of work and effective techniques, to identify and plan joint missions and to adopt common approaches to political or administrative problems they may face.

The Commission should take their reports more seriously and give greater political weight and support to their recommendations. It should act more consistently and effectively in response to grave

30) See, generally, the Vienna Declaration and Programme of Action Part I, paras. 6, 30 and Part II, paras. 1, 8-12, 14, 15, 83, 91, 92.

31) *Ibid.* Part II, paras. 54-61.

situations reported to it. They should be *recognized as an integral component* of the UN's human rights framework and have an established role in standard-setting and implementation, in UN early warning and prevention mechanisms, in the design, delivery and follow-up of the human rights components of peace-keeping operations and other field missions, and in the *integration of human rights considerations into other UN programmes*, such as in the area of development. Their reports should be much more widely publicized, disseminated and used, both within the UN system and in the outside world. There should be more flexible exchanges of information, particularly between the *mechanisms and UN field operations*, and they could also make more use of the media, especially in urgent or critical situations, where public awareness and pressure can be an indispensable protective tool.

Fundamental to the entire future direction of their work, however, is the critical question of resources. The human rights programme is chronically under-resourced and this impacts acutely on these mechanisms which often deal, quite literally, with matters of life and death. All of them work on a *pro bono* basis and depend heavily on adequate staffing to process and follow-up on cases, to assist in the preparation and carrying out of field missions and to prepare timely and complete reports. Their extensive work must be professional, detailed and accurate and requires the latest technology in communications equipment and in information retrieval and storage systems. It is intolerable that many NGOs are now much better equipped and resourced, comparatively speaking, than are these mechanisms. Their Declaration reflected a note of desperation in this respect:

"we sometimes appear ineffective in critical situations simply because the most basic support structure is not available, or because of inexcusably bureaucratic attitudes in administrative and budgetary offices of the Secretariat. How can we allow piles of individual cases to go unprocessed and unanswered because of inadequate human and material resources? If this continues, what will be the meaning of the catalogue of standards? Moreover, in terms of financial resources, what we are speaking of seems almost ridiculous given the minimal sums at stake compared to the overall resources of the United Nations."

The steady increase in the creation of new special procedures with no corresponding increase in human and financial resources threatens to seize up the entire system. Although the Vienna Declaration and Programme of Action stressed the need for increased resources for the human rights programme this still proved to be a major battle at the last session of the General Assembly and the increases in the pipeline are still insufficient to alleviate fully a dire situation and one which will deteriorate further if new mechanisms are appointed without adequate resources. This question of resources will continue to be the critical test of the commitment of governments and the UN to making the special procedures into an integral and effective component of any future system of human rights protection.

The High Commissioner for Human Rights and the Special Procedures

The proposal to establish a High Commissioner for Human Rights is one which

has long been debated at the UN and its origins considerably precede not only the development of the special procedures but also the adoption of the extensive framework of human rights treaties and standards which now exists. Indeed, when debates on a High Commissioner had reached a stalemate in the 1970s the incremental development over the next decade or so of the thematic and country-specific mechanisms filled the gap with the establishment of a range of different procedures being apparently a more productive approach to the gradual building of a comprehensive system of human rights protection.

The revival of the idea of a High Commissioner in the context of the World Conference on Human Rights, which was largely promoted by the non-governmental community,³² was not enthusiastically embraced by many governments. As noted above, some governments were seeking to avoid any new measure which might turn a stronger spotlight on their own shortcomings in human rights protection, while others feared that any attempt to reform and improve the existing system would only open it up and render it vulnerable to attack. Some felt that a High Commissioner would be used to argue that the special procedures, in particular, were redundant and their roles should be subsumed into that of this new human rights suprema. It was ironic, therefore, that it was only in the face of

this stalemate and dearth of ideas that the proposal for a High Commissioner began to gain currency and support in the run-up to Vienna, precisely as a means to fill the vacuum left by the absence of other concrete proposals for advancing the promotion and protection of human rights within the existing system. Public pressure and expectation was growing for some bold new initiative to emerge from the Conference and the call for a High Commissioner began to be taken up by an increasing number of governments, embarrassed by the almost total failure of the preparatory debates to address matters of substance. Those governments who remained adamantly and consistently opposed to new international human rights initiatives turned out to be surprisingly few and found themselves increasingly isolated.

Although it did not prove possible in Vienna to secure a firm endorsement by the World Conference of the establishment of a post of High Commissioner, consensus was finally reached on a recommendation, in the final document, to the General Assembly to take up the question. The critical element was that the Assembly was called upon to take this up at its very next session, due to open two months after the Conference, and to do so as a matter of priority. Fuelled by intensive NGO lobbying and increasing media interest, attempts by some governments to stall the debate or

32) The establishment of a High Commissioner was called for by a number of NGOs individually and was adopted as a recommendation at many non-governmental and expert preparatory events. It also emerged as one of the key recommendations from the NGO Forum which preceded the World Conference (see UN Doc. A/CONF.157/7). Amnesty International took up the proposal for the establishment of a High Commissioner for Human Rights as one of its primary objectives for the World Conference and submitted a paper to the Conference discussing the principal lacunae of the current system, which a High Commissioner could address, and detailing the main characteristics and functions of such a post. See "Facing Up to the Failures: Proposals for Improving the Protection of Human Rights by the United Nations", AI Index: IOR 41/16/92, December 1992.

to drag it on interminably into the following year were overcome and the resolution to establish a High Commissioner for Human Rights was finally adopted by consensus on 20 December 1993.

This historic decision establishes the High Commissioner for Human Rights at the rank of Under-Secretary-General to be the official with principal responsibility for all the UN's human rights activities and to ensure the promotion and protection of the full range of rights – civil and political and economic, social and cultural rights. The Secretary-General's appointment of a Commissioner, who is to be a person of high moral standing and personal integrity with expertise in human rights and an understanding of diverse cultures, is to be approved by the General Assembly. The individual will serve a four-year term, renewable once, and is to be provided with adequate staff and resources to fulfil the mandate. The Commissioner is to play an active role throughout the world in meeting the challenges of the full realization of all rights and in preventing violations and her/his mandate includes engaging in dialogue with governments, enhancing international cooperation, coordination of all human rights activities throughout the UN system, promoting realization of the right to development, overall supervision of the Centre for Human Rights, rationalizing and strengthening the human rights machinery, coordinating education and public information programmes and providing advisory services and technical assistance.

Of course, the resolution bears all the hallmarks of compromise and negotiation that were to be expected in the creation of such a post. Yet, it is worded sufficiently flexibly and broadly to ensure that the High Commissioner will have a key role to play in both promotion and pro-

tection activities and in respect of the full range of rights. The High Commissioner, as a high-ranking official with political status, authority and reasonable continuity of service, reporting to the Commission and, through ECOSOC, to the General Assembly, should be in a position to revitalize and develop an effective and strengthened programme which would, in turn, have a beneficial impact on the machinery operating within it, including the special procedures. The High Commissioner will have the authority to address a number of the shortcomings and weaknesses which currently undermine the special procedures, and which have been discussed above. Equally, there is no reason to assume that the establishment of this post will necessarily lead to any weakening of the special procedures or, indeed, other machinery. First, the human rights landscape is now radically different from the way that it looked when the idea of a High Commissioner was first debated in the UN and it is unthinkable to argue seriously that a single High Commissioner could take over all or even large parts of the activities of the existing machinery. Second, the High Commissioner's role is clearly envisaged as one of high-level oversight, coordination and integration, not the carrying out of the day-to-day tasks of the human rights programme which must continue to be done by the various experts, working groups, committees and other structures. Third, as the official with overall supervision of the Centre for Human Rights and working within the framework of the decisions of the General Assembly, ECOSOC and the Commission on Human Rights, there is a clear and rational relationship established between the High Commissioner and the existing machinery which should enhance the development of a coherent

and strengthened programme. Fourth, although the High Commissioner has the task of rationalizing, adapting, strengthening and streamlining the machinery, this has to be done "with a view to improving its efficiency and effectiveness."

Naturally, much will depend on the individual to be appointed, particularly the person who will become the first High Commissioner and who will play a key formative role in shaping the nature and direction of this post. The existing system must prove to be resilient enough to preserve its strongest aspects and to benefit from an effective, competent and committed High Commissioner but also to

withstand a weak or ineffective one. If this post is exploited to its fullest extent by a bold and creative first Commissioner, genuinely committed to advancing the UN's role in the protection of human rights, this could prove to be one of the most far-reaching and significant consequences of the World Conference; the High Commissioner does, indeed, have the potential to be the lynch-pin of a re-structured, coherent, coordinated and effective UN human rights programme if she or he is willing to take up this challenge and is given the necessary political and administrative support to do so.

A System of International Criminal Prosecution is Taking Shape

Christian Tomuschat*

I Introduction

It is a well-known deficiency of international law that it lacks effective enforcement mechanisms. Traditionally, the international system was conceived of as a network of bilateral relationships between sovereign States. In case of a violation of its duties by one of these actors, the aggrieved party was entitled to take reprisals or, in modern terminology: counter-measures. Yet, with regard to armed aggression, the law was not even on the side of the victim since the classical international law of the 19th century did not ban war¹. Also, nobody ever harboured the illusion that a weak State could prevail against a strong power.

After the First World War had shown that minimum world order could not be maintained without some collective institutions, efforts were undertaken to ensure peaceful coexistence of States by establishing the League of Nations. The League could not prevent the outbreak of the Second World War; but, at its end, a number of major decisions were taken with a view to ensuring international peace and security. First, the substantive law was strengthened. The principle of non-use of force (Article 2 (4) of

the UN Charter, henceforth: Charter) sought to bring about a dramatic change in international relations from a latent climate of violence to a new culture of dialogue in settling disputes. Notwithstanding the outlawing of force as a legitimate means of pursuing national policies, the international community agreed on the necessity of framing new and better rules of conduct in armed conflict, taking into account the bitter experiences of the recent past². At the same time, it was acknowledged that the letter of the law alone was not enough to shape realities, it being necessary to create institutions for its implementation. Thus, the UN Security Council (henceforth: Security Council) was mandated to see to it that international peace and security be respected on a world-wide scale. Additionally, in order to impose retribution for the crimes committed during the war period and to erect a signpost of deterrence for the future, the major war criminals of Germany and Japan were put on trial in Nuremberg and Tokyo³.

The idea to render individuals personally responsible for criminal actions they have engaged in, not in their private capacity, but primarily as governmental agents, was not a new one by 1944/1945.

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1) I. Brownlie, *International Law and the Use of Force by States*, 1963, p. 20.

2) Geneva Conventions I to IV on humanitarian law of armed conflict, of 12 August 1949.

3) For a short account see H.-H. Jescheck, *Nuremberg Trials*, in: *Encyclopedia of Public International Law*, Vol. 4 (1982), pp. 50-57, and B. V. A. Röling, *Tokyo Trial*, *ibid.*, pp. 242-245.

After the First World War, the victorious powers had agreed (Article 227 of the Treaty of Versailles) to put on trial the German Kaiser. Much to their relief, the Kaiser fled to the Netherlands, which refused to surrender him for purposes of criminal prosecution. In fact, it would have been hard to imagine on what grounds the German head of State could have been indicted. The situation was totally different in 1945. The atrocities planned and ordered, in particular by the leaders of Nazi Germany, struck at the very heart of mankind as a community of human beings. Murder, extermination of ethnic groups, deportation and enslavement were all crimes according to the principles of criminal law common to civilized nations⁴. The question not really resolved by the Nuremberg judgment was whether the planning and launching of a war of aggression, over and beyond being an internationally wrongful act, was already in 1939 an action entailing individual criminal responsibility⁵.

The UN General Assembly (henceforth: General Assembly) formally endorsed the principles underlying the Nuremberg and Tokyo judgments⁶. Moreover, it embarked on drafting the statute of an International Criminal Court designed to generalize the lessons to be drawn from the trials of the German and

Japanese war criminals. Rightly it was felt that individual responsibility, as opposed to the somewhat abstract responsibility of States as collective entities, would lend teeth to international rules on minimum standards of civilization and could, therefore, operate as a powerful deterrent. But a draft prepared by a special committee in 1953⁷ was not acted upon. The official explanation put forward was that the substantive law – a Code of Offences against the Peace and Security of Mankind – had to be elaborated first. This project, in turn, was postponed until the completion of a definition of aggression, which was to become the centrepiece of the Code. In reality, the primary reason impeding any substantial progress were tensions engendered by the Cold War.

The year 1993 saw a dramatic shift in the stalemate which had paralyzed the United Nations for four decades. By resolution 827 (1993) of 25 May 1993, the Security Council established the "International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991" (henceforth: Yugoslavia Tribunal)⁸, and shortly afterwards the International Law Commission (ILC) presented a complete draft statute of an

4) The Charter of the International Military Tribunal, which defined the offences to be prosecuted, was an annex to the Four Power Agreement for the prosecution and punishment of the major war criminals of the European Axis, of 8 August 1945, UNTS 82, p. 279.

5) See, for instance, Ch. Bassiouni, A Draft International Criminal Code and Draft Statute for an International Criminal Tribunal, 1987, p. 3; H.-H. Jescheck, International Criminal Law: Its Object and Recent Developments, in: M. Ch. Bassiouni/V. P. Nanda, A Treatise on International Criminal Law, Vol. I, 1973, p. 49, at 62-63.

6) Resolution 95 (I) of 11 December 1946.

7) UN doc. A/2645. For a summary see UN Yearbook 1953, pp. 683-686, for the consideration by the General Assembly, UN Yearbook 1954, pp. 430-433.

8) The Statute of the Tribunal is annexed to this resolution. It reproduces *in extenso*, without any modification, the report established by the Secretary-General in compliance with Security Council resolution 808 (1993) of 22 February 1993, UN doc. S/25704 of 3 May 1993.

International Criminal Tribunal (ICT)⁹. The Yugoslavia Tribunal is currently being transformed from its legal existence into an operative body. From 15 to 17 September 1993, the 11 judges were elected by the General Assembly. One month later, the Security Council appointed the Prosecutor. Now suitable premises have to be found at The Hague, the seat of the Tribunal, and staff is required to service it. On the other hand, the draft statute elaborated by the ILC has met with an extremely positive response by the General Assembly. The ILC is planning to review its text in light of the comments received from governments, completing its second reading of the statute during its 46th session in 1994.

It is a combination of several factors that has given fresh momentum to the efforts towards the establishment of international machinery for imposing criminal sanctions on persons guilty of international crimes. In 1989, the General Assembly had for the first time explicitly requested the ILC to address the issue of establishing an international criminal court with jurisdiction to try persons alleged to have committed international crimes¹⁰. The background of this resolution was an initiative by Trinidad and Tobago which called for an international mechanism to assist States in dealing with international drug trafficking, an activity whose side-effects threatened to poison, like a cancerous organ, the whole texture of civilized society in many Latin

American and Caribbean countries. Thus, for the first time, Third World countries had an actual interest in seeing an international criminal court being established. Shortly afterwards, the Gulf War highlighted the fact that, even if the Iraqi leader Saddam Hussein had been arrested, there was no international criminal jurisdiction competent to try him for the grave breaches of the international legal order he had undoubtedly committed. Furthermore, the controversy between Libya, on one hand, and the United States of America and the United Kingdom, as well as the United Nations, on the other, over the surrender of, the suspected authors of the bombing of the American jetliner at Lockerbie in Scotland on 21 December 1988 again underlined the urgent need for an international criminal court supported by the entire world community and thus exempt from any doubts as to the impartiality and objectiveness of its proceedings¹¹. But, lastly, it was the unspeakable horrors of the armed conflict in the former Yugoslavia, with its defiance of any standards for the protection of the civilian population, that generally changed the prevailing views on the necessity to complement the existing institutional framework for the upholding of fundamental tenets of civilization also by way of a criminal mechanism – which can be no other than a true court, surrounded by all the guarantees which international human rights law affords to an accused person.

9) Report of the International Law Commission on the work of its forty-fifth session, 3 May-23 July 1993, General Assembly Official Records, 48th session, Suppl. No. 10 (A/48/10), pp. 258 et seq. Formally, the draft, as the outcome of the deliberations of a Working Group, has not yet been approved by the ILC as a plenary body.

10) Resolution 44/39.

11) See C. Tomuschat, *The Lockerbie Case Before the International Court of Justice*, *The ICJ Review*, No. 48/1992, pp. 38 et seq.

II Main Features

1 Composition and Structure

The 11 members of the Yugoslavia Tribunal will form two Trial Chambers with three judges each and one Appeals Chamber with five judges. It is clear that before any judicial activity can begin, a large amount of time will pass since the preparation of the first indictments by the prosecutor will require great care and effort. The ILC suggests that the court, the judicial component of the overarching structure of the ICT, should consist of 18 judges, acting in Trial Chambers of five and an Appeals Chamber of seven judges. Provision is also made for a public prosecutor's office, headed by a prosecutor, which the ILC has termed the "Procuracy" (Articles 5, 13).

2 Establishment and Legal Foundations

A treaty is the usual instrument of international regulation. Indeed, the ILC suggests that the statute of the ICT conceived by it should be adopted as an international convention. In the case of the Yugoslavia Tribunal, the treaty-making process would hardly have been suitable. First of all, the time factor had to be taken into account. To negotiate the text of an international agreement at the worldwide level is tantamount to involving all States members of the United Nations and, hence, requires a considerable amount of time. Furthermore, treaties generally produce legal effects only with regard to those States which have ac-

cepted them. With specific regard to Yugoslavia, therefore, the question would have arisen whether all new States in the territory of the former Yugoslavia should ratify a treaty establishing the planned tribunal before that treaty could enter into force. If the answer was in the affirmative, any power anxious to avert international criminal sanctions could easily frustrate the aims of the international community by simply withholding its consent. However, many persuasive reasons show that no single State enjoys such a blocking potential. According to the Geneva Conventions of 1949, every State party has the right to prosecute the authors of grave breaches of their provisions. Thus, if any State acting individually is in a position to put on trial persons alleged to have committed war crimes, there can be no legal obstacle to States embarking on a common initiative to set up a scheme for the repression of war crimes. Such an approach was recommended by a group of CSCE rapporteurs¹². They proposed that a criminal jurisdiction for Yugoslavia be established by virtue of a treaty to be concluded under the auspices of the CSCE. But, however harmful they may have been, delays had to be reckoned with. By being committed to a treaty, the initiative to send a strong signal of deterrence risked being doomed to the very outset.

It is against a background of such considerations that the idea emerged to adopt the statute of the Yugoslavia Tribunal by a resolution of the Security Council under Chapter VII of the Charter¹³. Nowhere do the provisions of Chapter VII contemplate explicitly the estab-

12) Corell/Türk/Thune, Proposal for an International War Crimes Tribunal for the Former Yugoslavia, 9 February 1993, pp. 41-43.

13) The French proposal for the establishment of an ICT, UN doc. S/25266, 10 February 1993, was the first one to recommend a Security Council resolution (paras. 34-40).

ishment of a criminal jurisdiction. Yet, the mandate of the Security Council is a fairly broad one. The Charter entrusts it with ensuring international peace and security (Article 24 (1)) and vests it with powers of decision for that purpose under Chapter VII. Article 41, which contemplates sanctions short of war, is not exhaustive in enumerating the measures which the Security Council is authorized to take ("These may include...").¹⁴ A criminal jurisdiction, whose primary aim is to serve as a deterrent against violations of rules of conduct in armed conflicts, fits perfectly well into the philosophy of a set of rules designed to prevent dispute settlement by forcible means. However, the question may be legitimately asked if Chapter VII does not have certain inherent limitations. In a recent article, Bernhard Graefrath argues that the Security Council has been entrusted only with powers to put an end to an actual act of aggression or breach of the peace while lacking authority to deal substantively with the underlying root-causes of a conflict¹⁵. In his view, dispute settlement is generally a task under Chapter VI, where the Security Council is confined to issuing (non-binding) recommendations, whereas Chapter VII may be resorted to exclusively with regard to the forcible means and methods of an ongoing dispute.

In order to refute Graefrath's thesis, it is not enough to point to the recent practice of the Security Council. Resolution 687 (1991), which dictated the conditions of peace the UN required Iraq to comply with, might also be questioned as to its

lawfulness. The main argument against a narrow construction of Chapter VII can be derived from the nature of the mandate entrusted to the Security Council. It seems rather artificial to draw a strict dividing line between measures directly aimed at maintaining or restoring peace and other measures intended to address the causes and effects of a state of affairs falling under the criteria listed in Article 39. It is not by accident that the drafters of the Charter extended the scope of action of the Security Council under Chapter VII also to situations revealing a "threat to the peace" which is a state of affairs far from the actual outbreak of armed hostilities. Of course, a clear causal connection must exist. But, apart from the wide discretionary power of the Security Council to assess the relevant facts, such a connection springs to the eyes in the case of Yugoslavia. If conscientiously administered and supported by a resolute political will of the international community, the Yugoslavia Tribunal can make an important contribution to restricting, humanizing and even ending the current conflict in the country.

The Yugoslavia Tribunal constitutes, by necessity, a subsidiary organ of the Security Council under Article 29 of the Charter. Yet, it is wrong to argue that, in accordance with the Roman dictum "*nemo plus iuris transferre potest quam ipse habet*", the Tribunal cannot have any powers with which the Security Council is not vested¹⁶. Being a political organ, the Security Council could never pretend to issue judicial pronouncements. The jurisprudence of the International

14) P. M. Elsemann, in: J.-P. Cot/A. Pellet (eds.), *La Charte des Nations Unies*, 2nd ed., 1991, p. 695; J. A. Frowein, in: B. Simma (ed.), *Charta der Vereinten Nationen*, 1991, p. 579.

15) *Jugoslawientribunal - Präzedenzfall trotz fragwürdiger Rechtsgrundlage*, *Neue Justiz* 47 (1993), p. 433, at 434-435.

16) Graefrath, *loc. cit.*, p. 435.

Court of Justice (ICJ) has made clear, however, that no such necessary correlation exists between the nature of the parent body and the nature of its creations. In the case of the UN Administrative Tribunal, the ICJ held that, inasmuch as such a jurisdiction was necessary for the effective protection of UN staff, the General Assembly was implicitly authorized to give birth to it and to endow it with powers of decision which it, itself, was lacking¹⁷. If it can be shown that, in order to restore peace and security in Yugoslavia, the establishment of a criminal jurisdiction would be a helpful measure, then it would be fully in consonance with the object and purpose of the Charter to grant to that institution, the Yugoslavia Tribunal, all the powers with which a penal court is normally endowed and which are necessary for the effective discharge of its mandate.

Given the difficulties inherent in the treaty-making process, it could also be tempting to establish the general ICT contemplated in the ILC draft by virtue of a resolution of the Security Council. Such a strategy, however, would clearly exceed the confines of the authority enjoyed by the Security Council under the Charter. It might still be maintained that an ICT, created *ex ante* with a view to dealing with crimes related to situations which jeopardize international peace and security, constitutes a mechanism designed and suited to assist the Security Council in exercising its mandate. On the other hand, however, the existence of a permanent ICT with general jurisdiction over a core group of international crimes

would fundamentally alter the institutional framework created by the drafters of the Charter who made provision for just one international judicial body, namely the ICJ, whose jurisdiction still has to be accepted by States and does not exist automatically by virtue of their becoming members of the UN. An ICT with compulsory jurisdiction would thus be placed on a higher rank than the ICJ with its dependence on the sovereign will of States. It is inconceivable to characterize such a body as a subsidiary organ in accordance with Article 29¹⁸.

Given this linkage with the internal structure of the UN, it is certainly not too far-fetched to think of making an ICT part and parcel of the Charter by way of an amendment¹⁹. It would suffice to include a short provision in the Charter itself and refer the statute to an annex, following the model of the Statute of the ICJ. This legal technique has one great advantage. Pursuant to Article 108 of the Charter, amendments come into force for all UN members as soon as they have been approved by two thirds of the members, including all permanent members of the Security Council. In other words, the procedure under Article 108 of the Charter would provide a much larger basis of legitimacy than a simple resolution of the Security Council. On the other hand, it does not require unanimous consent. The ICT would also become effective *vis-à-vis* third parties attempting to evade its jurisdiction. On the basis of the famous agreed statement of the founding conference of San Francisco, a State objecting to an amendment of the Charter

17) Advisory opinion of 13 July 1954, ICJ Reports 1954, p. 47, at 57, 61.

18) See French proposal, *loc. cit.* (note 13), para. 33.

19) Rightly suggested by the International Commission of Jurists in its brochure "Towards Universal Justice", 1993, p. 26.

adopted against its will might leave the UN²⁰. But such a withdrawal entails heavy political costs and will, therefore, not be decided upon lightly by any State. Additionally, if all regions of the world support an ICT, which is the basic requirement of a Charter amendment, any single State that takes an outside position isolates itself from the international community and manifests that it is not prepared to share the philosophy of peaceful coexistence enshrined in the Charter. In doing so, it would considerably damage its international standing.

3 Natural Persons as Defendants

Both the Yugoslavia Tribunal and the ICT are to deal exclusively with natural persons. To make organizations responsible under criminal law would raise complex problems and does not add much to the potential of retribution and deterrence which an international criminal jurisdiction is intended to mobilize. In particular, criminal responsibility of States could not significantly differ from the traditional regime of State responsibility. Realistically, it would amount to increasing the gravity of the legal consequences of internationally wrongful acts. This, however, would lead into an impasse. No State is an abstract entity. It constitutes the organizational structure of a people having established governmental machinery for itself. In most cases, international crimes are committed by the members of that governmental superstructure. It is doubtful whether a people – and in par-

ticular its new generations – can be legitimately burdened with comprehensive duties of reparation related to the actions of a ruling oligarchy that has criminally abused its leading role²¹. In this regard, the right of every people to existence²² requires careful consideration.

4 *Nullum crimen, nulla poena sine lege*

Under the auspices of the Rule of Law or the *Rechtsstaat*, the prosecution of persons charged with international crimes is bound to respect the maxim *nullum crimen, nulla poena sine lege*, as it is now enshrined, in particular, in Article 15 of the International Covenant on Civil and Political Rights. The actual application of this rule to international criminal prosecution, though, gives rise to considerable difficulties. In the first place, it must be asked whether the existence of an international legal rule characterizing specific conduct as punishable can be deemed sufficient or whether the guarantee of *nullum crimen* presupposes that there be a legal prohibition of domestic law addressing the individual at the time when he or she committed the relevant unlawful act. In this regard, formalistic thinking should not prevail. The rationale of the *nullum crimen* principle can be easily identified. Everyone should be able to know exactly the line dividing lawful from criminal conduct. In the case of international crimes, however, as described in the statute of the Yugoslavia Tribunal and the ILC draft, one is faced with human behaviour that, to use the terms of

20) UNCIO VII, p. 262, at 267.

21) It has already become apparent that the responsibility of Iraq for all of the damages caused by its aggression on Kuwait, as determined by Security Council resolutions 674 (1990), para. 8, 686 (1991), para. 2, 687 (1991), para. 16, is unenforceable.

22) African Charter of Human and Peoples' Rights, 1982, Article 20.

the Martens clause²³, runs counter to "the usages established among civilized peoples, (...) the laws of humanity, and the dictates of the public conscience". No one who has committed an act of such a nature can claim that he or she erroneously considered it to be unobjectionable. It is precisely the object and purpose of the concept of international crime to exclude any defence based on a perverted domestic legal order. Otherwise, the international community would have no instruments at its disposal to counteract attacks by a tyrannical political system on the very foundations of the family of human beings. One caveat, however, must be clearly expressed. The doctrine of direct criminal responsibility of the individual under international law has, as its precondition, that international crimes be kept within strict confines. Policies and practices like *apartheid* that are not universally acknowledged as offences, notwithstanding their character as wrongful conduct under international law at the inter-State level, may not entail individual criminal responsibility *qua lege internationale*.

A fine expression of the requirements that must be fulfilled can be found in Article 26 (2) (a) of the ILC draft which, leaning on Article 53, describes an international crime other than a crime defined by treaty as "a crime under general international law, that is to say, under a norm of international law accepted and recognized by the international community of States as a whole as being of such a fundamental character that its violation gives rise to the criminal responsi-

bility of individuals."

In accordance with the philosophy just set out, the *nullum crimen* principle does not exclude criminal prosecution based on customary international law. It is a truism to say that customary law is less precise than written law. But deeds abhorred by the conscience of the international community can be recognized as such by every human being. It is for this reason that the Nuremberg and Tokyo judgments based themselves *inter alia* on unwritten rules. The Statute of the Yugoslavia Tribunal proceeds from the assumption that all the categories of criminal acts it lists, which are taken from the relevant international treaties on humanitarian law, have passed into the corpus of general international law and are thus binding on every State, including anyone of its nationals²⁴.

It should not be overlooked, however, that neither the Statute of the Yugoslavia Tribunal nor the ILC draft statute are meant to constitute substantive criminal law. They are both confined to specifying the jurisdiction of the court concerned. Thus, the judges are by no means relieved of the duty to verify whether, indeed, an alleged offender can be held accountable for the commission of one of the acts enumerated in the jurisdiction clauses. However, the approval of the Statute of the Yugoslavia Tribunal by the Security Council provides strong evidence for the view that the conduct described in those clauses may be rightly classified as falling within the purview of international crimes entailing direct responsibility.

23) Convention (No. IV) Respecting the Laws and Customs of War on Land, 18 October 1907, preamble, para. 8.

24) Report of the Secretary-General, UN doc. S/25704, para. 35.

5 Categories of International Crimes

A closer look at the Statute of the Yugoslavia Tribunal reveals that it first (Article 2) mentions grave breaches of the Geneva Conventions III and IV, following textually the wording of the relevant provisions (Articles 130 resp. 147), moves then on (Article 3) to embodying the essential substance of Articles 23, 25, 27 and 28 of the Hague Regulations respecting the Laws and Customs of War on Land²⁵, sets forth genocide as an international crime by reproducing the language of the Convention on the Prevention and Punishment of the Crime of Genocide (Article 4) and finally includes crimes against humanity (Article 5). To explain the legal background of crimes against humanity, the report of the Secretary General makes reference to the Charter and the Judgment of the Nuremberg trial, as well as to Law No. 10 of the Control Council of Germany. It is from this latter text that imprisonment, torture and rape have been taken as additional categories of conduct representing "inhuman acts committed against any civilian population." Unfortunately, the atrocious phenomenon of "ethnic cleansing" has not been clearly addressed²⁶. Another striking feature is the apparent contradiction between the commentary on the article and its text. Whereas the commentary explains that crimes against humanity "are prohibited regardless of whether they are committed in an armed conflict", the wording of Article 4 makes

commission in armed conflict a precondition of its coming under the jurisdiction of the Tribunal. This divergence may only be explained as an implication of the general mandate of the Tribunal, which is to prosecute persons responsible for serious violations of international humanitarian law. Thus, the Security Council shows its acute awareness of the need to remain within the bounds of the function assigned to it, namely to maintain international peace and security.

It is striking that the Yugoslavia Tribunal has not been granted jurisdiction to deal with the crime of aggression, although this crime is eminently relevant in the current historical situation. One will not go astray in assuming that some or all of the permanent members of the Security Council found that crime too delicate to be taken into consideration. *Ex post*, the precedent of the Nuremberg judgment has thus again been delegitimized. Another remarkable lacuna is the lack of any reference to the two Additional Protocols to the Geneva Conventions of 1949²⁷. Here again, the well-known reluctance of some permanent members of the Security Council has left its hallmark.

The ILC draft is extremely cautious in delimiting the scope of jurisdiction of an ICT. It focuses primarily on treaties defining *international crimes* (Article 23), adding crimes under general international law as a second-class option (Article 26 (2) (a)). This somewhat peculiar emphasis was intended to allay possible fears

25) Technically, they constitute an annex to Convention No. IV (note 23).

26) Elaborating on the law more carefully, the ILC has included in the Draft Code of Crimes against the Peace and Security of Mankind, adopted by it on first reading in 1991, Report of the ILC on the work of its forty-third session, 29 April-19 July 1991, General Assembly Official Records, 46th session, Suppl. No. 10 (A/46/10), p. 238, a provision making "deportation or forcible transfer of population" a punishable offence (Article 21).

27) [German] Bundesgesetzblatt 1990 II, p. 1551 resp. 1637.

by governments of an international criminal jurisdiction. In a long-term perspective, the balance should be corrected. Only a fraction of the treaties appearing in Article 23 enjoy such massive international support that the offences set forth by them can be said to count among the most reprehensible international crimes.

6 Jurisdiction *ratione personae*

The issue of general jurisdiction of an international criminal court *ratione materiae* must be carefully distinguished from its jurisdiction concerning a specific proceeding. In the case of the Yugoslavia Tribunal, the solution was easy. A resolution lawfully adopted by the Security Council in the exercise of the powers granted to it under Chapter VII of the Charter is binding on every State member of the United Nations. Hence, there can be no question of any additional recognition of the jurisdiction of the Tribunal by the States affected by a trial.

To confer jurisdiction on a permanent ICT is infinitely more complex. The ILC has chosen a two-stage approach. Like in the case of the ICJ, ratification of the statute would not involve acceptance of the jurisdiction of the ICT in respect of any specific trial, but would simply integrate the State concerned in the community supporting the ICT. The conferment of jurisdiction would require a specific declaration. In this regard, the system envisioned by the ILC is extremely flexible. It would permit all kinds of restrictions; pursuant to a strict construction of the language of Article 23, a State could even confine itself to referring an individual case to the court. It is, of course, doubtful whether under such circum-

stances an ICT could ever become a meaningful institution. Clearly, a compromise has to be struck. On one hand, it would be desirable if an ICT enjoyed at least a core area of competence, of which genocide would certainly be the centre-piece. On the other hand, by combining acceptance of the statute and recognition of the ICT's jurisdiction, one might discourage States from ratification, with the unfortunate result that the ICT could hardly claim to be an institution of the international community. The present writer tends to believe, however, that caution has prevailed to an excessive extent. Even if one sticks to the suggested two-stage approach, declarations of acceptance of the jurisdiction of the ICT should be assigned a minimum content. Otherwise, dangers of manipulation would become too manifest²⁸.

In considering the pros and cons of the system devised by the ILC, one should be aware of the wide scope of State jurisdiction in general. States do not only have the right to prosecute their own nationals or aliens who have perpetrated crimes in their territory. Under the four Geneva Conventions of 1949, for instance, every State party has been given the right to try any person alleged to have committed a grave breach. Accordingly, a declaration under Article 24 would confer jurisdiction on an ICT to that wide extent. However, a proviso according to which additionally the acceptance of the jurisdiction of the ICT by the State of nationality or the State of the place of the commission of the crime is required, if the suspect is present in the territory of that State (Article 24 (2)), would significantly reduce the third-party effect of a declaration of submission.

28) Rightly stressed by the International Commission of Jurists, *loc. cit.* (note 19), 29.

Generally, the difficulties briefly outlined above illustrate the paradoxical situation of an ICT called upon to safeguard basic standards of humanity cherished by the international community if its establishment and jurisdiction depend on consent given individually by States acting in the exercise of their respective sovereignty. The creation of an ICT is a measure frontally directed against State sovereignty. An ICT serves to strengthen international sanctions against States that do not live up to basic community commitments, by making the leadership personally responsible for the wrongs unleashed. But the international community lacks an efficient mechanism of international legislation. As yet, in order to bring about legal effects, it must rely on the treaty-making power of its members, which is an attribute of their sovereignty.

7 Exclusive or Concurrent Jurisdiction

The issue of compulsory or optional jurisdiction of an international criminal court must also be distinguished from the question of whether an international criminal court is vested with exclusive or concurrent jurisdiction. The Yugoslavia Tribunal does not enjoy a monopoly of prosecution of the offences listed in its Statute. It would, of course, be most welcome if the competent authorities in the successor States of the former Yugoslavia took justice into their own hands. Consequently, the statute has opted for concurrent jurisdiction (Article 9 (1)). Yet, the Yugoslavia Tribunal has been granted pri-

macy over national courts in the sense that it may at any time request a national court to defer to its competence (Article 9 (2)). Under the ILC draft, the basic approach is different. Since the jurisdiction of an ICT is meant to be optional, it could hardly be of an exclusive character.

8 Trials *in absentia*

None of the texts under review provide for trials *in absentia*, contrary to the proposals for the Yugoslavia Tribunal put forward by France²⁹. This caution is to be welcomed. Trials *in absentia* would fundamentally undermine the authority of an international criminal court. The practical effect of most of its judgments would be nil. Collection and assessment of evidence are particularly difficult in the absence of the accused. It is a misconception, though, that trials *in absentia* are ruled out by the right of the accused to be present at the trial (Art. 14 (3) (d) of the International Covenant on Civil and Political Rights)³⁰. No one can prevent a criminal proceeding from being instituted against him or her simply by hiding or openly challenging the trial from a safe haven. The right of physical presence is no absolute bar to conducting proceedings without the accused³¹. But the factual basis for a prosecution becomes so unreliable in his or her absence that an ICT might, after a while, look like one of the Russell Tribunals whose impartiality and conscientiousness were not above any doubt.

29) *Loc. cit.* (note 13), para. 108. The ILC, however, has not yet reached a definitive position.

30) C. Hollweg, *Das neue Internationale Tribunal der UNO und der Jugoslawienkonflikt*, *Juristenzeitung* 1993, p. 980, at 989 note 68, as well as the Secretary General in his explanatory report (Note 8, para 101).

31) See European Court of Human Rights (ECHR), *Colozza*, judgment of 12 February 1985, Publications of the ECHR, Series A, Vol. 89, p. 6, at 14-16.

The exclusion of trials *in absentia* is not of easy application. Although intended to reduce the burden of work to be disposed of by the competent bodies, it does little to lessen the weight of the obligations incumbent on the prosecution authorities. Under the Statute of the Yugoslavia Tribunal, the prosecutor is bound to carry out investigations *ex officio* with regard to anyone who appears to have committed any of the relevant crimes, irrespective of the actual chance of getting hold of the person concerned (Article 18). Only after an indictment has been prepared and confirmed by a competent judge of one of the Trial Chambers, can a warrant of arrest or surrender be issued (Article 19(2)). A similar system has been devised by the ILC draft (Article 63 (1)). The logic is impeccable, considered from the viewpoint of the Rule of Law. But it could mean that the wheels of the prosecution authorities turn frantically while not a single case may be pending before the competent Trial Chamber. The challenge they have to confront can be clearly perceived. To put it in drastic terms: will they prepare an indictment against Radovan Karadzic, one of the main authors of plans for "ethnic cleansing"?

9 Instituting Proceedings

Proceedings may not be initiated by governments. In the case of the Yugoslavia Tribunal, it is the responsibility of the prosecutor to carry out the requisite investigations *ex officio* and eventually prepare an indictment, basing himself on information from any sources, including from NGOs (Article 19). A somewhat more complex system has been devised by the ILC for the ICT. Since the scope of jurisdiction *ratione territorii* of that court is world-wide, it would clearly exceed

any reasonable expectations to entrust the Procuracy with investigating whether, anywhere on the globe, an international crime has been committed. Logically, therefore, a system of complaints has been provided for, according to which States subject to the jurisdiction of the ICT, or the Security Council, may bring the attention of the Court to the fact that an international crime appears to have been committed. It is only on the basis of such a complaint that the prosecutor may initiate an investigation. Thus, the prosecutor exercises an important screening function. By carefully appraising the allegations made, he or she may prevent the ICT from being abusively seized for purposes of political propaganda. No one should, without sufficient justification, be submitted to being denounced as the author of an international crime.

10 Procedural Guarantees

It is evident that an accused person must enjoy all the guarantees of fair trial which have been set forth in instruments elaborated under the auspices of the United Nations, in particular Article 14 of the International Covenant on Civil and Political Rights. Since paragraph 5 of that article acknowledges a right of "review", the two texts under examination have both opted for the establishment of an Appeals Chamber in addition to the Trial Chambers operating on first instance.

11 System of Trial

None of the texts has opted for a specific system of conducting trials. The choice is primarily between the Anglo-American model, where the judge essentially operates as an arbiter between the prosecution and the defence, and a "continental" model, largely adhered to in

Western Europe, where the judge assumes a more active role. It will be one of the first tasks of the 11 judges of the Yugoslavia Tribunal, when adopting the rules of procedure, required to complement the somewhat rudimentary statute (Article 15), to determine a viable procedural framework. They may be well advised to draw up a set of rules close to the code of criminal procedure of the former Yugoslavia. Thus, proceedings would be facilitated. The participants would easily understand their rights and duties. In the case of an ICT, no such easy choice can be made. It stands to reason that an ICT could hardly change its procedural rules each time according to the nationality of the defendants. In any event, the ILC, as a body of experts of international law, is right in avoiding to prejudge the issue by setting forth a general principle in the draft statute in course of elaboration.

12 Extradition or Surrender

Extradition or surrender is the natural counterpart of the decision to rule out trials *in absentia*. The Statute of the Yugoslavia Tribunal sets forth in categorical language that States shall comply with any request of a Trial Chamber for "the surrender or the transfer of the accused to the International Tribunal" (Article 29 (2) (e)). It thus refrains from taking account of the prohibition, contained in many national constitutions, to extradite the nationals of the country itself. Such a clause would, of course, have threatened the very rationale underlying the establishment of the Yugoslavia Tribunal. The same would have been true of a political offence clause. With regard to a system based on consent freely given or withheld, the legal position is infinitely more difficult. Pursuant to the ILC draft,

an obligation to surrender a suspect arises only for States having accepted the jurisdiction of the ICT with respect to the crime in question, irrespective, however, of his or her nationality. Other States parties are either required to act in accordance with the principle *aut dedere aut judicare*, if they are bound by the treaty establishing the crime concerned, or else to consider whether they should take steps to arrest and surrender the suspect to the ICT. No prophetic talents are needed to foresee that an obligation to surrender would rarely exist so that the ICT would largely depend on political decisions of national authorities to comply with a request for surrender notwithstanding the lack of a legal obligation to do so.

13 Penalties

The ultimate aim of a criminal proceeding is to impose a penalty on an offender found guilty. In this connection, too, the principle *nullum crimen nulla poena sine lege* causes considerable difficulties. None of the international texts setting forth international crimes provides for penalties. Invariably, reference is made to national law for that purpose. Thus, international and national law are conceived of as an integrated whole. In the Statute of the Yugoslavia Tribunal, reference is made "to the general practice... in the former Yugoslavia" (Article 24 (1)). Indeed, all of the crimes listed in Articles 2 to 5 of the Statute were punishable under the Yugoslav penal code. As from 25 May 1993, the date of the adoption of the Statute by the Security Council, the *lex* required is the Statute itself.

The Statute of the Yugoslavia Tribunal provides for imprisonment only. The ILC draft statute mentions fines as possible penalties in addition to imprison-

ment. As to the concrete length of a term of imprisonment or the amount of a fine, it permits the ICT to have regard to the law of nationality, the law of the State in whose territory the crime was committed or the law of the State that had custody of and jurisdiction over the accused. Some uncertainty may flow from this bouquet of choices. The Rule of Law can be deemed to be respected, though. Even under a single national system, some margin of discretion is enjoyed by trial courts. As a rule, the law confines itself to prescribing a frame of minimum and maximum penalties. If the judge is advised to take into account as many as three national systems, his discretion will be reduced instead of being extended.

It is important to note that, in spite of the gravity of all international crimes, capital punishment has been ruled out. This stance is in consonance with recent developments under international human rights law³². The US proposal³³ had kept the door to the death penalty open by suggesting that offenders should suffer "imprisonment or other appropriate punishment" (Article 21). An interesting proposal to order community service in aid of the victim or society at large, which was made at a meeting of experts³⁴, has not found any reflection in either of the two texts.

14 Enforcement of Sentences

Rightly, none of the texts under review contemplates the establishment of an in-

ternational detention centre like the prison at Spandau (Berlin), where the German war criminals convicted at Nuremberg were detained. Instead, it is suggested that imprisonment should be served in the facilities of individual States willing to provide their assistance to the international system of prosecution. In case of convictions with a strong political background or when a convicted person has close connections with international networks of a Mafia-type structure, it will not be easy to ensure actual enforcement of the punishment imposed.

15 Funding

An international criminal jurisdiction is certainly not a low-cost institution. It stands to reason that the Yugoslavia Tribunal is eligible for financing from the regular budget of the United Nations (Statute, Article 32) inasmuch as it was established by a lawful resolution of the Security Council. Nonetheless, to secure the necessary financial resources has caused tremendous difficulties. As a first step for 1993, the General Assembly appropriated start-up costs in the modest amount of USD 500,000, and every conceivable effort has been made to reduce the expenditure due for 1994 to a minimum. The ILC draft does not touch upon the delicate issue of funding. To put the financial burden of an ICT on the States parties to its statute would be a particularly awkward solution. An ICT derives its legitimacy from general international

32) Second Optional Protocol to the International Covenant on Civil and Political Rights, adopted by General Assembly resolution 40/128 of 15 December 1989; Sixth Protocol to the European Convention on Human Rights Concerning the Abolition of the Death Penalty, of 28 April 1983, [German] Bundesgesetzblatt 1988 II, p. 663.

33) A non-paper, not officially circulated.

34) International Meeting of Experts on the Establishment of an International Criminal Tribunal, Vancouver, 22-26 March 1993, Report, p. 25.

law, which has characterized specific conduct in violation of basic rules for the protection of community interests as international crimes. Consequently, an ICT would, in any event, represent an institution of the international community, even if at an initial stage it was formally supported only by a limited number of contracting States. This implies that its financing should, from the very outset, be ensured by the international community, acting through the United Nations. To that end, the ICT would have to be an organ of the United Nations. Hence, financial arguments, too, militate in favour of giving an ICT a place within the framework of the United Nations by a Charter amendment.

III Conclusion

The fate of the Yugoslavia Tribunal will be a test for the viability of an ICT in an international environment which still lacks a world government. If the Yugoslavia Tribunal reveals itself to be paper construction, serving as a fig-leaf to hide the failure of the United Nations to put

an end, by prevention, to the atrocities being committed daily on the soil of the former Yugoslavia, irreparable damage will also be inflicted on the idea of a permanent ICT. On the other hand, if the Yugoslavia Tribunal stands the challenge it is called upon to face, there is every chance that the Security Council might entrust it with new responsibilities as soon as a major crisis, being dealt with under Chapter VII of the Charter, breaks out. The project of an ICT might thus be overtaken by a successive increase in the scope of jurisdiction of a court that started out as the Yugoslavia Tribunal. Such a development, awkward as it might seem at first glance, would have an inherent justification. To prosecute international crimes is an original task of the international community and should not be left to individual States or to a restricted group of States. To date, the international community does not dispose of adequate instruments for rule-making. But it is not illegitimate to use all available methods by which results can be achieved to promote and strengthen the basic values of the world-wide community of human beings.

Women's Human Rights

A Challenge to the International Human Rights Community

*Florence Butegwa**

Introduction

The past decade has witnessed increased and more organized demands for States, the United Nations and non-governmental human rights organizations to recognize and work towards global systemic respect for women's human rights. These demands stem from the realization by women that human rights law has not been conceived or interpreted to cover many of the violations which they suffer as women. Treaty-based and non-governmental human rights bodies have not interpreted their mandates to include the monitoring, documentation and/or reporting on violations of women's human rights. The obligations which States assume at the international level, and the practice of international human rights organizations, will influence domestic legislation and State practice. The failure of the international human rights community to promote a respect for women's human rights has had a negative influence on the domestic scene. Systematic

violations of women's human rights continue to occur with impunity. Conversely, the widespread and systemic discrimination against women and practices which impinge on the dignity of women as human beings taking place in all countries of the world have made it difficult for any concerted effort at international level to address the situation.

The consequences of national and international systems which ignore the plight of slightly over half the population of the world can be seen from statistics such as the following:

- some 500,000 women die every year from pregnancy-related causes¹;
- in a detailed family planning survey of 733 women in Kisii District of Kenya, 42% admitted to being regularly beaten by their husbands²;
- in Bangladesh, killings of women by their husbands account for 50% of all murders³;
- in the United States of America, a woman reports a rape to the police

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- 1) WHO: Prevention of Maternal Mortality: A Report of a WHO Interregional Meeting, WHO Doc. FHE/86.1 (1985) at 5.
- 2) Raikes Alanagh: Pregnancy, Birthing and Family Planning in Kenya: Changing Patterns of Behavior, Centre for Development Research, Copenhagen (1990) cited in IWTC/UNIFEM Resource Centre: Fact Sheet on Gender Violence, 1992 at 1.
- 3) *ibid.* at 1.

every 5-6 minutes⁴;

- in Santiago, Chile, 80% of women have suffered physical, emotional or sexual abuse by a male partner or relative⁵.

These statistics are just the tip of an iceberg. There are few reliable studies to provide statistical evidence and support in relation to complaints of discrimination against women in many spheres. For instance, the majority of women in Africa and Asia do not have access to property, credit and other economic resources to the same extent as men have.⁶ Male children enjoy greater access to education and leisure. In employment, women are denied opportunities for certain jobs and advancement purely because they are women.

This paper takes a brief look at the case for women's human rights and women's efforts to make the international community more responsive to violations of women's human rights. The efforts outlined here are given in the context of the World Conference on Human Rights (Vienna, June 1993).

Human Rights Law and Women's Human Rights

There are two often-heard reactions to demands for the promotion and respect of women's human rights. One is that such demands are superfluous since hu-

man rights law is gender neutral and meant for the entire human species. The other is that demands for women's human rights will "dilute" human rights by admitting numerous small claims to the status of human rights. Both reactions stem from the failure or refusal to appreciate the basis of women's demands. They would also appear to stem from a kind of proprietary justification by some human rights organizations. On the part of States, these reactions appear to stem from the magnitude of their responsibility for past neglect, violations and institutionalization of abuse as well as the magnitude of their responsibility to change the status quo.

The Right to be Free from Discrimination

Women's human rights should not be seen as a new breed of human rights. The Charter of the United Nations has, as one of the purposes of the Organization, the promotion and encouragement of a "respect for human rights and for fundamental freedoms for all without distinction as to (...) sex (...)." ⁷ The Universal Declaration of Human Rights guarantees the right of every individual not to be discriminated against on the basis of sex, among other things. These guarantees, accepted as part of customary international law, have been further reiter-

4) Federal Bureau of Investigations: FBI Uniform Crime Reports 1990, Washington D.C. (1991), *ibid.* at 2.

5) *ibid.* at 1.

6) In the case of Africa see generally, Schuler M: *Women, Law and Development in Africa (WILDAF): Origins and Issues*, OEF International, Washington D.C. 1990; see also Butegwa F, "Access to Agricultural...", in *Third World Studies*.

7) Art. 1(3).

ated more specifically in treaty-form.⁸ The International Covenant on Civil and Political Rights quite specifically states:

"All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal effective protection against discrimination on any ground such as (...) sex (...)." ⁹

The African Charter on Human and Peoples' Rights simply states that "every individual shall be equal before the law."¹⁰ The Charter further provides in Article 18 (3) that States shall ensure the elimination of every discrimination against women and also ensure the protection of the rights of women as stipulated in international declarations and conventions. Thus the State parties to the African Charter undertake to do everything possible to eliminate discrimination against women as defined by international declarations and conventions.

Freedom from discrimination is a substantive and independent human right in the context of these instruments.¹¹ The Human Rights Committee has confirmed, in relation to Article 26 of the International Covenant on Civil and Political Rights, that the right to freedom from discrimination is an autonomous right. It prohibits discrimination in law and in

practice in any field regulated and protected by public authorities.¹² The concept of discrimination is understood to mean:

"any distinction, exclusion, restriction or preference which is based on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms."¹³

There is discrimination against women if a law, practice or omission is made on the basis of their sex and it impairs or nullifies enjoyment by women on an equal footing with men of human rights and fundamental freedoms. Many of the rights which are denied women, whether in relation to marriage, child custody, access to property, in employment or any other fields, are evidence of discrimination against them solely on the basis of their sex. Where the discrimination is in laws, or caused by direct action of State agencies, State accountability is clearly established. State liability is also invoked where the discrimination is by private actors but States condone the violations, for instance, by failing to consistently and systematically prosecute and punish offenders.

8) See the International Covenant on Civil and Political Rights, the International Covenant on Social and Economic Rights, the Convention on the Elimination of All Forms of Discrimination Against Women and the regional human rights treaties.

9) Art. 26.

10) Art. 3

11) Anne Bayefsky, "The Principle of Equality or non-discrimination in international law", *Human Rights Law Journal*, 11 (1990) 1 at 3.

12) General Comment CCPR/C/21/Rev.1/Add.1 of 1989.

13) Bayefsky, *supra* note 12 at 9, 19.

Emerging Issues

There are other rights, not based on freedom from discriminations, which women from around the world are demanding. Included among these is the right to be free from all forms of violence directed at them as women. There is little dispute that violence against women, in various forms, is endemic in all communities and countries around the world. In each of the five "satellite" meetings organized by WILDAF, as part of the preparation for the World Conference on Human Rights, systemic violence against women in the home, in public places and in situations of internal armed conflict was one of the major issues identified by women as needing immediate and urgent action. Whether the violence takes the form of rape, assaults by a husband or another partner, dowry deaths, forced prostitution or any other form, the victim suffers these abuses because she is a woman. Since there is no parallel treatment for men, the discourse is not about discrimination. This, however, does not mean that the demand by women that States comply with their international obligation to protect them from violence is an attempt to "create" new human rights. Systemic violence is a violation of a number of fundamental rights and freedoms, including those of personal integrity and security, freedom from cruel and inhuman treatment, and the right to life. Rape and forced prostitution are increasingly being used by State and insurgency forces as a form of torture. Freedom from torture is a fundamental right that is not disputed. As mentioned above, whether

or not the violence is by State agents or by private individuals, State responsibility to take all necessary steps to protect women cannot be denied.¹⁴ Women are demanding that the States, UN organizations and their institutions as well as non-governmental human rights organizations include in their mandate, monitoring and reporting on violations that are gender specific. It is encouraging that the UN Commission for Human Rights is considering the appointment of a Special Rapporteur on Violence Against Women.

Women Organizing for the World Conference on Human Rights

The determination by women to demand that their respective States and the international community promote and respect women's human rights has been persisting for over a decade. When the UN General Assembly called for the convening of a World Conference on Human Rights, women saw it as a great opportunity for several reasons. It was an opportunity for people in all regions of the world to assess the status of women's human rights in their respective countries. It was an opportunity to expose the failure of the existing human rights mechanisms to respond to the violations which women suffer. Finally, it was an opportunity to explore ways in which women's human rights could better be promoted and respected at the national and international levels.

Women's human rights activist organizations and individuals appreciated the

14) See, for example, Art. 2 of the International Covenant on Civil and Political Rights. See also the opinion of the European Court of Human Rights in *Airey v. Ireland*, 33 European Court of Human Rights (Ser. A) 1979, para. 25.

opportunities that the Vienna Conference presented. Various strategies at international, regional and national level were decided upon to ensure that the Preparatory Committee for the World Conference, regional groupings and individual States take the question of women's human rights seriously. Concerns were that women's human rights be on the agenda and be discussed within the contexts of the other agenda items for the Conference. One of the first initiatives was the global campaign to collect signatures that would support a petition to the Secretary-General of the UN and the Preparatory Committee to put women's human rights on the agenda of the conference.¹⁵ By June 1993, when the World Conference was held in Vienna, over 250,000 signatures from different countries of the world had been submitted to the Secretary-General of the UN and another 350,000 were presented physically to the World Conference plenary session in Vienna. The petition campaign also served as an educational and organizing tool for action at local and national levels.

The official preparatory process included three regional meetings, in Tunis for the Africa region, San José for Latin America, and Bangkok for Asia and the Pacific. These meetings provided opportunities for women's human rights activists to lobby governments in their regions to include in their deliberations and resolutions issues of concern to women. In Tunis, for instance, six key areas were identified by women's rights activists as needing consideration at the World Conference. These were:

1 Universality of Human Rights

The universality of human rights is one of the cornerstones of international human rights law. African governments have subscribed to this principle by ratifying regional and human rights instruments. In spite of this, they continue to plead African culture and religion to justify the continuation of discriminatory laws and practices within their respective territories. The World Conference was called upon to reaffirm the universality of human rights and to urge States to ensure that domestic laws and practices were in conformity with international human rights standards.

2 Indivisibility of Human Rights

There has been a noticeable emphasis, within the practice of States and human rights organizations, on civil and political rights. This practice has led to resources, monitoring and reporting efforts and international sanctions to be devoted to the promotion and protection of civil and political rights. While such rights must be protected, women throughout the Third World are concerned that the neglect of social and economic rights is hurting them disproportionately. Such neglect is underscoring and reinforcing the cultural inequities which deny women access to health and medical care (including accessible family planning services), education, economic resources, especially land and adequate quality foods. The World Conference was called upon to reaffirm the indivisibility and in-

15) This strategy was designed and agreed upon at an institute convened and facilitated by the Centre for Women's Global Leadership, Rutgers University. Women from the USA, Europe, Latin America, the Caribbean, Africa and the Asia Pacific region participated in this institute.

terdependence of human rights and to explore specific ways in which the international community can promote and monitor the enjoyment of social and economic rights.

3 Violence Against Women

In recent years there has been an alarming increase in incidents of rape, defilement of young girls and domestic violence in many African countries. Women and girls have a right to safety and integrity of person as well as to a life of dignity and freedom from cruel and inhuman treatment. The fact that the violence was often committed by private individuals does not make it less of a human rights issue. In many African countries, the legal system, enforcement mechanisms and other State agencies have failed to protect women and girls from this kind of abuse or to adequately and systematically prosecute and punish offenders. The World Conference, the UN Commission on Human Rights and the States were urged to devise ways of effectively combating systematic violence against women and to remove the barrier of the private/public sphere obstructing the treatment of this violation within the human rights framework.

4 Codification of the Family Code

Many women from North African countries are concerned that their respective governments had not codified laws spelling out rights and obligations in areas of marriage, divorce, custody of children, property ownership and succession. This made the definition and interpretation of what the law is, in any particular situation, dependent on a host of religious

leaders. This abdication of responsibility by States is leading to serious violations of women's human rights in these countries. The emergence of religious intolerance and extremism is compounding the situation. The World Conference and the entire human rights community was called upon to put pressure on the concerned States in Africa and elsewhere to protect women's human rights and to ensure that they have laws and practices commensurate with international human rights standards.

These issues were echoed in four other meetings held at sub-regional and pan-African level after Tunis. Additional issues emerged which deserve mention here because they formed part of the issues which African women were lobbying for at the Fourth Preparatory Committee meeting in Geneva (April 1993) and at the World Conference itself (June 1993). These additional issues are reviewed hereafter.

5 Economic Structural Adjustment Policies

The imposition and implementation of economic structural adjustment programmes (ESAP) in many countries of Africa are creating new challenges for the human rights community. Multilateral financial agencies and donor countries are demanding strict adherence to these policies as a precondition for development aid. As countries cut government funding for health and medical services and education as well as subsidies for basic foods, basic rights to food, medical care and education are affected. The international community has been called upon to consider the negative impact on the human rights of the majority of the people, especially women.

6 Women's Human Rights in Situations of Internal Armed Conflict

Many African countries are either in the middle of, or are recovering from, internal armed conflict. Women and girls suffer horrendous violations as women, including abductions, rape by the various fighting groups (including government forces), forced pregnancies and other gender-specific abuses. The World Conference, UN human rights bodies and NGOs were urged to conduct and/or support studies that seek to establish the magnitude of the problem and to explore ways of protecting women's human rights in these situations. Human rights organizations which monitor and report on abuses in internal armed conflict situations must include gender specific abuses in their investigations and reporting.

Human Rights Education

The failure of the international human rights community to consider that it is its responsibility to disseminate human rights information to the people must be seen as one of the most serious obstacles to progress in the field of human rights. The potential for the people to demand their rights, to monitor their own human rights situation and to report violations must not be underestimated. Effective dissemination of human rights information (content, State obligations and enforcement mechanisms) is of particular relevance to the promotion of a respect for women's human rights. The African Charter on Human and Peoples' Rights realises this importance by stating that:

"State parties (...) shall have the duty to protect and ensure through teach-

ing, education and publication, the respect of the rights and freedoms contained in the present Charter and to see to it that these freedoms and rights as well as corresponding obligations and duties are understood."

The significance of this provision is that not only is State responsibility invoked if violations occur through the actions of the State and its agents, but also if private individuals commit violations because they are unaware of protected rights and freedoms. The entire world community needs to be involved in effective human rights education.

The World Conference on Human Rights

These issues and many others from women in other parts of the world became the women's concerns which were presented to the Preparatory Committee meeting in Geneva and to the World Conference itself. Among the 7000 participants, including academics, treaty bodies, national institutions and representatives of 800 NGOs which gathered in Vienna in June 1993, were a large number of women's rights activists and supporters. Women worked, strategized and lobbied together to ensure that, for the first time, the rights of women were considered to be an integral part of the human rights body of laws and standards.

For the first time the world community considered and resolved to take steps to promote and protect the rights of women. The Vienna Declaration and Programme of Action reaffirms that human rights and fundamental freedoms are the birthright of all human beings; their protection and promotion is the first respon-

sibility of Governments.¹⁶ This responsibility exists regardless of the political, economic and cultural systems.¹⁷ What the world community was saying was that culture constitutes no valid excuse for the abdication by States of their responsibility to promote and protect women's human rights.

The World Conference affirms that the human rights of women and the girl-child are an inalienable, integral, and indivisible part of universal human rights. The full and equal participation of women in political, civil, economic, social and cultural life, at national, regional and international levels, and the eradication of all forms of discrimination on grounds of sex are priority objectives of the international community. Gender-based violence and all forms of sexual harassment, including those based on cultural prejudices were declared to be incompatible with the dignity and worth of the human person, and must be eliminated. The Conference urged governments, institutions, inter-governmental and non-governmental organizations to intensify their efforts for the protection and promotion of the rights of women and the girl-child.¹⁸

To ensure that the principles stated above are put into practice, the following measures were agreed upon at the World Conference.

1 Integration of Women's Rights Into UN System

The Plan of Action of the World Conference states that the equal status of

women and the human rights of women should be integrated into the mainstream of UN system-wide activity. Issues of women's human rights must be regularly addressed throughout relevant UN bodies and mechanisms. Steps are to be taken to increase cooperation and promote further integration of objectives and goals between the Commission on the Status of Women, the Commission on Human Rights, the Committee on the Elimination of All Forms of Discrimination against Women, the United Nations Development Fund for Women and other UN agencies. Treaty monitoring bodies should include the status of women and the human rights of women in their deliberations and findings, making use of gender specific data. It was noted with satisfaction and encouragement that the Commission on Human Rights is considering the creation of the post of Special Rapporteur on Violence Against Women.

2 Adoption of a Draft Declaration on Violence Against Women

The UN General Assembly has been called upon to adopt the Draft Declaration on Violence Against Women, which is before the Assembly. This is seen as one definite step towards the elimination of violence and other forms of sexual harassment against women. Factors which permit the perpetuation of gender violence, including harmful customary practices and gender bias in the administration of justice are to be eliminated by States. The aim is to eliminate gender

16) Para. 1, Vienna Declaration, The Vienna Declaration and Programme of Action, (1993) UN Doc. A/CONF.157/23.

17) *ibid.* at 30.

18) *ibid.* at 34.

violence both in the private and public spheres.¹⁹

3 Universal Ratification of CEDAW

The Conference urged States to eradicate all forms of discrimination against women. Towards this end, the Conference urged universal ratification of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) by the year 2000. States were urged to withdraw reservations which were contrary to the object and purpose of the Convention. The Committee on the Elimination of All Forms of Discrimination Against Women was urged, together with other UN bodies, to find ways and means of dealing with the many such reservations lodged by States on ratification.

4 Dissemination of Human Rights Information

Treaty monitoring bodies were urged to disseminate necessary information to enable women to make use of existing human rights implementing mechanisms. The Commission on the Status of Women and the Committee on the Elimination of All Forms of Discrimination Against Women are to explore ways of introducing an individual complaints procedure through an optional protocol to the CEDAW.

5 Access of Women to Decision-Making Posts

The World Conference urged governments, regional and international organizations, including the UN to take urgent

steps to appoint and promote women to decision-making posts. This will ensure that women's human rights concerns will be taken into consideration at all levels of policy-making and implementation.

6 Human Rights of Women and the Fourth World Conference on Women

The World Conference on Human Rights recommended that the human rights of women should play an important role in the preparations and deliberations of the Fourth World Conference on Women, to be held in Beijing in 1995.

Conclusion

The preparations for the World Conference on Human Rights were very important for women's rights advancement. The organizing, solidarity, issue identification and strategizing were as important as the gains realized in Vienna. The more difficult work, however, is still ahead. This is ensuring that the principles and Plan of Action agreed upon in Vienna are actually put into effect at the national and international levels. A constant and more visible presence by activist women's rights organizations needs to be maintained at meetings of the Commission on Human Rights. The Commission needs information on specific areas in which all the mechanisms at its disposal, including thematic and country rapporteurs, should play a role. The Commission, on the other hand, needs to open communication channels with women's rights NGOs so that they can play a supportive and proactive role in the work of

19) *ibid.* at 54.

the Commission. There is a lot of conceptual and strategy-building work required in the area of social and economic rights. The mechanisms for measuring State compliance or non-compliance with the standards set in the International

Covenant on Social, Economic and Cultural rights remain unclear. These challenges, however, are no longer insurmountable. The human rights of women are an integral part of fundamental rights and freedoms.

The Human Rights of the Child

Joaquín Ruiz-Giménez*

"One of the most tragic situations, for which humanity as a whole should feel both hurt and shame, is that we have built a world... in which the majority of the poor are children, and what is even worse, that the majority of children are poor."

(Manfred Max-Neef "Follies of Humankind", *Resurgence* No. 145, March/April 1991
(editor's translation))

"The States Parties to the present Convention shall respect and ensure the rights set forth in this Convention to each child within their jurisdiction without discrimination of any kind..."

(Article 2 of the Convention on the Rights of the Child, 1989)

To begin with, I would like to draw attention to the Universality of the issue, in the sense that it extends to all children throughout the entire world, without discrimination of any kind, nor conditions as to personal or social status (except as concerns the age limit of 18), as described in the Convention on the Rights of the Child, approved by the United Nations General Assembly on 20 November 1989 (Articles 1 and 2).

Universality is a term which may also be used to describe the territorial scope of effectiveness of the standards for protecting the human rights of the child. These standards are directly binding upon States which have signed and ratified the Convention, as well as upon all UN Member States, as nearly all of the civil, political, economic, social and cultural rights recognized by the Convention are contained in the International Covenants of 16 December 1966, and considered to be inherent rights for all hu-

man persons, without discrimination, including all children everywhere in the world.

A further methodological observation is that, in order to evaluate objectively the current normative system for promoting and protecting the rights of the child at the supranational level, one must take into account the slow and difficult process of formulating and enacting standards, and then contrast this with the actual status of children in all too many countries in the world.

This complex issue may be simplified by examining it from the following three perspectives:

- a the historical process of recognition of the fundamental rights of the child;
- b the current system of protection for those inherent rights, in terms of supranational standards, and its contrast with the actual status of the child;
- c the challenge that this poses for the

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future to the international community and to individual States and civil societies.

I The Historical Process of Recognition of the Rights of the Child, and their Effective Protection in the World

1 It is a historically proven fact that the basic inherent rights – those which contemporary philosophy, judicial science, and national and international standards refer to as “fundamental human rights” – trace their roots to an awareness of a spiritual or material need, or of a lack or yearning of the human being in society. Evidence of this may be found in the history of the rights of freedom (now known as civil and political rights), and of the rights of equality and solidarity (economic, social and cultural rights).

That awareness set in motion a gradual lawmaking process, which occurred in successive phases, until the first ethical requirements in the form of binding legal standards were formulated. At the same time, a parallel process of universalization took place with respect to the content of those inherent rights, as well as with respect to the territorial scope of their effective protection.

The establishment and protection of the rights of the child followed a similar path.

In many of the international instruments, which are too numerous to analyze here, one can sense the difficult stages the collective human spirit has had to endure in order to progress towards effective recognition of the fundamental rights of the child, and at the same time, one can discern the goals which are yet to be achieved.

2.1 If we limit our discussion to the present century, it is clear that the upheaval caused by the two World Wars (during the period from 1914 to 1945) and their devastating effects on civilian populations, particularly on its most vulnerable segments, i.e. children and families, were what led the international community to take important legal steps towards the creation of standards of protection for the child. Initially these took the form of declarations, and later, of more binding regulations.

Hence, in 1924 the League of Nations formulated and distributed an inspiring Declaration of the Rights of the Child, with the intention of later developing more binding standards. Unfortunately, this was precluded by the collapse of that organization and the outbreak of the Second World War.

After the war, the new United Nations Organization, in its decisive Universal Declaration of Human Rights of 10 December 1948 (Resolution 217 A (III)), not only laid down the principles of equality and non-discrimination for everyone (Article 2), which includes children in their capacity as persons, and the right to recognition everywhere as a person before the law (Article 6), it also stated that the “family is the natural and fundamental group unit of society and is entitled to protection by society and the State” (Article 16.3), adding, specifically, that “motherhood and childhood are entitled to special care and assistance” and that “all children, whether born in or out of wedlock, shall enjoy the same social protection.” (Article 25.2).

Although this historic Declaration was no more binding than a recommendation, it became an important catalyst for later advances. Take, for example, the International Covenant on Civil and Political Rights of 16 December 1966, which con-

firmed the principles of equality and non-discrimination for all human persons (Articles 2, 16 and 26) and stipulated that "Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State./Every child shall be registered immediately after birth and shall have a name./Every child has the right to acquire a nationality." (Article 24).

A similar spirit is conveyed in the International Covenant on Economic, Social and Cultural Rights (Articles 2.2 and 3), which makes specific reference to the protection of the family, motherhood, and also children and young persons, from any type of economic, social or labour-related exploitation. (Article 10).

2.2 Nevertheless, information gathered by the UN on the increasingly grave and inhuman situation of children in many countries moved the General Assembly to require that all governments set aside resources in connection with a set of ten basic principles, which were contained in the new Declaration of the Rights of the Child of 20 November 1959 (Resolution 1386 [XIV]).

It is interesting to note that, whereas the principles of this Declaration did not make specific reference to the "right to life of the unborn", the third paragraph of the Preamble states that "the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth", which indicates that this right cannot fail to be considered as a hermeneutic criterion and governing principle in the system of protection for the rights of the child.

The 1959 Declaration provided the impetus for a new phase in standard-setting action geared towards the formulation of an international instrument which would be binding upon the States signing and ratifying it, and which would also provide measures for overseeing compliance and administering penalties, if necessary.

That noble task culminated 20 years later in the approval, on 20 November 1989, of the Convention on the Rights of the Child. It was a veritable *Magna Carta*, and on the whole, quite excellent, despite a few omissions and debatable aspects, as would be the case with any other collective work of its magnitude.

II Principle Aspects of Current Supranational Standards on the Fundamental Rights of the Child, and Contrast with the Social Reality

Of all the international instruments concerned with the promotion and protection of the fundamental rights of the child, the Convention of 20 November 1989, which has already been ratified by more than 140 States, is considered to be the highest achievement.

Next, in descending order, are a number of very relevant instruments which have been developed for the purpose of either implementing or complementing the 1989 Convention. These include, first and foremost, the World Declaration on the Survival, Protection and Development of Children and its corresponding Plan of Action for the 1990s, approved by the World Summit of Heads of State and Government, held in New York on 30 September 1990.

Secondly, there is the European Charter of Rights of the Child, formulated by

the European Parliament on 8 July 1992 (Resolution A3-0172/92), which was inspired by the earlier instruments, although it added several worthwhile proposals, such as strengthening supervisory and punitive functions, the appointment of Ombudsmen or Defenders of Children at the community and national levels, as well as other valuable complementary aspects (see the *Official Journal of the European Communities*, No. C 241/67, 8 July 1992).

Lastly, the influence of the 1989 Convention is beginning to make itself felt in many of the States that have signed and ratified it. There is currently a significant body of legislation and other complementary instruments which testify to the weight of the collective conscience in this fundamental area.

Given that it is impossible to provide a detailed analysis of the Convention in the space of this article, I will instead provide a summary of its basic characteristics:

1 The Convention establishes the following general principles: equality and non-discrimination (Article 2); primary consideration for the best interests of the child (Article 3); the State's obligation to protect all of the rights of the child, including his economic, social and cultural rights "to the maximum extent of their available resources and, where needed, within the framework of international co-operation" (Article 4); and the obligation to respect the "responsibilities, rights, and duties of parents, or where applicable, the members of the extended family" (Article 5).

2 Typology of the rights and duties recognized.

2.1 Civil and political rights (to be con-

sistent with the terminology used in the UN International Covenants of 1966): the child's right to life and to survival; to a name and nationality and to know his parents; to an identity; to not being separated from his or her parents, except when determined to be necessary; to enter and to leave any country; to the freedom of expression; to the freedom of thought, conscience and religion; to the freedom of association and of peaceful assembly (with the usual restrictions); to protection from interference with their privacy, family, home and correspondence, and from attacks on their honour and reputation; to access to information (with an interesting reference to the mass media); the right of the parents for the upbringing and development of the child; the right to protection from all forms of physical or mental abuse or harm; the right to special protection by the State for children in cases of abandonment or desertion; the right to adoption; the right to refugee status (Articles 6 to 22, inclusive).

2.2 Economic, social and cultural rights: the child's right to health care services, especially for disabled or handicapped children; the right to the highest level of health possible and to medical services; the right to nutrition; to social security; to a standard of living adequate for the child's physical, mental, spiritual, moral and social development; the right to education at all levels and in all disciplines, directed to the development of the child's personality and the development of respect for human rights, peace, tolerance, equality and the natural environment; the rights of children of ethnic, religious or linguistic minorities; the right to rest and leisure; rights concerning child labour (articles 23 to 31, inclusive).

2.3 The rights of the child in abnormal or dangerous situations (and the duties of States to protect children in such situations):

- a) the child's right to protection from economic exploitation and from hazardous work (Article 32);
- b) the child's right to protection from the illegal use of narcotic drugs and psychotropic substances, and from the production and trafficking of such substances (Article 33);
- c) the child's right to protection from all forms of exploitation and sexual abuse (Article 34);
- d) the child's right to protection from abduction, the sale or traffic in children for any purpose or in any form (Article 35);
- e) the child's right to protection from all other forms of exploitation (Article 36);
- f) the child's right to protection from torture and other cruel or inhuman treatment, or deprivation of liberty (articles 37 and 39);
- g) the child's rights in situations of armed conflict (Article 38).

2.4 The child's rights with regard to due process of law and the guarantees for any child who has violated penal law (Article 40).

3 Instruments and agents of protection concerning the rights of the child.

Without a doubt, one of the most important aspects of the 1989 Convention is that it established a system for the promotion and protection of the rights recognized, thereby making progress towards positive implementation, although the current level remains inadequate. The main aspects of this protective mechanism are as follows:

3.1 Primary and direct protection afforded by the family, or subsidiarily, by other legal guardians (Articles 5, 7, 9, 10, 14, 18, and 21).

3.2 Protection afforded by national public authorities (in keeping with the principle of subsidiarity, but interpreted not only in the negative, or abstentionist respect, when the family acts correctly, but also in the positive respect, when the family fails to do so.)

a) Noteworthy among these are the duties explicitly conferred upon the States by the Convention, both in terms of "authority or jurisdiction" and in terms of "duties", in all of the articles in which rights are guaranteed.

b) Equally important is the protective function assigned to other public institutions and subordinate administrative authorities (see Article 3 of the Convention), such as the "Child Defence Magistrates" (in the laudable solidarity movement reflected in the Declarations of Rome 1991, Dakar 1992, Mexico and Pamplona 1993).

c) Particularly important is the intervention of the judiciary, both in terms of preventive and corrective measures, in all cases which either actively or passively concern children as a result of the violation of legal standards (Articles 32 to 40 of the Convention, and the Beijing Rules).

3.3 Moving from the national to the supranational level, the system of protection provided by the Convention is made up of two main components:

a) The establishment of a United Nations Committee on the Rights of the Child, composed of 10 independent and democratically elected experts, for

four-year terms, with eligibility for re-election (Article 43), charged with supervisory and reporting functions regarding compliance of States Parties with their protective duties (Article 44), and formulating "suggestions and general recommendations" to the UN General Assembly (Article 45).

- b) The cooperation of the UN specialized agencies with the Committee in these areas (in particular, UNICEF, UNESCO, WHO, etc.) (Article 45).

4 Contrast between the legal system of protection and the actual status of children in the world.

At the present time, there is a striking contrast between efforts to develop an increasingly dense body of legal regulations for promoting and protecting the rights of the child on a universal basis, and the disturbing information on the actual status of millions of children, and their mothers, the world over. The information, which has been conveyed by the media, and especially that reported by competent UN organs, is consistent, on the whole, with the findings of a number of NGOs, as was reflected in the final documents of the World Conference on Human Rights, held in Vienna in June 1993.

This gaping contradiction between the legal and social realities should not lead to the conclusion that "the past is better than the present", nor should it foster fatalistic attitudes of powerlessness to overcome this enormous challenge.

It would be helpful to reflect upon some aspects of this information, both negative and positive.

4.1 The extent of the negative aspects:

In the Declaration drawn up by the 71 Heads of State and Government (who met at the World Summit for Children in New

York on 30 September 1990), emphasis was placed on the issue of the survival of the child. It was noted that as many as 40,000 children per day were dying of malnutrition and other illnesses, not including victims of war or other acts of violence, cruelty and exploitation.

Two years later, in December 1992, when the Executive Director of UNICEF, Mr. James Grant, issued his 1993 report on *The State of the World's Children*, he estimated (thanks to improved statistical methods and taking into account the favourable effects of vaccination campaigns, medical care, drinking water installations, housing projects, etc. that had been carried out over the past two years), that some 35,000 children were dying daily or nearly 13 million dying annually of technically correctable causes.

The statistics contained in the report reveal sharp differences between the status of children in the developing countries and those in the industrialized countries, in other words, between the poorest countries and those with high *per capita* incomes.

More recently still, the publication of a new UNICEF report in September 1993, entitled *The Progress of Nations*, reveals the magnitude of the challenge involved in achieving one of the basic factors of world progress: the protection of the physical and mental development of the child, through the implementation of effective measures to promote such aspects as survival, nutrition, health, education, demographic moderation and care for women throughout the world.

4.2 It should be noted that both UNICEF reports highlight the progress achieved during the last decade without concealing any of the negative aspects of the situation. As both reports acknowledge, some US\$ 25,000 million is needed annu-

ally until the year 2000 in order to meet the seven basic objectives established in the Plan of Action, which was approved during the above-mentioned World Summit of Heads of State and Government in 1990, and to reduce the staggering rate of maternal mortality, child morbidity and mortality, inadequate drinking water, lack of education, etc.

III Meeting the Challenge: Ways and Means

Faced with the reality of the inhuman status of children in far too many parts of the world, it is easy to see why the Vienna World Conference on Human Rights included, in its Final Document (Part II, Paragraph 12), the explicit requirement that all States ratify the Convention on the Rights of the Child before 1995 (date of the 50th anniversary of the UN Charter), and ensure "its effective implementation (...) through the adoption of all the necessary legislative, administrative and other measures and the allocation to the maximum extent of the available resources". It also calls for States to ratify the principles of non-discrimination and of attending to the best interests of the child in all areas concerning her/him, including listening to her/his opinions. In addition, it calls for strengthening national and international mechanisms and programmes of protection for the child, in particular for abandoned children, street children, children who have in one way or another been exploited, those afflicted with illness, especially AIDS, refugees and displaced persons, prisoners, children caught in the midst of armed conflicts, and victims of famine, drought or other catastrophes. It points out that "the rights of the child

should be a priority in the UN system-wide action on human rights". These basic principles and requirements are repeated in Part III, Section II, Sub-section D of the "Final Document", which also supports the proposal that the UN Secretary-General determine the necessary means for improving the protection afforded children in armed conflicts; raise the minimum age for entry into the armed forces to 18; carry out periodic inspection and monitoring of all UN organs and mechanisms; cooperate with all NGOs working in this area; and, provide the Committee on the Rights of the Child with the necessary resources to carry out its mandate as quickly and efficiently as possible.

Without minimizing the recommendations of the Vienna Conference, which are praiseworthy, it is important to draw attention to the deep-rooted causes for the deplorable state of the world's children and the pressing need to remedy them.

Following is a list, by no means exhaustive, of some suggested approaches.

- 1 Promote an intense and on-going media information campaign on the status of the child, both nationally and internationally, handling the issue with calm objectivity, highlighting negative as well as positive aspects.
- 2 Develop a national educational campaign, starting with the family, and extending to society as a whole, for promoting maximum awareness and solidarity with children of all nations. Such a campaign could combine the efforts of churches and religious groups, public and private schools, NGOs and other altruistic associations, especially those involved in promoting and defending the rights of the child.

- 3 Require that individual governments (at the municipal, regional and national levels) maintain adequate organization and financing for social services contributing to the well-being of families and children and that they allocate 0.7% of GDP to co-operation with developing countries.
- 4 Facilitate and help finance the efforts of NGOs working on behalf of needy children.
- 5 Using the most effective channels; bring pressure to bear upon the competent UN organs for the establishment of a new international economic order; cancel the external debt of developing countries, or, at a minimum, convert it into social services for the child in each debtor country; require that the organs of the international community obtain sufficient financing to meet the objectives contained in the 1989 Convention on the Rights of the

Child, which was ratified by the World Summit in 1990; promote the creation of a permanent and independent International Penal Court (as proposed by the International Commission of Jurists at the Vienna Conference); and lastly, try and punish perpetrators of war crimes, grave human rights violations, and, in particular, maltreatment, exploitation and other crimes against mothers and children.

No one can close their eyes – much less harden their heart – to the sheer immensity of this challenge. It is imperative that we, as jurists, not only oversee the effective implementation of national and international standards which protect the fundamental rights of the child, but also fight for social justice, without which there can be no well-being for the child, nor true peace in the world.

Non-Governmental Organizations and the UN World Conference on Human Rights

Fateh Azzam*

Introduction

More than 1,400 non-governmental organizations, with many times that number of representatives, participated in the World Conference on Human Rights, held in Vienna, Austria, in June 1993. These NGOs lobbied governments, conducted parallel activities, and held ongoing discussions and briefings at many levels detailing their positions regarding the progress of the World Conference. One felt the dynamic of a stronger-than-ever world-wide human rights movement.

It is not an easy task to summarize the work and effects of non-governmental efforts before and during the World Conference. There are no clear specific indicators showing the specific results of these efforts, and the impact of NGOs on governmental debates and specifically on the outcome of the conference. One can nevertheless attempt to assess this impact in general terms, based more on a personal assessment of events and interactions than through a formal study.

Background

Since the adoption of the Universal Declaration of Human Rights, human rights NGOs began to be established and to grow in number and importance. However, by the time the first World Confer-

ence on Human Rights was held in Tehran in 1968, they were still too few to have a major impact on the discussions at the time. The International Covenants had not yet come into force, and neither human rights law nor its implementation machinery were yet formed. Before and after the Tehran Conference, NGOs, mostly international, focused their efforts on standard-setting and lobbying for the creation of this body of law.

By the late 1980s, human rights law was well-formed and the implementation machinery was established and ready to be used, however inadequate and ineffective it may sometimes seem to be. Also there to use such machinery, and having worked hard to promote its creation, were the international NGOs, with offices in Geneva and other European capitals with easy flying distance from Geneva.

Also, by the 1980s, a wide network of local and regional NGOs had, slowly but surely, developed in all parts of the globe. These NGOs were connected to the hub – the UN and its Centre for Human Rights as well as the multilateral human rights treaty bodies – primarily through the international NGOs. Many of the local NGOs working in their specific national contexts were affiliated to, or members of, these international bodies for the promotion and protection of human rights. Whether the connection was organizational or not, however, there developed

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a close working relationship with local NGOs, providing much of the documentary evidence of the human rights situation in their regions, and the international NGOs, providing the needed access – through their consultative status with ECOSOC – to the UN and to treaty bodies such as the UN Human Rights Commission, the UN Sub-Commission for the Prevention of Discrimination and Protection of Minorities, the Human Rights Committee, the Committee Against Torture, and others.

In the international context, and especially at the UN, this was understood to be the operable relational model between the parties. At the same time, however, a different dynamic was appearing in the local and regional arenas. The proliferation of local human rights NGOs, and their increasing activity, was making the States of the different regions increasingly uncomfortable. Charges of human rights abuses were no longer being made only in the halls of the UN, but on the streets and in the local papers as well. Governments were having to fend off those charges in their domestic contexts; a much more difficult and politically sensitive task than the traditional reliance on their collective powers and alliances as they have always had in the UN.

This was the situation as preparations began towards the holding of the World Conference on Human Rights in June 1993. Governments approached the Conference from one perspective, warily, and even with a certain degree of pre-determined hostility to NGOs. The UN and its experts, along with many international NGOs, seem to have approached it from another perspective, relying on modes of relations that had been tested, and roles that had been well-practised, during the last twenty years, expecting the process to remain much the same. Few, however,

expected the strong showing of local and regional NGOs; and, perhaps, local NGOs were just as surprised as anybody else.

In the beginning, local NGOs that were not closely connected to an international partner or kept regularly informed of UN activities were not aware of the importance of this event. Thus, in the early stages of planning, few international NGOs were closely involved, and most local NGOs did not take up the task with full vigour until the regional meetings were held.

First PrepCom Meeting (9-13 September 1991)

The battle lines were drawn early between NGOs and governments as the UN Preparatory Committee, charged with preparing for the World Conference on Human Rights, held its first meeting. Serious restrictions on the participation of NGOs were contemplated and it was proposed that NGO participation should be limited to public sessions and as observers. No interventions by NGOs would be allowed, except by invitation of the Chairperson. This was the first shot in the battle even to be heard at the Conference.

A quick and unequivocal response came from approximately thirty international NGOs, in the form of a joint declaration. The letter to the Chairperson, dated 11 September, asserted that NGOs "are essential partners in all aspects of human rights work", and stated that "it is in the interest of both the success and integrity of the World Conference" that NGOs be allowed to participate actively and fully in its deliberations "to the same degree already possible in the UN, or greater." Otherwise, the declaration asserted, "the Conference risks becoming

cut off from reality and an empty exercise."¹

Second PrepCom meeting (30 March-10 April 1992)

NGO participation continued to be a source of conflict during the first week of discussions. Eventually, the rules of procedure were amended to include participation by NGOs with ECOSOC consultative status, and added other NGOs that were participating in PrepComs and regional meetings. Intense opposition by the Asian group of States caused this provision to remain "bracketed", i.e. left for later discussion and decision, and the question of NGO participation was, again, postponed to a later session of the PrepCom.

During the second PrepCom meeting it became apparent that NGO participation was only one of the many conflicts and problems which had arisen between States within the framework of the World Conference on Human Rights. Discussions were contentious; very little was decided and the 2nd PrepCom degenerated into ineffectiveness. There was little agreement on anything, including the agenda and the venue of the Conference.

3rd PrepCom (14-18 Sept. 1992)

The problem of NGO participation continued during this session of the PrepCom. After much debate and wrangling, a significant development took place as a result of a compromise between States; NGOs allowed to attend would be:

- organizations with ECOSOC consultative status which are active in the field of human rights and/or development. This included primarily Western and international NGOs.
- other NGOs active in the field of human rights and/or development which have headquarters in the region, "in prior consultation with the countries of the region."

These were considerably broader criteria than had previously been suggested; i.e. not limiting NGO participation to organizations with consultative status, as had been the case in the past. The second point, however, also gave rise to many serious reservations. NGOs would rightly find it difficult to accept to be "approved" by their governments. The Secretariat eventually issued a declaration that "consultation with the countries of the region" did not mean that States had a right of veto on NGO participation.

NGO Coordination

As the criteria for NGO participation were apparently being widened, efforts to coordinate the participation and work of NGOs in the World Conference were initiated. The International Service for Human Rights (Geneva) and the Ludwig Boltzmann Institute (Vienna) initiated a Joint Liaison Project "with the intention of achieving the fullest possible contribution and participation of NGOs, particularly from the South." An NGO Newsletter was launched and distributed to approximately 6,000 NGOs world-wide. For many in the South, the NGO Newsletter No. 1 (October 1992) was the first

1) The text of that statement can be found in International Service for Human Rights (ISHR) *Human Rights Monitor* No. 21 (May 1993) p. 8.

indication of the importance of the World Conference. Background information about the World Conference was provided in the Newsletter, along with valuable information about NGO participation and funding. It also announced an NGO Forum preceding the Conference as well as the possibility of holding NGO activities parallel to the Conference.

Soon thereafter, the formation of a Joint Planning Committee (JPC) was announced. The JPC was composed of members of the Conference of NGOs with consultative status with ECOSOC (CONGO), the Boltzman Institute, and members of the coordinating committees for NGO participation in the regional preparatory meetings. It is noteworthy that twelve out of the fifteen members of the JPC were international organizations with offices in Geneva or New York. The remaining three represented the regional committees from Africa, Asia/Pacific and Latin America/Caribbean.

The JPC took on the task of disseminating information to NGOs, coordinating their participation in the World Conference and liaising with the Secretariat of the World Conference. The JPC organized a preliminary agenda for the NGO Forum and the parallel NGO activities during the World Conference. An open consultation meeting was called for NGOs during the meetings of the 49th Session of the UN Human Rights Commission and the 4th PrepCom in Geneva.

Africa Regional Preparatory Meeting (Tunis, 2-6 November 1992)

Apart from the meetings of the African Commission on Human and Peoples

Rights, this was perhaps the largest human rights conference ever to take place on the African continent. The attendance of NGOs was particularly important; 163 NGOs were present, including 131 African NGOs.² The initiative was taken by the Arab Institute for Human Rights (Tunis) which, along with the ICJ, the International Federation for Human Rights, and the International Service for Human Rights, organized the participation of the Africa-based NGOs.

NGOs created six working groups to cope with issues they felt must be addressed by the regional meeting. More than 30 NGOs presented oral and written statements. NGO lobbying was strong, and they were able to meet with the drafting Committee which set a precedent for subsequent regional meetings.

Suggestions by NGOs were formulated for the first time in Tunis. Amnesty International's call for creating the post of a UN High Commissioner for Human Rights was made. The ICJ began its intense lobbying for the creation of a permanent International Penal Court to try perpetrators of gross violations of human rights. The Arab Organization for Human Rights called for better coordination of UN human rights work and for the protection of human rights defenders.

Despite these efforts, however, NGO recommendations were not adopted by the inter-governmental drafting committee or plenary. The adversarial relationship between governments and NGOs on the African continent had proved too strong. Some of these NGOs, such as the Arab Organization for Human Rights, with branches in many of North African States, had not yet been allowed to for-

2) Arab Organization for Human Rights, 25 [*Huquq al-Insan Watan al-'Arabi (Human Rights in the Arab World)*] (January 1992) pp. 236-42.

mally register as legal entities in their own country. Moreover, the relative inexperience of many of the NGOs, and the last-minute nature of their coordination, also had an impact on their effectiveness.

One positive outcome was the holding of the first Arab NGO meeting on human rights. The nascent Arab human rights movement met for the first time to articulate some common positions, and it was agreed to hold a special Arab preparatory meeting for the World Conference.

Latin American/Caribbean Regional Meeting (San José, 18-22 January 1993)

More than 170 NGOs participated in this regional meeting, including 114 whose headquarters were in the region.³ These organizations represented a wide array of interests, including indigenous peoples, women, ecology groups and the handicapped.

The Inter-American Institute for Human Rights (San José) undertook the task of organizing efforts for NGO participation. A pre-meeting gathering of Latin American NGOs was arranged, which, in fact, set the tone and organized the lobbying and focus of NGO efforts during the regional meeting.

The NGOs pooled efforts to draft a number of joint declarations on issues of mutual concern. They succeeded in being heard by the drafting committee, and presented the NGO points of view on specific issues under consideration.

Debates in the regional meeting focused on democratization and on the regions' right to development, particularly

in view of the unequal economic relations with the industrialized north, with special condemnation of protectionist measures. The need to protect vulnerable groups was emphasized.

NGO calls, made at the Africa regional meeting, were repeated in San José, with better, though incomplete results: there was a reference in the San José document, suggesting that the idea of creating a UN High Commissioner for Human Rights be studied, another which was aimed at strengthening the UN Human Rights Centre, and several paragraphs on protection of vulnerable groups. All were the result of efforts and lobbying by NGOs and their coalitions.

Asia-Pacific Regional Meeting (Bangkok, 29 March-2 April 1993)

It was evident to all who attended this regional meeting that NGOs from the Asia-Pacific region were the most organized and focused in their preparations and work during the regional meeting. More than 135 NGOs based in that region participated, in addition to the international NGOs. Organized by INHURED International and ACFOD (Thailand), they held a pre-meeting NGO conference from 25-28 March, where clear positions were articulated and a plan of action organized. The NGO conference was comprehensive, taking in broad human rights issues such as implementation of existing mechanisms and the creation of regional ones, and thematic issues such as the rights of children, indigenous peoples, workers, women and others.

A strong joint statement was prepared and presented to governments in the form of an NGO Declaration. The "Bangkok

3) ISHR, *Human Rights Monitor*, No. 21 (May 1993) p. 17.

Declaration" stressed the indivisibility and universality of human rights, and focused on the thematic issues resulting from the conference, stressing an integrated approach to human rights. It repeated the call for strengthening UN human rights mechanisms, including the creation of the post of UN High Commissioner for Human Rights.

The "Bangkok Declaration" undoubtedly had an effect on governments, which were divided over a number of contentious regional issues such as the right to self-determination, foreign occupation, and regional economic development. The NGOs did not stop at the Declaration, however, but strongly lobbied their governments during the regional meeting, on all issues of concern, holding daily press conferences which helped make the proceedings of the regional meeting transparent and the governments positions public. It was evident that Asian governments had not anticipated so many NGOs beating on their doors with their demands.⁴

The governmental statement reflected some of the NGO concerns, taking account of women's rights and children's rights, the right to development, and the universality and interdependence of human rights. But the statement rejected any linkage and sought to "streamline" UN mechanisms and to weaken rather than to strengthen the role of the UN Centre for Human Rights and of human rights implementation machinery in general.

The significance of NGO work and organization during the Asia Pacific regional meeting was expressed by the *Human Rights Monitor* thus:

"Too often in the past, Asian governments at the UN Commission have dismissed NGO criticisms as concerns of foreigners who do not know their cultures. With Asian NGOs speaking out so clearly, they will now find that a more difficult defence to adopt."⁵

Arab NGO Meeting (Cairo, 10-12 April 1993)

More than 60 Arab and International NGOs participated in this first-time event. During the three days of the conference, Arab human rights NGOs went over the same grounds established for the World Conference agenda, stressing universally and the interdependence of human rights, democracy and development. Regional concerns were echoed in the final statement of the conference, including the problems of foreign occupation, selectivity in the implementation and enforcement of human rights and humanitarian law, and human rights violations by unofficial or non-State bodies. Special attention was also called to women's rights and the rights of minorities.

This meeting was unique in that it was the first such gathering of the emerging Arab human rights movement. It did not, however, take place on the margins of a governmental meeting, since the Arab

4) For a comprehensive collection of documents and NGO interventions, see *Our Voice: Bangkok NGO Declaration on Human Rights*, published in 1993 by the Asian Cultural Forum on Development (ACFOD) on behalf of the Organizing Committee and Coordinating Committee for Follow-up Asia Pacific NGO Conference on Human Rights. ACFOD, P.O. Box 26, Bungthonglang, Bangkok 10242, Thailand.

5) ISHR, *Human Rights Monitor*, No. 21 (May 1993) p. 21.

countries are geographically split, according to UN criteria, between Asia and Africa. This was also the reason why it proved difficult for Arab NGOs to continue their coordination during the World Conference itself, as the NGOs were also active in the regional division of labour.

Fourth PrepCom Meeting (Geneva, 19 April-7 May 1993)

The stormy three weeks of the meeting barely yielded a draft declaration to be considered for adoption in Vienna. Regional governmental conflicts were at their height, with serious splits on issues between the hard-liners – mostly Asian States – the Western group, and the African group of States. It seemed that the effort was to focus on not allowing a retreat from the achievements of the past decades in the concept and protection of human rights. NGOs were a particular target of governments, with Asian governments taking the lead in attempting to severely limit their participation in the proceedings. It took several days of discussion to agree on a compromise, where NGOs would be allowed to silently attend the Plenary Committee, and invited to make short presentations before the Drafting Committee, until the Committee actually began working in private, as was the case in regional meetings. Thus, the procedures for NGO participation fell below ECOSOC standards. By 3 May, the Plenary became the Drafting Committee in full session, and NGOs were ushered out of the room.

NGO lobbying during the Fourth PrepCom was largely ineffective, with the possible exception of strong pressure from women's groups who succeeded in getting paragraphs adopted on women's rights. NGOs did address the assembly during the first week's debates, but were

excluded when the draft document was being finalized.

While approximately 60 NGOs attended the proceedings, including regional representatives and pressure groups working on thematic issues, their organization was weak and preparation insufficient. The Joint Planning Committee articulated a coordination and work structure, which was good in theory, but which, in reality, failed to meet the challenge. Three organizational avenues were pursued: tasks force committees were formed to write statements on different aspects of the draft final document, lobby groups were formed to meet with governments, and a committee for liaison and follow-up, with the UN Secretariat was set up.

In the JPC, international NGOs had near-total control, and work was being conducted without enough consultation with the regional and thematic groups, such as the entire Coordinating Committee of Asia Pacific NGOs, which were there *en force*. Statements were being prepared by the JPC task forces without thorough discussion or consultation. Important issues were missing which were added only when the thematic or regional groups brought them in. When governments began the actual discussions, little was prepared. The strongest showing was for women's groups and indigenous peoples interest groups.

The regional and thematic NGOs felt that the JPC exhibited a lack of leadership and a lack of sensitivity to their specific concerns and role in the process. The crux of the conflict was the idea that while international NGOs had the expertise in the UN system, as most of them had Consultative Status with ECOSOC and knew how to lobby governments, (although they were unable to do so effectively because of the severe restrictions),

the regional and local groups, which had the practical knowledge and experience in the field, were given much less consideration in the decision-making process. A bridge between the "expert" and the "victim" seemed to have been missing. Southern NGOs left with a smouldering resentment that was to emerge during the World Conference in Vienna.

NGOs at the UN World Conference in Vienna (14-25 June 1993)

With an estimated 9,000 individuals attending the UN World Conference on Human Rights, including governmental and non-governmental delegations, support staff and journalists, the Austria Centre in Vienna resembled a bustling Arab bazaar of ideas, issues and interests. The physical allocation of space was representative of the NGO-government dynamic; NGOs were downstairs running their stalls and conducting their parallel activities consisting of lectures, films, workshops and organizational meetings, while struggling for access to the upper level, where governmental delegations were conducting the official Conference.

Most of the first half of the Conference was taken up by NGOs attempting to reorganize themselves after a nearly disastrous NGO Forum which had taken place 10-13 June, and by intense discussions and lobbying on the rules of procedure governing NGO participation in the Conference. This led, in major part, to a weakening of the NGOs' potential for having an impact on the Conference through lobbying, as too much of their efforts were expended on organizational and procedural matters.

The NGO Forum opened with NGOs being critical of the Joint Planning Com-

mittee's handling of the administrative and substantive content of the Forum and of the preparations for the Conference itself. For example, by the time the Forum ended, more than half of the NGOs from the Africa region had still not arrived due to administrative problems with travel arrangements. There was also anger at the impression that the JPC had not sufficiently contested the Secretariat when invitations to about 17 NGOs were withdrawn.

NGOs also felt that the JPC had not undertaken sufficient consultation in the planning of the Forum, and that, in effect, they were being marginalized during the entire process. The conflict was exacerbated by the JPC's invitation to former US President, Jimmy Carter, to address the Forum. Latin American NGOs, in particular, resented what they perceived to be JPC insensitivity by inviting the former President of a country responsible for human rights abuses in the American sub-continent. While insisting that it was a protest against the country and not the man, these NGOs angrily reacted when Mr Carter attempted to speak, and effectively prevented him from doing so. The JPC had already provoked a furore when one of its members attempted to silence the President of the Palestinian Women's Society, Ms. Issam Abdul-Hadi, in the midst of her presentation to the Forum. These unfortunate public confrontations created intense debates and acrimonious recriminations which persisted for several days.

During the first few days it also transpired that the Austrian government had invited the Dalai Lama to address the World Conference, and that China had succeeded in forcing the UN to ban his entry into the Austria Centre building.

These problems, in addition to the displeasure expressed by children's rights

NGOs for not being put on the agenda, and the growing feeling of marginalization and of mismanagement by the JPC, led to a movement spearheaded by a majority of Southern NGOs to reorganize coordination among NGOs. The JPC voluntarily dissolved itself, having "lost legitimacy and support of most NGOs"⁶ and a Liaison Committee was formed, representing all regional groups and thematic NGOs such as those concerned with indigenous peoples, children, women, the disabled and others.

Thus, the NGOs entered the first day of the World Conference in extended order, only to begin a procedural battle with the governmental conference. Governmental delegations, particularly those from the Asia Group, sought again to limit NGO participation in the Plenary, the Main Committee and the Drafting Committee. They had a minor success in being allowed to attend the Plenary in limited numbers using special green identification badges, and sitting in a separate gallery. Soon thereafter, many of those restrictions were dropped, or fell off by themselves, and any NGO could attend; eventually they were even allowed to speak; albeit under restrictions. NGOs also were able to attend the meetings of the Main Committee under the severe limitation of 50 seats. The struggle, however, was lost in the most important arena of debate and lobbying: the Drafting Committee, which remained closed to NGOs.

Much time and energy were lost during the first half of the World Conference at the expense of the important task of trying to influence the governmental debates on the final document of the World Conference: the Vienna Declaration.

Given the intransigence of many governments, however, one cannot assume that, had there not been such procedural and organizational problems, the effect of NGO lobbying would have been more tangibly felt. The NGOs inability to be present in the Drafting Committee's deliberations certainly diminished their capacity to influence its decisions, and the attempts of some sympathetic governmental delegations to keep NGOs informed of the proceedings could not bridge that gap.

Lobby efforts did continue, and the new Liaison Committee, charged with liaising with the Secretariat, held daily briefings detailing progress on NGO access and on the Drafting Committee's discussions and dynamics. Documents responding to various draft proposals were circulated, re-drafted and sent to governments. Regional NGOs continued to coordinate their efforts with varying success. Latin-American NGOs were strong, but the Asia/Pacific Coordinating Committee again emerged as the most organized, having gained from its previous experience in the regional meeting and having come with a clear and strong NGO "Bangkok Declaration" to guide its responses and reactions to developments "upstairs." Their strenuous efforts to voice a counterpoint to the positions of their governments finally caused the Asian Group of States to call a once and only meeting with the Asia/Pacific NGOs, three days before the final day of the Conference; a rather empty gesture of reconciliation.

NGOs turned much of their attention to conducting and attending the parallel activities "downstairs", which were certainly more inspiring and stimulating

6) *Terra Viva*, No. 2, 12 June 1993.

than the comparatively stale debates and presentations at the Plenary sessions.

The strongest advocacy and presence was displayed by the thematic NGOs, particularly women, children and indigenous peoples. The Women's Tribunal, held in the first days of the Conference, was an impressive and heart-wrenching display of testimonies by women victims of abuse and violence. A moving programme of speeches and events by children also touched everyone present. Everywhere one saw the large "S" tagged onto delegate's clothes, protesting the abandoning of the plural from "indigenous peoples." The success of the Vienna Declaration in improving the substance of protection of all three vulnerable groups is a matter of debate. Whether the proposals and positions detailed in the Declaration were concrete enough, or went far enough, is beyond the scope of this article. Activists from those thematic groups, however, left Vienna with the feeling that they did not procure the results aimed for, and the Final Document did not significantly improve the protections of these vulnerable groups beyond the usual platitudes. One delegate, commenting on the Document's clauses on women, commented:

"On several issues, we would be better off with nothing rather than with the language that is being adopted."⁷

Indeed, the focus of much NGO lobbying during the Conference was on the effort not to allow any relinquishing of what had already been gained during the past twenty-five years. NGOs did, in fact,

succeed in preventing such retreat, although the Vienna Declaration, as a whole, was disappointing. The initial response adopted at the final NGO Plenary on 25 June expressed a consensus feeling among NGOs. The attending NGOs from around the globe, while praising certain clauses in the Declaration, came out with the general view that the Declaration was a "Flawed Document", and stated that:

"[it] uses weak and vague language and fails to commit governments individually or jointly to concrete measures for the protection and promotion of human rights".⁸

Concluding Remarks

NGOs had to fight a bitter battle to be heard throughout the preparatory period leading up to the World Conference, as well as in the Conference itself. Governments, particularly those in Asia, used every means at their disposal to limit the participation of NGOs in the deliberations of the World Conference at every step of the process. NGOs spent a major part of their focus and energy fighting for access. Ironically, the only practical suggestions discussed during the Conference came from NGOs themselves; Amnesty International led the drive for the establishment of the post of UN High Commissioner for Human Rights, while the ICJ lobbied extensively for a permanent International Penal Court. Moderate success was achieved by Latin American NGOs in their drive to have the problem

7) Shelagh Day, "No Way to build a world", in *Terra Viva* No. 13, 25 June 1993, p.23.

8) "Initial Response of Non-Governmental Organizations to the Draft Vienna Declaration", Press Statement: 25 June 1993, 15:00 Hrs.

of impunity properly addressed in the Final Document. The Vienna Declaration, however, was weak on all those points.

The energy expended on procedural issues regarding NGO participation in the formal conference, and the tensions created by the conflict with the JPC leading up to and during the NGO Forum, had a negative impact on the effectiveness and organization of NGO lobbying and focus during the World Conference.

Perhaps the most significant lesson to be learned from the experience was the new-found strength of the human rights movement, based in large part on the development and participation of Southern and national NGOs. This, however, may be a double-edged sword in the future. Many of the local and thematic organizations crossed the very thin line between human rights advocacy, populist advocacy, and political advocacy. Indeed, any organization could have attended the Conference as a human rights NGO, and many did which were not human rights organizations in the proper sense. This included what were referred to as GANGOS (Government-Appointed Non-Governmental Organizations), and representatives of Peru's "Shining Path" movement. Many NGOs adopted populist mass-movement style advocacy, bringing in the political approaches and dynamics of their own country contexts to an international human rights gathering such as the World Conference. The "silencing" of former US President Jimmy Carter was an example of an embarrassing double-standard, no matter how justified the reaction may be to the insensitivity of inviting such a symbolic figure in the first place. At the World Conference, we be-

gan to discover the dangers inherent in the ascendancy and popularity of the human rights paradigm. This must be guarded against in the future if we are to preserve the very specific legal gains of the past decades in the protection of human rights.

On the other hand, one noted a level of professionalism and seriousness in the majority of national NGOs that displayed a muscle never seen before. Many of these professional NGOs were from the South; and clearly, Southern human rights NGOs have come of age and will be a force to be reckoned with in the human rights debate in the future.

Devolving from this maturation, the World Conference may well have marked a milestone in the relationship between the international NGOs and the national and regional ones. This rethinking of the relationship already began at the World Conference with the reorganizing of the JPC into the New Liaison Committee, with a different, more equal and representative membership. In fact, after a number of meetings towards the end of the Conference, it was decided that the New Liaison Committee would continue to act beyond Vienna, towards closer cooperation and coordination, but short of conceptualizing a "super NGO" or an executive coordination function. Significantly, the proposal noted that "the Regional Coordinating Committees [are] the essential basis of future NGO international cooperation", and noted the need to address "one particular further matter of urgency." This is the possible renegotiation of NGO access to the UN system, currently restricted to ECOSOC status NGOs."⁹ It was agreed that the regional

9) Draft Resolution from the Beyond Vienna Working Group, circulated 23 June 1993, and approved by the NGO plenary that day.

coordinators in the New Liaison Committee would prepare their constituencies and meet again during the 50th session of the Human Rights Commission to make proposals and future joint action and coordination.

Whether or not this development will have any impact on the UN System and the government's view of NGO consultative status and access remains to be seen. It is important, however, to note that in attempting to restrict NGO participation, governments did not differentiate between NGOs with ECOSOC status and others; they dealt with NGOs as a block. Lobbying during the regional meeting and the World Conference was of a different nature than that in the UN Com-

mission or Sub-Commission. NGOs also acted as a whole, coordinating efforts and making joint statements with little regard to consultative status or the lack thereof.

Organizing continues and we may be seeing some interesting and important changes in the next few years. The human rights movement will be faced with the delicate task of needing to separate serious and professional human rights work from the "populist" and political nature of some of the organizations. Indeed, the indivisibility of human rights, as reaffirmed in Vienna, means that any issue may be seen in a human rights context. It will be important in the coming years not to lose perspective, and not lose the gains of the previous years.

New Models of Human Rights Protection: Preventive Peacekeeping

*Bertrand G. Ramcharan**

Introduction

The United Nations World Conference on Human Rights announced a determination to take new steps forward in the commitment of the international community with a view to achieving sustained progress in human rights endeavours. It expressed grave concern about continuing human rights violations in all parts of the world and about the lack of sufficient and effective remedies for the victims. It, therefore, recommended that the UN assume a more active role in the promotion and protection of human rights. Recognizing the important role of human rights components in specific arrangements concerning some peacekeeping operations by the UN, the World Conference recommended that the UN Secretary-General take into account the reporting experience and capabilities of the UN Centre for Human Rights and human rights mechanisms in conformity with the Charter of the UN.

Effective international protection requires anticipatory and preventive measures, mitigatory and remedial measures,

and measures of redress and compensation. While some mechanisms have been established for tackling violations of human rights after they have begun, and for providing limited redress, preventive measures are singularly lacking. This is a major deficiency in the international protection system. In the political and security sectors of the UN, incipient efforts have been made to develop systems of early warning and preventive diplomacy. The human rights programme has to catch up in this area. It has begun to play a part in the human rights components of peacekeeping operations. As the World Conference indicated, this is a role that should be developed and accentuated.

However, there are still important conceptual breakthroughs to be made in the international protection system, and one of them is to draw upon the experience and techniques of peacekeeping in taking the new steps forward called for by the World Conference. A decade ago, the New York NGO Committee on Human Rights organized a Human Rights Day Programme at the UN Headquarters de-

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voted to a comparison of the techniques of peacekeeping and human rights. The idea was to encourage resort to the methods and techniques of peacekeeping in the human rights programme. Since then, we have seen the development of electoral assistance and monitoring, and the inclusion of human rights components in peacekeeping operations in places such as Central America and Cambodia. The UN observer mission in South Africa was also a step in the same direction.

We are seeing, however, an evolution in the *problematique* of human rights violations which will require more emphasis on preventive measures in the international protection system of the future. Even though more and more countries embrace the values of democracy, the Rule of Law and the respect for human rights, internal conflicts, ethnic and religious clashes, are causing great violence and brutality. It is much more difficult to deal with such conflicts after they have broken out – when passions are high and the desire for vengeance proliferates. In situations of potential internal conflict, or in situations where population groups straddle one or more nations, with a potential for strife and exploitation, preventive peacekeeping could be a valuable way of defusing problems and preventing their eruption. There has, however, been only one preventive peacekeeping operation to date: the UN operation in the Former Yugoslav Republic of Macedonia (FYROM), about fifteen months in existence now, which has been highly acclaimed as the first successful preventive deployment in the history of peacekeeping operations. Because of its great relevance to the development of new forms of human rights protection, especially of the preventive type, the experience of this first preventive peacekeeping operation is discussed below.

I The Initial Idea for a Preventive Deployment

The initiative for a preventive deployment first came from the Co-Chairmen of the International Conference on the Former Yugoslavia. They discussed this idea with President Gligorov who, in turn, wrote to the UN Secretary-General on 11 November 1992, asking for such a preventive deployment. In a letter of 18 November 1992 to the UN Secretary-General, the Co-Chairmen informed him that there was a growing feeling that there was a need to take preventive measures to avoid the outbreak of violence in Macedonia and Kosovo. They recalled that they had warned the Security Council a few days earlier, on 13 November, that there would be a tragedy of dreadful proportions if conflict were to break out in Macedonia or Kosovo, which would engulf the neighbouring countries.

Elaborating upon their idea, the Co-Chairmen stated that, in terms of preventive diplomacy, it would be desirable to place UN personnel, under the aegis of UNPROFOR, in Macedonia, so as to provide a calming influence for all sides and give a sense of stability. They suggested to the Secretary-General:

“the deployment of a contingent of UNPROFOR personnel within Macedonia, who could have their headquarters in Skopje and be distributed in the main population centres, as well as on the Macedonian borders with Serbia (including Kosovo) and Albania. Their efforts would be complemented by those of the CSCE, which already had a small ‘spill-over mission’ in Skopje.”

The Co-Chairmen suggested that, as a start, about a dozen UN military and

police officers, with supporting political staff, could be sent, who could be stationed in Skopje and could travel to the border areas. In the light of their experience and recommendations, the UN presence could be built up as needed. The Co-Chairmen were conscious of the scarcity of UN resources and they were seeking to indicate a way to implement their recommendation even in the face of that scarcity.

II The Secretary-General Follows-Up

Following receipt of the Co-Chairmen's recommendation, the UN Secretary-General advised the Security Council that he would be sending an exploratory mission to Macedonia to look into the possibility of establishing a preventive deployment of UN peacekeepers in that country. Following its visit, the exploratory mission made the following recommendations:

"(a) that a small UNPROFOR presence be established on the Macedonian side of the Republic's borders with Albania and the Federal Republic of Yugoslavia (Serbia and Montenegro) with an essentially preventive mandate of monitoring and reporting any developments in the border areas which could undermine confidence and stability in Macedonia or threaten its territory.

(b) that a small group of United Nations civilian police should be deployed in the border areas to monitor the Macedonian border police."

The rationale for the latter deployment was that incidents, arising from illegal attempts to cross the border, had led to increased tension on the Macedonian side. The Mission believed that the pres-

ence of a small UN civilian police detachment would have a calming effect.

On 9 December 1992, the Secretary-General reported to the Council on the findings of the exploratory mission, together with his recommendations (S/24923). On 11 December 1992, the Security Council authorized the Secretary-General to establish a presence of the United Nations Protection Force (UNPROFOR) in the Former Yugoslav Republic of Macedonia (FYROM). The Council requested that the Secretary-General immediately deploy the military, civil affairs, and administrative personnel he had recommended in his report, as well as police monitors.

III Implementation

In mid-December 1992, a UN team discussed practical arrangements with the FYROM Government in Skopje. The first UNCIVPOL monitors arrived on 27 December. They were eventually deployed along the northern and western borders. On 28 December, a reconnaissance team went to the country to make arrangements for the interim deployment of a Canadian company. On 7 January 1993, a Canadian company arrived in the country, pending the arrival of a joint battalion from Finland, Norway and Sweden. On 25 January, Brigadier-General Finn Saermark-Thomsen of Denmark, who had been designated Commander of the Macedonia Command of UNPROFOR, arrived in Skopje. On 18 February, the Nordic battalion took over the operation from the Canadian company.

The Nordic battalion was 434 strong and composed of three rifle companies. It was deployed on the western border from Debar northward and on the northern border up to the border with Bul-

garia. At the beginning, there were 19 United Nations Military Observers (UNMOs) in the area of operations. The western border south of Debar was covered solely by UNMOs.

Since early January 1993, the northern border and the western border north of Debar have been constantly monitored from observation posts and by regular patrols, with a view to reporting any activities that might increase tension or threaten peace and stability. The UNMOs conduct regular patrols in their area of operations to monitor the situation. They have also carried out a programme of visits to border villages, aimed at gaining the confidence of their inhabitants and assisting in defusing possible inter-ethnic tensions.

While carrying out their border visiting programme, the UNMOs have been approached by representatives of different ethnic groups who lodged various complaints about alleged discriminatory practices by the authorities. In those cases where the complaints were relevant to the mandate of the mission, they were brought to the attention of the appropriate authorities. Some were also brought to the attention of the competent international bodies, such as the International Conference on the Former Yugoslavia.

UNCIVPOL has also conducted regular patrols to specific crossings, and the border areas in general, on a daily basis. In the course of doing so, it has received, through local mayors, a number of complaints concerning the local border police. In those cases where there appeared, *prima facie*, to exist a basis for the complaint, UNCIVPOL took up the matter with the relevant police authorities.

The Civil Affairs component of the mission established, from the outset, an information programme to explain the role

of UNPROFOR in the country. UNPROFOR has maintained close coordination with the CSCE mission in the country.

By the middle of 1993, UNPROFOR's assessment was that it had been successful in its preventive mandate in the country. It was concerned, however, about the internal situation and the possibility of instability, should there be an increase in inter-ethnic tensions, a possibility which, it reported, was repeatedly mentioned by local and international sources. A related concern of UNPROFOR was the deterioration of the economic situation, stemming from the implementation of sanctions which, it was feared, could contribute to heightened inter-ethnic tensions.

By September of 1993, the Secretary-General reported to the Security Council that the FYROM Command of UNPROFOR consisted of 1,190 military and civilian, including UNCIVPOL, personnel. A Nordic battalion was based at Kjojila, east of Skopje, and a United States contingent of 315 troops had arrived in Skopje in early July, deploying to the FYROM side of the border with the Federal Republic of Yugoslavia on 20 August 1993. UN Military Observers, UNCIVPOL and Civil Affairs officers were also continuing their activities. UNPROFOR reported:

"This first venture in the field of preventive peacekeeping on the part of UNPROFOR continues to be successful, and to enjoy an excellent cooperative relationship with the FYROM Government, and to be fully supported by the people of the country."

IV Observations

From the foregoing brief account, it will be seen that the preventive deployment

in the Former Yugoslav Republic of Macedonia (FYROM) has effectively carried out its functions externally as well as internally. The model of UN observers patrolling sensitive areas where ethnic tensions are high, receiving complaints, transmitting them to the authorities, and serving as an intermediary and confidence builder is one that clearly has great relevance to situations of ethnic and reli-

gious tension, in situations where there are minority populations, or in other situations where internal strife or conflict could result in gross violations of human rights. The model of preventive peacekeeping, thus, clearly suggests itself as a prime candidate in the future armoury of the international human rights protection system.

The Global Campaign for Women's Human Rights

*Charlotte Bunch**

A few years ago, violence against women was not considered a human rights issue, much less seen as requiring attention from the international human rights community. Likewise, the UN resolution to hold its first World Conference on Human Rights in 25 years neither mentioned women nor recognized any specific gender aspects of human rights. Yet, by the time the Vienna Conference ended, gender based violence and women's human rights had emerged as among the most talked about subjects and women were seen as a well organized constituency. The UN Vienna Declaration devotes several pages to the "equal status and human rights of women" as a priority for governments and the UN and sounds a

historic call for the elimination of "violence against women in public and private life" as a human rights obligation.

Progress on women's human rights did not happen by accident. The process has been a long time in the making and can be traced back to the growth of women's movements globally during the UN Decade for Women from 1975-85. Since that time, women have continually questioned why "Women's rights" and lives have been deemed secondary to the "human rights" and lives of men. The organized effort to change this attitude in the human rights context gained momentum in the beginning of the 1990s. Targeting the Vienna Conference as an arena for making public women's human rights per-

* Center for Women's Global Leadership

spectives began in 1991 when international, regional, and local women's groups began meeting to discuss how to bring this issue before the world community.

That year, the global campaign for women's human rights launched its first annual "Sixteen Days of Activism Against Gender Violence", linking 25 November, International Day Against Violence Against Women, to 10 December, Human Rights Day. A petition drive was initiated calling upon the UN Human Rights Conference "to comprehensively address women's human rights at every level of its proceedings" and to recognize "gender violence, a universal phenomenon which takes many forms across culture, race and class... as a violation of human rights requiring immediate action." Initially co-sponsored by the Center for Women's Global Leadership and the International Women's Tribune Centre, the petition was eventually translated into 23 languages and sponsored by over 1000 groups who gathered almost half a million signatures from 124 countries by the time of the Vienna meeting.

This movement sought to gain recognition that "women's rights are human rights", making clear that discrimination against and abuse of women is not less important than other human rights violations. Traditionally, women's rights have been treated as separate and not taken as seriously as human rights questions by governments and non-governmental organizations. Yet, more women die each day from various forms of gender-based discrimination and violence than from any other type of human rights abuse. This violence, ranges from female infanticide and abortion to the disproportionate malnutrition of girl children as well as the multiple forms of battery, mutilation, sexual assault and murder that women

throughout the world suffer at all ages because they are female.

Women from all regions demanded that women's human rights be discussed at their preparatory meetings (in Tunis, San José, and Bangkok) as well as at other NGO and national preparatory events. The broad concerns were generally the same, but women elaborated on the specific human rights issues most important in their particular context. Several regional, national, and global documents were written and exchanged by women in this process. Thus, by the final Geneva International Preparatory Committee meeting to draft the document for Vienna, women were ready with common demands to present. The Geneva women's caucus included both representatives of international women's and human rights NGOs often present at such gatherings and Third World women active in their regional processes, most of whom were organized to attend through the United Nations Development Fund for Women (UNIFEM). This coalition crossed historic divisions not only of North/South and East/West but also of women working in government, non-government, and UN agencies. It both succeeded in pressuring for texts on women in the draft document which was accepted by the governments there, virtually assuring their passage later, and formed the basis for women working together across these lines in Vienna.

The campaign sought to show how general human rights abuses specifically affect women and to demonstrate that many violations of female human rights have been invisible. Local and regional hearings gathered testimony on abuses to present to the Conference and to the UN Human Rights Commission as concrete evidence of the need for more responsiveness to women from human

rights mechanisms. In February of 1993, activists from around the world, meeting in a strategy session at the Center for Women's Global Leadership, decided to cap the campaign with a tribunal on violations of women's human rights in Vienna.

Women were chosen to testify on specific issues in each region within five broad themes: Human Rights Abuse in the Family; War Crimes Against Women in Conflict Situations; Violations of Women's Bodily Integrity; Socio-Economic Violations of Women's Human Rights; Political Persecution and Discrimination. The Tribunal gave expression to the life and death consequences of women's human rights violations – demonstrating how being female can be life threatening, subjecting some women to torture, terrorism, and slavery daily. Thus, while women were lobbying for official recognition of our human rights from the UN, we were also defining them for ourselves in our own forums.

But women wanted visibility not only as victims but also as actors on the world scene, involved in re-shaping human rights perspectives to take better account of all people's lives. Many women participated in working groups on other topics and sought to bring gender perspectives into areas such as development and democracy, or racism and xenophobia. In this effort, we met with resistance. The conference was more willing to acknowledge some specific women's human rights concerns separately, than it was to integrate women fully into all topics and address gender as a factor in every area.

Given the extent to which women's human rights were almost invisible at the beginning of this process, the considerable discussion generated by women's organizing around Vienna may be our

most enduring success. The Conference's recognition of women's human rights and violence against women – publicly or privately perpetrated – as basic human rights issues can be used in working for government accountability for these abuses. Women also achieved visibility in the human rights world which should lead to greater inclusion in future endeavours. Attempting to integrate gender into all areas of human rights discussion was less successful and poses a challenge if women's human rights are to be central to human rights and not ghettoized into a separate and probably still unequal sphere. In particular, the gender implications of socio-economic rights must be spelled out further and gender, race, class, and culture understood more clearly as intertwined in shaping violations of women's human rights.

An important aspect of this organizing was the empowering impact it had on women – both those involved directly and those who heard about it through the media. For many this was the first time they imagined that abuses women suffer routinely can be understood as human rights violations and addressed by global institutions. Further, organizing to influence the UN and international human rights machinery was an educational process for most of the women who had little experience in these areas. The challenge is to continue such organizing so that more women learn these mechanisms locally and to pressure for concrete action internationally.

One goal in Vienna was expanding the possibilities for redress of violations of women's human rights internationally. In areas like violence against women, women can now argue in local courts and with national governments that the UN has recognized this human rights abuse and mandated State action on it. This

will not automatically end such violations but it provides another tool for fighting to prevent them. To be effective, wide dissemination of information about the Vienna Declaration is required along with training in how to use it and other human rights instruments on behalf of women. Further, local pressure is needed for realization of the Conference's call to strengthen implementation and ratification without reservation of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).

The challenge is implementation of the Vienna promises throughout the UN system. This is no small task given the bureaucracy's resistance to change and the reluctance of governments to put money into women's concerns. In Vienna, the women's caucus organized by UNIFEM brought governmental, non-governmental, and UN agencies women together with personnel in UN human rights positions (UN Human Rights Centre, Treaty bodies, special rapporteurs, etc.) to discuss implementing the Vienna Declaration and bringing gender perspectives into their work. Women must continue this ongoing work and be present at meetings of the UN Human Rights Commission and other such bodies to pres-

sure for concrete measures, such as the appointment of a Special Rapporteur on Violence Against Women, and adequate funding for these initiatives. At the end of the World Conference, women called upon the UN to make timetables and plans for gender parity and gender-awareness training for its staff as well as to report on progress toward implementing the Vienna Declaration at the UN Fourth World Conference on Women to be held in September, 1995 in Beijing.

There is much to be done to implement and expand the Conference's recognition of women's human rights at many levels. But by defining woman abuse as a human rights violation that the State has a responsibility to end, rather than a private problem or "just life", a critical step forward has been taken.

The words of the Vienna Declaration and the consciousness that the Conference raised were important moves toward ending the violation of women's human rights. On its own the Vienna Conference did not accomplish much but, as part of this process, it was significant. And that, after all, is precisely why women targeted it as an important place to be present and to be heard. And we were.

DOCUMENTS

Preliminary Evaluation of the UN World Conference on Human Rights

Issued by the ICJ on 1 July 1993

The International Commission of Jurists (ICJ) has concluded its preliminary assessment of the UN World Conference on Human Rights which took place in Vienna between 14-25 June 1993.

The ICJ asserted that amongst the most important gains of this conference is the ability of the human rights movement to organize itself. Over 1400 international, regional and local human rights groups gathered in Vienna from all over the world to deliberate about human rights concerns. The Conference was preceded by a three day NGO Forum. Parallel NGO activities continued throughout the official meeting.

Most of the major practical proposals before the official meeting indeed originated from NGOs. Amnesty International has been the driving force behind the revival of the idea of the High Commissioner for Human Rights and the International Commission of Jurists initiated the public debate around the International Criminal Court. These two main practical proposals were unanimously accepted by the NGO Forum and tabled before the official governmental meeting.

Commenting on the final document of the governmental meeting, the ICJ welcomed the affirmation of universality, indivisibility and interdependence of human rights. The ICJ said that the tireless efforts of some governments have enabled progress to be achieved in several areas. Nevertheless, the ICJ expressed concern that some of the adopted principles constitute regression. Amongst the main weaknesses of the Conference is that it shied away from creating new mechanisms for implementation.

Positive Trends

As stated earlier, the ICJ is relieved that the principles of universality, indivisibility and interdependence of all human rights were strongly upheld.

The ICJ particularly welcomes the following:

- **The International Criminal Court:** The ICJ is pleased with the reference in the final document to the international Criminal Court. Such reference reflects the consensus amongst governments on the need for such a court. As the ICJ is advocating that this court be established through a treaty, this consensus is indeed encouraging.
- **The Administration of Justice and the Question of Impunity:** The document addressed the question of impunity in several paragraphs. The ICJ particularly welcomes the provision calling upon States to "abrogate legislation leading to impunity for those responsible for

grave violations of human rights..." The ICJ also welcomes the assertion that the perpetrators of gross violations of human rights and grave breaches of international law be brought to justice.

- **The Right to Petition** : Optional protocols to conventions were encouraged. These conventions include the Convention on the Elimination of All Forms of Discrimination Against Women; and, the International Covenant on Economic, Social and Cultural Rights. These optional protocols allow individuals to complain against the violations of the rights recognized by the convention. The ICJ Welcomes such a trend.
- **Integrating Women Rights Into Human Rights**: The ICJ welcomes the serious attempt to respond to the human rights concerns of women. The Conference urged States to consider the full and equal enjoyment by women of all human rights as a priority. The Conference adopted several measures to advance the promotion and protection of women human rights in private and public life.
- **The Right to Development**: This right has been universally reaffirmed and accepted.

Negative Trends

Despite these positive developments, the ICJ is seriously concerned about the following issues:

- **The Treatment of NGOs**: Despite their constructive role, NGOs were given limited access to the Drafting Committee which was without doubt the most important Committee of the Conference. Since many issues were put on the agenda of the World Conference as a result of NGO efforts, it would have been more constructive and direct to include the NGOs in the Drafting Committee.

Moreover, the reference to the work of NGOs in the Final Declaration is inadequate. After favourable sentences, the document stated that NGOs which are "genuinely" involved in the field of human rights should enjoy the freedoms and protections of the Universal Declaration of Human Rights. Who decides which NGO is genuine? Such a qualification is subjective.

The document also stated that NGOs are free to carry out their activities "within the framework of national law." Several national laws, however, are unduly restrictive to freedoms of association and expression. The Conference was also silent on the Draft Declaration of Human Rights Defenders.

- **The Right to Free Expression**: The paragraph referring to the media in the declaration also refers to media protection "within the framework of national law." The paragraph failed to invoke the right to free expression under international law.
- **Religious Intolerance**: Instead of requesting States to take all appropriate measures to counter religious intolerance, the Conference allowed States to work within the framework of their legal systems. Many countries, however, have legal systems which embody discriminatory rules.
- **The UN Commissioner for Human Rights**: Despite the public debate on the question of establishing a High Commissioner on Human Rights, States failed to come up with a uniformed vision about the structure and the mandate of this office. The matter had to be, therefore, referred to the General Assembly for further consideration.

- **The Abstract Discussion of Human Rights:** Throughout the meeting as well as the preparatory process, the UN adopted a rule that there should be no reference to specific country situations. During the Conference itself, two exceptions were made when resolutions on Bosnia and Herzegovina and Angola were adopted. The lack of specific country reference made it difficult in some occasions for the Conference to grasp reality.

Conclusion

In setting strategies for the future, the ICJ welcomes the positive trends detected in the Vienna Conference. The ICJ sincerely hopes that the negative observations could be rectified in future UN activities.

The task that lies ahead is to ensure that they be followed up. The ICJ is convinced that the Vienna Conference will, despite its negative aspects, be remembered as the beginning of the renewal of a process to uphold human rights throughout the world.

Appeal by Nobel Peace Prize Laureates

Message Addressed to the World Conference on Human Rights by the Nobel Peace Prize Laureates Assembled in Vienna from 14 to 16 June 1993

We,

Laureates of the Nobel Peace Prize having gathered in Vienna, from 14 to 16 June 1993, at the invitation of the Federal Minister for Foreign Affairs of the Republic of Austria,

Considering the important objectives of the World Conference on Human Rights,

Bearing in mind the inherent interrelationship between the maintenance of peace and the observance of human rights,

Address the following message to the World Conference.

- 1 One of the fundamental lessons of our times is that respect for human rights is the key to peace. There can be no real peace without justice, and lasting peace must be founded upon a universal commitment to human kinship. National interests must be subject to international obligations.
- 2 In all cases where peace is broken and armed conflict occurs, it is essential that, as a mere minimum, the norms of international humanitarian law be respected by all parties to the conflict. Also, the community of nations must continue its progress towards complete disarmament.
- 3 The world is still witnessing mass violations of human rights which in themselves are a threat to peace: torture, political killings and summary executions, arbitrary detention, disappearances, all these are phenomena which can no longer be tolerated. There is an international responsibility to ensure that those who commit such crimes are brought to justice.
- 4 The death penalty constitutes a cruel and inhuman punishment and should be abolished throughout the world. Once abolished by a State it should never be reintroduced.
- 5 As a result of human rights violations and armed conflict the number of refugees and displaced persons is acquiring unprecedented dimensions. Human solidarity is imperative to ensure their protection and assistance. At the same time there is a need to address the root causes of such movements of people and a need for action to facilitate their return and their social reintegration under dignified conditions and to ensure their security.
- 6 The only way to permanently resolve the conflicts which are still racking the world is to address the main causes of human rights violations. Ethnic conflicts, the rise of militarism, racial, religious, cultural and ideological antagonism and the denial of social justice will be overcome if all people are raised, educated and nurtured in the spirit of tolerance based on the respect for human rights, as manifested in the various human rights instruments adopted by the United Nations system.
- 7 Human rights include economic, social and cultural rights as well as civil and political rights. Those rights are indivisible and interrelated. They are universal in character. Genuine peace cannot be achieved without due observance of all those rights including the right to food, employment, health, education and a safe environment.

- 8 The right to food is of primordial importance. Governments must make the production and distribution of food their primary concern. Without adequate production of food and equitable distribution any human rights system will collapse.
- 9 Also, peace, fragile as it is, must be based on social justice, adequate economic progress and the right to self-determination. It is, therefore, the duty of the Governments of all nations to create international and national conditions in which the inherent dignity and worth of the human person are truly respected and the individual human being is given the possibility to develop his or her potential to the fullest with special attention paid to women, children and also disabled persons whose rights have been traditionally undervalued. Political systems based on genuine democratic participation by all are best able to ensure that aim. In that context the legitimate rights of indigenous peoples must be fully respected.
- 10 As we enter the twenty-first century it is time to give a new impetus to the vision enshrined in the Charter of the United Nations for a world of peace and justice. Such a world must be based on observance of human rights and the achievement of economic and social progress. In this context the important role which non-governmental organisations have to play in that regard must be recognised and supported.

BASIC TEXT

Vienna Declaration and Programme of Action

Adopted by the World Conference on Human Rights on 25 June 1993*

The World Conference on Human Rights

Considering that the promotion and protection of human rights is a matter of priority for the international community, and that the Conference affords a unique opportunity to carry out a comprehensive analysis of the international human rights system and of the machinery for the protection of human rights, in order to enhance and thus promote a fuller observance of those rights, in a just and balanced manner,

Recognizing and affirming that all human rights derive from the dignity and worth inherent in the human person, and that the human person is the central subject of human rights and fundamental freedoms, and consequently should be the principal beneficiary and should participate actively in the realization of these rights and freedoms,

Reaffirming their commitment to the purposes and principles contained in the Charter of the United Nations and the Universal Declaration on Human Rights,

Reaffirming the commitment contained in Article 56 of the Charter of the United Nations to take joint and separate action, placing proper emphasis on developing effective international co-operation for the realization of the purposes set out in Article 55, including universal respect for, and observance of, human rights and fundamental freedoms for all,

Emphasizing the responsibilities of all States, in conformity with the Charter of the United Nations, to develop and encourage respect for human rights and fundamental freedoms for all, without distinction as to race, sex, language or religion,

Recalling the Preamble to the Charter of the United Nations, in particular the determination to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, and in the equal rights of men and women and of nations large and small,

Recalling also the determination expressed in the Preamble of the Charter of the United Nations to save succeeding generations from the scourge of war, to establish conditions under which justice and respect for obligations arising from treaties and other sources of international law can be maintained, to promote social progress and better standards of life in larger freedom, to practice tolerance and good neighbourliness, and to employ international machinery for the promotion of the economic and social advancement of all peoples,

Emphasizing that the Universal Declaration of Human Rights, which constitutes a common standard of achievement for all peoples and all nations, is the source of inspiration and has been the basis for the United Nations in making advances in standard setting as contained in the existing international human rights instruments, in particular the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights,

Considering the major changes taking place on the international scene and the aspirations of all the peoples for an international order based on the principles enshrined in the Charter of

* UN Doc. A/CONF.157/23.

the United Nations, including the promoting and encouraging respect for human rights and fundamental freedoms for all and respect for the principle of equal rights and self-determination of peoples, peace, democracy, justice, equality, Rule of Law, pluralism, development, better standards of living and solidarity,

Deeply concerned by various forms of discrimination and violence, to which women continue to be exposed all over the world,

Recognizing that the activities of the United Nations in the field of human rights should be rationalized and enhanced in order to strengthen the United Nations machinery in this field and to further the objectives of universal respect for observance of international human rights standards,

Having taken into account the Declarations adopted by the three regional meetings at Tunis, San José and Bangkok and the contributions made by Governments, and bearing in mind the suggestions made by intergovernmental and non-governmental organizations, as well as the studies prepared by independent experts during the preparatory process leading to the World Conference on Human Rights,

Welcoming the International Year of the World's Indigenous People 1993 as a reaffirmation of the commitment of the international community to ensure their enjoyment of all human rights and fundamental freedoms and to respect the value and diversity of their cultures and identities,

Recognizing also that the international community should devise ways and means to remove the current obstacles and meet challenges to the full realization of all human rights and to prevent the continuation of human rights violations resulting thereof throughout the world,

Involving the spirit of our age and the realities of our time which call upon the peoples of the world and all States Members of the United Nations to rededicate themselves to the global task of promoting and protecting all human rights and fundamental freedoms so as to secure full and universal enjoyment of these rights,

Determined to take new steps forward in the commitment of the international community with a view to achieving substantial progress in human rights endeavours by an increased and sustained effort of international co-operation and solidarity,

Solemnly Adopts the Vienna Declaration and Programme of Action

I

1. The World Conference on Human Rights reaffirms the solemn commitment of all States to fulfil their obligations to promote universal respect for, and observance and protection of, all human rights and fundamental freedoms for all in accordance with the Charter of the United Nations, other instruments relating to human rights, and international law. The universal nature of these rights and freedoms is beyond question.

In this framework, enhancement of international co-operation in the field of human rights is essential for the full achievement of the purposes of the United Nations.

Human rights and fundamental freedoms are the birthright of all human beings; their protection and promotion is the first responsibility of Governments.

2. All peoples have the right of self-determination. By virtue of that right they freely determine their political status, and freely pursue their economic, social and cultural development.

Taking into account the particular situation of peoples under colonial or other forms of alien domination or foreign occupation, the World Conference on Human Rights recognizes the right of peoples to take any legitimate action, in accordance with the Charter of the United Nations, to realize their inalienable right of self-determination. The World Conference on Human Rights considers the denial of the right of self-determination as a violation of human rights and underlines the importance of the effective realization of this right.

In accordance with the Declaration on Principles of International Law concerning Friendly Relations and Co-operation Among States in accordance with the Charter of the United Nations, this shall not be construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States conducting themselves in compliance with the principle of equal rights and self-determination of peoples and thus possessed of a Government representing the whole people belonging to the territory without distinction of any kind.

3. Effective international measures to guarantee and monitor the implementation of human rights standards should be taken in respect of people under foreign occupation, and effective legal protection against the violation of their human rights should be provided, in accordance with human rights norms and international law, particularly the Geneva Convention relative to the Protection of Civilian Persons in Time of War of 14 August 1949, and other applicable norms of humanitarian law.

4. The promotion and protection of all human rights and fundamental freedoms must be considered as a priority objective of the United Nations in accordance with its purposes and principles, in particular the purpose of international co-operation. In the framework of these purposes and principles, the promotion and protection of all human rights is a legitimate concern of the international community. The organs and specialized agencies related to human rights should therefore further enhance the coordination of their activities based on the consistent and objective application of international human rights instruments.

5. All human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis. While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms.

6. The efforts of the United Nations system towards the universal respect for, and observance of, human rights and fundamental freedoms for all, contribute to the stability and well-being necessary for peaceful and friendly relations among nations, and to improved conditions for peace and security as well as social and economic development, in conformity with the Charter of the United Nations.

7. The processes of promoting and protecting human rights should be conducted in conformity with the purposes and principles of the Charter of the United Nations, and international law.

8. Democracy, development and respect for human rights and fundamental freedoms are interdependent and mutually reinforcing. Democracy is based on the freely expressed will of the people to determine their own political, economic, social and cultural systems and their full participation in all aspects of their lives. In the context of the above, the promotion and protection of human rights and fundamental freedoms at the national and international levels should be universal and conducted without conditions attached. The international community should support the strengthening and promoting of democracy, development and respect for human rights and fundamental freedoms in the entire world.

9. The World Conference on Human Rights reaffirms that least developed countries committed to the process of democratization and economic reforms, many of which are in Africa, should be supported by the international community in order to succeed in their transition to democracy and economic development.

10. The World Conference on Human Rights reaffirms the right to development, as established in the Declaration on the Right to Development, as a universal and inalienable right and an integral part of fundamental human rights.

As stated in the Declaration on the Right to Development, the human person is the central subject of development.

While development facilitates the enjoyment of all human rights, the lack of development may not be invoked to justify the abridgement of internationally recognized human rights.

States should cooperate with each other in ensuring development and eliminating obstacles to development. The international community should promote an effective international co-operation for the realization of the right to development and the elimination of obstacles to development.

Lasting progress towards the implementation of the right to development requires effective development policies at the national level, as well as equitable economic relations and a favourable economic environment at the international level.

11. The right to development should be fulfilled so as to meet equitably the developmental and environmental needs of present and future generations. The World Conference on Human Rights recognizes that illicit dumping of toxic and dangerous substances and waste potentially constitutes a serious threat to the human rights to life and health of everyone.

Consequently the World Conference on Human Rights calls on all States to adopt and vigorously implement existing conventions relating to the dumping of toxic and dangerous products and waste and to cooperate in the prevention of illicit dumping.

Everyone has the right to enjoy the benefits of scientific progress and its applications. The World Conference on Human Rights notes that certain advances, notably in the biomedical and life sciences as well as in information technology, may have potentially adverse consequences for the integrity, dignity and human rights of the individual, and calls for international co-operation to ensure that human rights and dignity are fully respected in this area of universal concern.

12. The World Conference on Human Rights calls upon the international community to make all efforts to help alleviate the external debt burden of developing countries, in order to supplement the efforts of the Governments of such countries to attain the full realization of the economic, social and cultural rights of their people.

13. There is a need for States and international organizations, in co-operation with non-governmental organizations, to create favourable conditions at the national, regional and international levels to ensure the full and effective enjoyment of human rights. States should eliminate all violations of human rights and their causes, as well as obstacles to the enjoyment of these rights.

14. The existence of widespread extreme poverty inhibits the full and effective enjoyment of human rights; its immediate alleviation and eventual elimination must remain a high priority for the international community.

15. Respect for human rights and for fundamental freedoms without distinction of any kind is a fundamental rule of international human rights law. The speedy and comprehensive elimination of all forms of racism and racial discrimination, xenophobia and related intolerance is a priority task for the international community. Governments should take effective measures to prevent and combat them. Groups, institutions, intergovernmental and non-governmental organizations and individuals are urged to intensify their efforts in co-operating and co-ordinating their activities against these evils.

16. The World Conference on Human Rights welcomes the progress made in dismantling *apartheid* and calls upon the international community and the United Nations system to assist

in this process. The World Conference on Human Rights also deplores the continuing acts of violence aimed at undermining the quest for a peaceful dismantling of *apartheid*.

17. The acts, methods and practices of terrorism in all its forms and manifestations as well as linkage in some countries to drug trafficking are activities aimed at the destruction of human rights, fundamental freedoms and democracy, threatening territorial integrity, security of States and destabilizing legitimately constituted Governments. The international community should take the necessary steps to enhance co-operation to prevent and combat terrorism.

18. The human rights of women and of the girl-child are an inalienable, integral and indivisible part of universal human rights. The full and equal participation of women in political, civil, economic, social and cultural life, at the national, regional and international levels, and the eradication of all forms of discrimination on grounds of sex are priority objectives of the international community. Gender-based violence and all forms of sexual harassment and exploitation, including those resulting from cultural prejudice and international trafficking, are incompatible with the dignity and worth of the human person, and must be eliminated. This can be achieved by legal measures and through national action and international co-operation in such fields as economic and social development, education, safe maternity and health care, and social support.

The human rights of women should form an integral part of the United Nations human rights activities, including the promotion of all human rights instruments relating to women.

The World Conference on Human Rights urges Governments, institutions, intergovernmental and non-governmental organizations to intensify their efforts for the protection and promotion of human rights of women and the girl-child.

19. Considering the importance of the promotion and protection of the rights of persons belonging to minorities and the contribution of such promotion and protection to the political and social stability of the States in which such persons live,

The World Conference on Human Rights reaffirms the obligation of States to ensure that persons belonging to minorities may exercise fully and effectively all human rights and fundamental freedoms without any discrimination and in full equality before the law in accordance with the Declaration on the Rights of Persons Belonging to the National or Ethnic, Religious and Linguistic Minorities.

The persons belonging to minorities have the right to enjoy their own culture, to profess and practise their own religion and to use their own language in private and in public, freely and without interference or any form of discrimination.

20. The World Conference on Human Rights recognizes the inherent dignity and the unique contribution of indigenous people to the development and plurality of society and strongly reaffirms the commitment of the international community to their economic, social and cultural well-being and their enjoyment of the fruits of sustainable development. States should ensure the full and free participation of indigenous people in all aspects of society, in particular in matters of concern to them. Considering the importance of the promotion and protection of the rights of indigenous people, and the contribution of such promotion and protection to the political and social stability of the States in which such people live, States should, in accordance with international law, take concerted positive steps to ensure respect for all human rights and fundamental freedoms of indigenous people, on the basis of equality and non-discrimination and recognize the value and diversity of their distinct identities, cultures and social organization.

21. The World Conference on Human Rights, welcoming the early ratification of the Convention on the Rights of the Child by a large number of States and noting the recognition of the human rights of children in the Declaration on the Survival, Protection and Development of Children and Plan of Action adopted by the World Summit for Children, urges universal ratifica-

tion of the Convention by 1995 and its effective implementation by States Parties through the adoption of all the necessary legislative, administrative and other measures and the allocation to the maximum extent of the available resources. In all actions concerning children, non-discrimination and the best interest of the child should be primary considerations and the views of the child given due weight. National and international mechanisms and programmes should be strengthened for the defence and protection of children, in particular, the girl-child, abandoned children, street children, economically and sexually exploited children, including through child pornography, child prostitution or sale of organs, children victims of diseases including acquired immunodeficiency syndrome, refugee and displaced children, children in detention, children in armed conflict, as well as children victims of famine and drought and other emergencies. International co-operation and solidarity should be promoted to support the implementation of the Convention and the rights of the child should be a priority in the United Nations system-wide action on human rights.

The World Conference on Human Rights also stresses that the child for the full and harmonious development of his or her personality should grow up in a family environment which accordingly merits broader protection.

22. Special attention needs to be paid to ensure non-discrimination, and the equal enjoyment of all human rights and fundamental freedoms by disabled persons, including their active participation in all aspects of society.

23. The World Conference on Human Rights reaffirms that everyone, without distinction of any kind, is entitled to the right to seek and to enjoy in other countries asylum from persecution, as well as the right to return to one's own country. In this respect it stresses the importance of the Universal Declaration of Human Rights, the 1951 Convention relating to the Status of Refugees, its 1967 Protocol and regional instruments. It expresses its appreciation to States that continue to admit and host large numbers of refugees in their territories, and to the Office of the United Nations High Commissioner for Refugees for its dedication to its task. It also expresses its appreciation to the United Nations Relief and Works Agency for Palestine Refugees in the Near East.

The World Conference on Human Rights recognizes that gross violations of human rights, including in armed conflicts, are among the multiple and complex factors leading to displacement of people.

The World Conference on Human Rights recognizes that, in view of the complexities of the global refugee crisis and in accordance with the Charter of the United Nations, relevant international instruments and international solidarity and in the spirit of burden-sharing, a comprehensive approach by the international community is needed in coordination and co-operation with the countries concerned and relevant organizations, bearing in mind the mandate of the United Nations High Commissioner for Refugees. This should include the development of strategies to address the root causes and effects of movements of refugees and other displaced persons, the strengthening of emergency preparedness and response mechanisms, the provision of effective protection and assistance, bearing in mind the special needs of women and children, as well as the achievement of durable solutions, primarily through the preferred solution of dignified and safe voluntary repatriation, including solutions such as those adopted by the international refugee conferences. The World Conference on Human Rights underlines the responsibilities of States, particularly as they relate to the countries of origin.

In the light of the comprehensive approach, the World Conference on Human Rights emphasizes the importance of giving special attention including through inter-governmental and humanitarian organizations and finding lasting solutions to questions related to internally displaced persons including their voluntary and safe return and rehabilitation.

In accordance with the Charter of the United Nations and the principles of humanitarian law, the World Conference on Human Rights further emphasizes the importance of and the need for humanitarian assistance to victims of all natural and man-made disasters.

24. Great importance must be given to the promotion and protection of the human rights of persons belonging to groups which have been rendered vulnerable, including migrant workers, the elimination of all forms of discrimination against them, and the strengthening and more effective implementation of existing human rights instruments. States have an obligation to create and maintain adequate measures at the national level, in particular in the fields of education, health and social support, for the promotion and protection of the rights of persons in vulnerable sectors of their populations and to ensure the participation of those among them who are interested in finding a solution to their own problems.

25. The World Conference on Human Rights affirms that extreme poverty and social exclusion constitute a violation of human dignity and that urgent steps are necessary to achieve better knowledge of extreme poverty and its causes, including those related to the problem of development, in order to promote the human rights of the poorest, and to put an end to extreme poverty and social exclusion and to promote the enjoyment of the fruits of social progress. It is essential for States to foster participation by the poorest people in the decision-making process by the community in which they live, the promotion of human rights and efforts to combat extreme poverty.

26. The World Conference on Human Rights welcomes the progress made in the codification of human rights instruments, which is a dynamic and evolving process, and urges the universal ratification of human rights treaties. All States are encouraged to accede to these international instruments; all States are encouraged to avoid, as far as possible, the resort to reservations.

27. Every State should provide an effective framework of remedies to redress human rights grievances or violations. The administration of justice, including law enforcement and prosecutorial agencies and, especially, an independent judiciary and legal profession in full conformity with applicable standards contained in international human rights instruments, are essential to the full and non-discriminatory realization of human rights and indispensable to the processes of democracy and sustainable development. In this context, institutions concerned with the administration of justice should be properly funded, and an increased level of both technical and financial assistance should be provided by the international community. It is incumbent upon the United Nations to make use of special programmes of advisory services on a priority basis for the achievement of a strong and independent administration of justice.

28. The World Conference on Human Rights expresses its dismay at massive violations of human rights especially in the form of genocide, "ethnic cleansing" and systematic rape of women in war situations, creating mass exodus of refugees and displaced persons. While strongly condemning such abhorrent practices it reiterates the call that perpetrators of such crimes be punished and such practices immediately stopped.

29. The World Conference on Human Rights expresses grave concern about continuing human rights violations in all parts of the world in disregard of standards as contained in international human rights instruments and international humanitarian law and about the lack of sufficient and effective remedies for the victims.

The World Conference on Human Rights is deeply concerned about violations of human rights during armed conflicts, affecting the civilian population, especially women, children, the elderly and the disabled. The Conference therefore calls upon States and all parties to armed conflicts strictly to observe international humanitarian law, as set forth in the Geneva Conventions of 1949 and other rules and principles of international law, as well as minimum standards for protection of human rights, as laid down in international conventions.

The World Conference on Human Rights reaffirms the right of the victims to be assisted by humanitarian organizations, as set forth in the Geneva Conventions of 1949 and other relevant

instruments of international humanitarian law, and calls for the safe and timely access for such assistance.

30. The World Conference on Human Rights also expresses its dismay and condemnation that gross and systematic violations and situations that constitute serious obstacles to the full enjoyment of all human rights continue to occur in different parts of the world. Such violations and obstacles include, as well as torture and cruel, inhuman and degrading treatment or punishment, summary and arbitrary executions, disappearances, arbitrary detentions, all forms of racism, racial discrimination and *apartheid*, foreign occupation and alien domination, xenophobia, poverty, hunger and other denials of economic, social and cultural rights, religious intolerance, terrorism, discrimination against women and lack of the Rule of Law.

31. The World Conference on Human Rights calls upon States to refrain from any unilateral measure not in accordance with international law and the Charter of the United Nations that creates obstacles to trade relations among States and impedes the full realization of the human rights set forth in the Universal Declaration of Human Rights and international human rights instruments, in particular the rights of everyone to a standard of living adequate for their health and well-being, including food and medical care, housing and the necessary social services. The World Conference on Human Rights affirms that food should not be used as a tool for political pressure.

32. The World Conference on Human Rights reaffirms the importance of ensuring the universality, objectivity and non-selectivity of the consideration of human rights issues.

33. The World Conference on Human Rights reaffirms that States are duty-bound, as stipulated in the Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights and in other international human rights instruments, to ensure that education is aimed at strengthening the respect of human rights and fundamental freedoms. The World Conference on Human Rights emphasizes the importance of incorporating the subject of human rights education programmes and calls upon States to do so. Education should promote understanding, tolerance, peace and friendly relations between the nations and all racial or religious groups and encourage the development of United Nations activities in pursuance of these objectives. Therefore, education on human rights and the dissemination of proper information, both theoretical and practical, play an important role in the promotion and respect of human rights with regard to all individuals without distinction of any kind such as race, sex, language or religion, and this should be integrated in the education policies at national as well as international levels. The World Conference on Human Rights notes that resource constraints and institutional inadequacies may impede the immediate realization of these objectives.

34. Increased efforts should be made to assist countries which so request, to create the conditions whereby each individual can enjoy universal human rights and fundamental freedoms. Governments, the United Nations system as well as other multilateral organizations are urged to increase considerably the resources allocated to programmes aiming at the establishment and strengthening of national legislation, national institutions and related infrastructures which uphold the Rule of Law and democracy, electoral assistance, human rights awareness through training, teaching and education, popular participation and civil society.

The programmes of advisory services and technical cooperation under the Centre for Human Rights should be strengthened as well as made more efficient and transparent and thus become a major contribution to improving respect for human rights. States are called upon to increase their contributions to these programmes, both through promoting a larger allocation from the United Nations regular budget, and through voluntary contributions.

35. The full and effective implementation of United Nations activities to promote and protect human rights must reflect the high importance accorded to human rights by the Charter of the United Nations and the demands of the United Nations human rights activities, as mandated by Member States. To this end, United Nations human rights activities should be provided with increased resources.

36. The World Conference on Human Rights reaffirms the important and constructive role played by national institutions for the promotion and protection of human rights, in particular in their advisory capacity to the competent authorities, their role in remedying human rights violations, in the dissemination of human rights information, and education in human rights.

The World Conference on Human Rights encourages the establishment and strengthening of national institutions, having regard to the "Principles relating to the status of national institutions" and recognizing that it is the right of each State to choose the framework which is best suited to its particular needs at the national level.

37. Regional arrangements play a fundamental role in promoting and protecting human rights. They should reinforce universal human rights standards, as contained in international human rights instruments, and their protection. The World Conference on Human Rights endorses efforts underway to strengthen these arrangements and to increase their effectiveness, while at the same time stressing the importance of cooperation with the United Nations human rights activities.

The World Conference on Human Rights reiterates the need to consider the possibility of establishing regional and sub-regional arrangements for the promotion and protection of human rights where they do not already exist.

38. The World Conference on Human Rights recognizes the important role of non-governmental organizations in the promotion of all human rights and in humanitarian activities at national, regional and international levels. The World Conference on Human Rights appreciates their contribution to increasing public awareness of human rights issues, to the conduct of education, training and research in this field, and to the promotion and protection of all human rights and fundamental freedoms. While recognizing that the primary responsibility for standard-setting lies with States, the conference also appreciates the contribution of non-governmental organizations to this process. In this respect, the World Conference on Human Rights emphasizes the importance of continued dialogue and co-operation between Governments and non-governmental organizations. Non-governmental organizations and their members genuinely involved in the field of human rights should enjoy the rights and freedoms recognized in the Universal Declaration of Human Rights, and the protection of the national law. These rights and freedoms may not be exercised contrary to the purposes and principles of the United Nations. Non-governmental organizations should be free to carry out their human rights activities, without interference, within the framework of national law and the Universal Declaration of Human Rights.

39. Underlining the importance of objective, responsible and impartial information about human rights and humanitarian issues, the World Conference on Human Rights encourages the increased involvement of the media, for whom freedom and protection should be guaranteed within the framework of national law.

II

A Increased coordination on human rights within the United Nations system

1. The World Conference on Human Rights recommends increased coordination in support of human rights and fundamental freedoms within the United Nations system. To this end, the World Conference on Human Rights urges all United Nations organs, bodies and the specialized agencies whose activities deal with human rights to cooperate in order to strengthen, rationalize and streamline their activities, taking into account the need to avoid unnecessary duplication. The World Conference on Human Rights also recommends to the Secretary-General that high-level officials of relevant United Nations bodies and specialized agencies at their annual meeting, besides co-ordinating their activities, also assess the impact of their strategies and policies on the enjoyment of all human rights.

2. Furthermore, the World Conference on Human Rights calls on regional organizations and prominent international and regional finance and development institutions to also assess the impact of their policies and programmes on the enjoyment of human rights.

3. The World Conference on Human Rights recognizes that relevant specialized agencies and bodies and institutions of the United Nations system as well as other relevant inter-governmental organizations whose activities deal with human rights play a vital role in the formulation, promotion and implementation of human rights standards, within their respective mandates, and should take into account the outcome of the World Conference on Human Rights within their fields of competence.

4. The World Conference on Human Rights strongly recommends that a concerted effort be made to encourage and facilitate the ratification of and accession or succession to international human rights treaties and protocols adopted within the framework of the United Nations system with the aim of universal acceptance. The Secretary-General, in consultation with treaty bodies, should consider opening a dialogue with States not having acceded to these human treaties, in order to identify obstacles, and to seek ways of overcoming them. The World Conference on Human Rights encourages States to consider limiting the extent of any reservations they lodge to international human rights instruments, formulate any reservations as precisely and narrowly as possible, ensure that none is incompatible with the object and purpose of the relevant treaty and regularly review any reservations with a view to withdrawing them.

5. The World Conference on Human Rights encourages States to consider limiting the extent of any reservations they lodge to international human rights instruments, formulate any reservations as precisely and narrowly as possible, ensure that none is incompatible with the object and purpose of the relevant treaty and regularly review any reservations with a view to withdrawing them.

6. The World Conference on Human Rights, recognizing the need to maintain consistency with the high quality of existing international standards and to avoid proliferation of human rights instruments, reaffirms the guidelines relating to the elaboration of new international instruments contained in General Assembly resolution 41/120 of 4 December 1986 and calls on the United Nations human rights bodies, when considering the elaboration of new international standards, to keep those guidelines in mind, to consult with human rights treaty bodies on the necessity for drafting new standards and to request the Secretariat to carry out technical reviews of proposed new instruments.

7. The World Conference on Human Rights recommends that human rights officers be assigned if and when necessary to regional offices of the United Nations Organization with the purpose of disseminating information and offering training and other technical assistance in the field of human rights upon the request of concerned Member States. Human rights training for international civil servants who are assigned to work relating to human rights should be organized.

8. The World Conference on Human Rights welcomes the convening of emergency sessions of the Commission on Human Rights as a positive initiative and that other ways of responding to acute violations of human rights be considered by the relevant organs of the United Nations system.

Resources

9. The World Conference on Human Rights, concerned by the growing disparity between the activities of the Centre for Human Rights and the human, financial and other resources available to carry them out, and bearing in mind the resources needed for other important United Nations programmes, requests the Secretary-General and the General Assembly to take immediate steps to increase substantially the resources for the human rights programme from within the existing and future regular budgets of the United Nations, and to take urgent steps to seek increased extra-budgetary resources.

10. Within this framework, an increased proportion of the regular budget should be allocated directly to the Centre for Human Rights to cover its costs and all other costs borne by the Centre for Human Rights, including those related to the United Nations human rights bodies. Voluntary funding of the Centre's technical cooperation activities should reinforce this enhanced budget; the World Conference on Human Rights calls for generous contributions to the existing trust funds.

11. The World Conference on Human Rights requests the Secretary-General and the General Assembly to provide sufficient human, financial and other resources to the Centre for Human Rights to enable it effectively, efficiently and expeditiously to carry out its activities.

12. The World Conference on Human Rights, noting the need to ensure that human and financial resources are available to carry out the human rights activities, as mandated by inter-governmental bodies, urges the Secretary-General, in accordance with Article 101 of the Charter of the United Nations, and Member States to adopt a coherent approach aimed at securing that resources commensurate to the increased mandates are allocated to the Secretariat. The World Conference on Human Rights invites the Secretary-General to consider whether adjustments to procedures in the programme budget cycle would be necessary or helpful to ensure the timely and effective implementation of human rights activities as mandated by Member States.

Centre for Human Rights

13. The World Conference on Human Rights stresses the importance of strengthening the United Nations Centre for Human Rights.

14. The Centre for Human Rights should play an important role in co-ordinating system-wide attention for human rights. The focal role of the Centre can best be realized if it is enabled to cooperate fully with other United Nations bodies and organs. The co-ordinating role of the Centre for Human Rights also implies that the office of the Centre for Human Rights in New York is strengthened.

15. The Centre for Human Rights should be assured adequate means for the system of thematic and country rapporteurs, experts, working groups and treaty bodies. Follow-up on recommendations should become a priority matter for consideration by the Commission on Human Rights.

16. The Centre for Human Rights should assume a larger role in the promotion of human rights. This role could be given shape through cooperation with Member States and by an enhanced programme of advisory services and technical assistance. The existing voluntary funds will have to be expanded substantially for these purposes and should be managed in a more efficient and coordinated way. All activities should follow strict and transparent project management rules and regular programme and project evaluations should be held periodically. To this end, the results of such evaluation exercises and other relevant information should be made available regularly. The Centre should, in particular, organize at least once a year information meetings open to all Member States and organizations directly involved in these projects and programmes.

Adaptation and strengthening of the United Nations machinery for human rights, including the question of the establishment of a United Nations High Commissioner for Human Rights

17. The World Conference on Human Rights recognizes the necessity for a continuing adaptation of the United Nations human rights machinery to the current and future needs in the promotion and protection of human rights, as reflected in the present Declaration and within the framework of a balanced and sustainable development for all people. In particular, the United Nations human rights organs should improve their coordination, efficiency and effectiveness.

18. The World Conference on Human Rights recommends to the General Assembly that when examining the report of the Conference at its forty-eighth session, it begins, as a matter of priority, consideration of the question of the establishment of a High Commissioner for Human Rights for the promotion and protection of all human rights.

B Equality, dignity and tolerance

1. Racism, racial discrimination, xenophobia and other forms of intolerance

19. The World Conference on Human Rights considers the elimination of racism and racial discrimination, in particular in their institutionalized forms such as *apartheid* or resulting from doctrines of racial superiority or exclusivity or contemporary forms and manifestations of racism, as a primary objective for the international community and world-wide promoting programme in the field of human rights. United Nations organs and agencies should strengthen their efforts to implement such a programme of action related to the third decade to combat racism and racial discrimination as well as subsequent mandates to the same end. The World Conference on Human Rights strongly appeals to the international community to contribute generously to the Trust Fund for the Programme for the Decade for Action to Combat Racism and Racial Discrimination.

20. The World Conference on Human Rights urges all Governments to take immediate measures and to develop strong policies to prevent and combat all forms and manifestations of racism, xenophobia or related intolerance where necessary by enactment of appropriate legislation, including penal measures, and by the establishment of national institutions to combat such phenomena.

21. The World Conference on Human Rights welcomes the decision of the Commission on Human Rights to appoint a Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance. The World Conference on Human Rights also appeals to all States parties to the International Convention on the Elimination of All forms of Racial Discrimination to consider making the declaration under Article 14 of the Convention.

22. The World Conference on Human Rights calls upon all Governments to take all appropriate measures in compliance with their international obligations and with due regard to their respective legal systems to counter intolerance and related violence based on religion or belief, including practices of discrimination against women and including the desecration of religious sites, recognizing that every individual has the right to freedom of thought, conscience, expression and religion. The Conference also invites all States to put into practice the provisions of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination based on Religion or Belief.

23. The World Conference on Human Rights stresses that all persons who perpetrate or authorize criminal acts associated with ethnic cleansing are individually responsible and accountable for such human rights violations, and that the international community should exert every effort to bring those legally responsible for such violations to justice.

24. The World Conference on Human Rights calls on all States to take immediate measures, individually and collectively, to combat the practice of ethnic cleansing to bring it quickly to an end. Victims of the abhorrent practice of ethnic cleansing are entitled to appropriate and effective remedies.

2 Persons belonging to national or ethnic, religious and linguistic minorities

25. The World Conference on Human Rights calls on the Commission on Human Rights to examine ways and means to promote and protect effectively the rights of persons belonging to minorities as set out in the Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities. In this context, the World Conference on Human Rights calls upon the Centre for Human Rights to provide, at the request of Governments concerned and as part of its programme of advisory services and technical assistance, qualified expertise on minority issues and human rights, as well as on the prevention and resolution of disputes, to assist in existing or potential situations involving minorities.

26. The World Conference on Human Rights urges States and the international community to promote and protect the rights of persons belonging to national or ethnic, religious and linguistic minorities in accordance with the Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities.

27. Measures to be taken, where appropriate, should include facilitation and cultural life of society and in the economic progress and development in their country.

Indigenous people

28. The World Conference on Human Rights calls on the Working Group on Indigenous Populations of the Sub-Commission on Prevention of Discrimination and Protection of Minorities to complete the drafting of a declaration on the rights of indigenous people at its eleventh session.

29. The World Conference on Human Rights recommends that the Commission on Human Rights consider the renewal and updating of the mandate of the Working Group on Indigenous Populations upon completion of the drafting of a declaration on indigenous people.

30. The World Conference on Human Rights also recommends that advisory services and technical assistance programmes within the United Nations system respond positively to requests by States for assistance which would be of direct benefit to indigenous people. The World Conference on Human Rights further recommends that adequate human and financial resources be made available to the Centre for Human Rights within the overall framework of strengthening the Centre's activities as envisaged by this document.

31. The World Conference on Human Rights urges States to ensure the full and free participation on indigenous people in all aspects of society, in particular in matters of concern to them.

32. The World Conference on Human Rights recommends that the General Assembly proclaim an international decade of the world's indigenous people, to begin from January 1994, including action-oriented programmes, to be decided upon in partnership with indigenous people. An appropriate voluntary trust fund should be set up for this purpose. In the framework of such a Decade, the establishment of a permanent forum for indigenous people in the United Nations system should be considered.

Migrant workers

33. The World Conference on Human Rights urges all States to guarantee the protection of the human rights of all migrant workers and their families.

34. The World Conference on Human Rights considers that the creation of conditions to foster greater harmony and tolerance between migrant workers and the rest of the society of the State in which they reside is of particular importance.

35. The World Conference on Human Rights invites States to consider the possibility of signing and ratifying, at the earliest possible time, the International Convention on the Rights of All Migrant Workers and Members of Their Families.

3 The equal status and human rights of women

36. The World Conference on Human Rights urges the full and equal enjoyment by women of all human rights and that this be a priority for Governments and for the United Nations. The World Conference on Human rights also underlines the importance of the integration and full participation of women as both agents and beneficiaries in the development process, and reiterates the objectives established on global action for women towards sustainable and equitable development set forth in the Rio Declaration on Environment and Development and Chapter 24 of Agenda 21, adopted by the United Nations Conference on Environment and Development (Rio de Janeiro, Brazil, 3-14 June 1992).

37. The equal status of women and the human rights of women should be integrated into the mainstream of United Nations system-wide activity. These issues should be regularly and systematically addressed throughout relevant United Nations bodies and mechanisms. In particular, steps should be taken to increase cooperation and promote further integration of objectives and goals between the Commission on the Status of Women, the Commission on Human Rights, the Committee for the Elimination of Discrimination Against Women, the United Nations Development Fund for Women, the United Nations Development and coordination should be strengthened between the Centre for Human Rights and the Division for the Advancement of Women.

38. In particular, the World Conference on Human Rights stresses the importance of working towards the elimination of violence against women in public and private life, the elimina-

tion of all forms of sexual harassment, exploitation and trafficking in women, the elimination of gender bias in the administration of justice and the eradication of any conflicts which may arise between the rights of women and the harmful effects of certain traditional or customary practices, cultural prejudices and religious extremism. The World Conference on Human Rights calls upon the General Assembly to adopt the draft declaration on violence against women and urges States to combat violence against women in accordance with its provisions. Violations of the human rights of women in situations of armed conflict are violations of the fundamental principles of international human rights and humanitarian law. All violation of this kind, including in particular murder, systematic rape, sexual slavery, and forced pregnancy, require a particularly effective response.

39. The World Conference on Human Rights urges the eradication of all forms of discrimination against women, both hidden and overt. The United Nations should encourage the goal of universal ratification by all States of the Convention on the Elimination of All Forms of Discrimination against Women by the year 2000. Ways and means of addressing the particularly large number of reservations to the Convention should be encouraged. *Inter alia*, the Committee on the Elimination of Discrimination Against Women should continue its review of reservations to the Convention. States are urged to withdraw reservations that are contrary to the object and purpose of the Convention or which are otherwise incompatible with international treaty law.

40. Treaty monitoring bodies should disseminate necessary information to enable women to make more effective use of existing implementation procedures in their pursuits of full and equal enjoyment of human rights and non-discrimination. New procedures should be adopted to strengthen implementation of the commitment to women's equality and the human rights of women. The Commission on the Status of Women and the Committee on the Elimination of Discrimination Against Women should quickly examine the possibility of introducing the right of petition through the preparation of an optional protocol to the Convention on the Elimination of All Forms of Discrimination against Women. The World Conference on Human Rights welcomes the decision of the Commission on Human Rights to consider the appointment of a special rapporteur on violence against women at its fiftieth session.

41. The World Conference on Human Rights recognizes the importance of the enjoyment by women of the highest standard of physical and mental health throughout their life span. In the context of the World Conference on Women, and the Convention on the Elimination of All Forms of Discrimination against Women, as well as the Proclamation of Tehran of 1968, the World Conference on Human Rights reaffirms, on the basis of equality between women and men, a woman's right to accessible and adequate health care and the widest range of family planning services, as well as equal access to education at all levels.

42. Treaty monitoring bodies should include the status of women and the human rights of women in their deliberations and findings, making use of gender-specific data. States should be encouraged to supply information on the situation of women *de jure* and *de facto* in their reports to treaty monitoring bodies. The World Conference on Human Rights notes with satisfaction that the Commission on Human Rights adopted at its forty-ninth session resolution 1993/46 of 8 March 1993 stating that rapporteurs and working groups in the field of human rights should also be encouraged to do so. Steps should also be taken by the Division for the Advancement of Women in cooperation with other United Nations bodies, specifically the Centre for Human Rights, to ensure that the human rights activities of the United Nations regularly address violations of women's human rights, including gender-specific abuses. Training for United Nations human rights and humanitarian relief personnel to assist them to recognize and deal with human rights abuses particular to women and to carry out their work without gender bias should be encouraged.

43. The World Conference on Human Rights urges Governments and regional and international organizations to facilitate the access of women to decision-making posts and their greater participation in the decision-making process. It encourages further steps within the United Nations Secretariat to appoint and promote women staff members in accordance with the Charter of the United Nations, and encourages other principal and subsidiary organs of the United Nations to guarantee the participation of women under conditions of equality.

44. The World Conference on Human Rights welcomes the World Conference on Women to be held in Beijing in 1995 and urges that human rights of women should play an important role in its deliberations, in accordance with the priority themes of the World Conference on Women of equality, development and peace.

4. *The rights of the child*

45. The World Conference on Human Rights reiterates the principle of "First Call for Children" and, in this respect, underlines the importance of major national and international efforts, especially those of the United Nations Children's Fund, for promoting respect for the rights of the child to survival, protection, development and participation.

46. Measures should be taken to achieve universal ratification of the Convention on the Rights of the Child by 1995 and the universal signing of the World Declaration on the Survival, Protection and Development of Children and Plan of Action adopted by the World Summit for Children, as well as their effective implementation. The World Conference on Human Rights urges States to withdraw reservations to the Convention on the Rights of the Child contrary to the object and purpose of the Convention or otherwise contrary to international treaty law.

47. The World Conference on Human Rights urges all nations to undertake measures to the maximum extent of their available resources, with the support of international cooperation, to achieve the goals in the World Summit Plan of Action. The Conference calls on States to integrate the Convention on the Rights of the Child into their national action plans. By means of these national action plans and through international efforts particular priority should be placed on reducing infant and maternal mortality rates, reducing malnutrition and illiteracy rates and providing access to safe drinking water and to basic education. Whenever so called for, national plans of action should be devised to combat devastating emergencies resulting from natural disasters and armed conflicts and the equally grave problem of children in extreme poverty.

48. The World Conference on Human Rights urges all States, with the support of international cooperation, to address the acute problem of children under especially difficult circumstances. Exploitation and abuse of children should be actively combated, including by addressing their root causes. Effective measures are required against female infanticide, harmful child labour, sale of children and organs, child prostitution, child pornography, as well as other forms of sexual abuse.

49. The World Conference on Human Rights supports all measures by the United Nations and its specialized agencies to ensure the effective protection and promotion of human rights of the girl child. The World Conference on Human Rights urges States to repeal existing laws and regulations and remove customs and practices which discriminate against and cause harm to the girl child.

50. The World Conference on Human Rights strongly supports the proposal that the Secretary-General initiate a study into means of improving the protection of children in armed

conflicts. Humanitarian norms should be implemented and measures taken in order to protect and facilitate assistance to children in war zones. Measures should include protection for children against indiscriminate use of all weapon of war, especially anti-personnel mines. The need for aftercare and rehabilitation of children traumatized by war must be addressed urgently. The Conference calls on the Committee on the Rights of the Child to study the question of raising the minimum age of recruitment to armed forces.

51. The World Conference on Human Rights recommends that matters relating to human rights and the situation of children be regularly reviewed and monitored by all relevant organs and mechanisms of the United Nations system and by the supervisory bodies of the specialized agencies in accordance with their mandates.

52. The World Conference on Human Rights recognizes the important role played by non-governmental organizations in the effective implementation of all human rights instruments and, in particular, the Convention on the Rights of the Child.

53. The World Conference on Human Rights recommends that the Committee on the Rights of the Child, with the assistance of the Centre for Human Rights, be enabled expeditiously and effectively to meet its mandate, especially in view of the unprecedented extent of ratification and subsequent submission of country reports.

5 Freedom from Torture

54. The World Conference on Human Rights welcomes the ratification by many Member States of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and encourages its speedy ratification by all other Member States.

55. The World Conference on Human Rights emphasizes that one of the most atrocious violations against human dignity is the act of torture, the result of which destroys the dignity and impairs the capability of victims to continue their lives and their activities.

56. The World Conference on Human Rights reaffirms that under human rights law and international humanitarian law, freedom from torture is a right which must be protected under all circumstances, including in times of internal or international disturbance or armed conflicts.

57. The World Conference on Human Rights therefore urges all States to put an immediate end to the practice of torture and eradicate this evil forever through full implementation of the Universal Declaration of Human Rights as well as the relevant conventions and, where necessary, strengthening of existing mechanisms. The World Conference on Human Rights calls on all States to cooperate fully with the Special Rapporteur on the question of torture in the fulfilment of his mandate.

58. Special attention should be given to ensure universal respect for, and effective implementation of, the Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment adopted by the General Assembly of the United Nations.

59. The World Conference on Human Rights stresses the importance of further concrete action within the framework of the United Nations with the view to providing assistance to victims of torture and ensure more effective remedies for their physical, psychological and

social rehabilitation. Providing the necessary resources for this purpose should be given high priority, *inter alia*, by additional contributions to the United Nations Voluntary Fund for the Victims of Torture.

60. States should abrogate legislation leading to impunity for those responsible for grave violations of human rights such as torture and prosecute such violations thereby providing a firm basis for the Rule of Law.

61. The World Conference on Human Rights reaffirms that efforts to eradicate torture should, first and foremost, be concentrated on prevention and, therefore, calls for the early adoption of an optional protocol to the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment, which is intended to establish a preventive system of regular visits to places of detention.

Enforced Disappearances

62. The World Conference on Human Rights, welcoming the adoption by the General Assembly of the Declaration on the Protection of All Persons from Enforced Disappearance, calls upon all States to take effective legislative, administrative, judicial or other measures to prevent, terminate and punish acts of enforced disappearances. The World Conference on Human Rights reaffirms that it is the duty of all States, under any circumstances, to make investigations whenever there is reason to believe that an enforced disappearance has taken place on a territory under their jurisdiction and, if allegations are confirmed, to prosecute its perpetrators.

6. The rights of the disabled person

63. The World Conference on Human Rights reaffirms that all human rights and fundamental freedoms are universal and thus unreservedly include persons with disabilities. Every person is born equal and has the same rights to life and welfare, education and work, living independently and active participation in all aspects of society. Any direct discrimination or other negative discriminatory treatment of a disabled person is therefore a violation of his or her rights. The World Conference on Human Rights calls on Governments, where necessary, to adopt or adjust legislation to assure access to these and other rights for disabled persons.

64. The place of disabled persons is everywhere. Persons with disabilities should be guaranteed equal opportunity through the elimination of all socially determined barriers, be they physical, financial, social or psychological, which exclude or restrict full participation in society.

65. Recalling the World Programme of Action concerning Disabled Persons, adopted by the General Assembly at its thirty-seventh session, the World Conference on Human Rights calls upon the General Assembly and the Economic and Social Council to adopt the draft standard rules on the equalization of opportunities for persons with disabilities, at their meetings in 1993.

C Cooperation, development and strengthening of human rights

66. The World Conference on Human Rights recommends that priority be given to national and international action to promote democracy, development and human rights.

67. Special emphasis should be given to measures to assist in the strengthening and building of institutions relating to human rights, strengthening of a pluralistic civil society and the protection of groups which have been rendered vulnerable. In this context, assistance

provided upon the request of Governments for the conduct of free and fair elections, including assistance in the human rights aspects of elections and public information about elections, is of particular importance. Equally important is the assistance to be given to the strengthening of the Rule of Law, the promotion of freedom of expression and the administration of justice, and to the real and effective participation of the people in the decision-making processes.

68. The World Conference on Human Rights stresses the need for the implementation of strengthened advisory services and technical assistance activities by the Centre for Human Rights. The Centre should make available to States upon request assistance on specific human rights issues, including the preparation of reports under human rights treaties as well as for the implementation of coherent and comprehensive plans of action for the promotion and protection of human rights. Strengthening the institutions of human rights and democracy, the legal protection of human rights, training of officials and others. Broad-based education and public information aimed at promoting respect for human rights should all be available as components of these programmes.

69. The World Conference on Human Rights strongly recommends that a comprehensive programme be established within the United Nations in order to help States in the task of building and strengthening adequate national structures which have a direct impact on the overall observance of human rights and the maintenance of the Rule of Law. Such a programme, to be coordinated by the Centre for Human Rights, should be able to provide, upon the request of the interested Government, technical and financial assistance to national projects in reforming penal and correctional establishments, education and training of lawyers, judges and security forces in human rights, and any other sphere of activity relevant to the good functioning of the Rule of Law. That programme should make available to States assistance for the implementation of plans of action for human rights promotion and protection of human rights.

70. The World Conference on Human Rights requests the Secretary-General of the United Nations to submit proposals to the United Nations General Assembly, containing alternatives for the establishment, structure, operational modalities and funding of the proposed programme.

71. The World Conference on Human Rights recommends that each State consider the desirability of drawing up a national action plan identifying steps whereby that State would improve the protection and promotion of human rights.

72. The World Conference on Human Rights reaffirms that the universal and inalienable right to development, as established in the Declaration on the Right to Development, must be implemented and realized. In this context, the World Conference on Human Rights welcomes the appointment by the Commission on Human Rights of a thematic working group on the right to development and urges that the Working Group, in consultation and cooperation with other organs and agencies of the United Nations system, promptly formulate, for early consideration by the United Nations General Assembly, comprehensive and effective measures to eliminate obstacles to the implementation and realization of the Declaration on the Right to Development and recommending ways and means towards the realization of the right to development by all States.

73. The World Conference on Human Rights recommends that non-governmental and other grass-roots organizations active in development and/or human rights should be enabled to play a major role on the national and international levels in the debate, activities and implementation relating to the right to development and, in cooperation with Governments, in all relevant aspects of development cooperation.

74. The World Conference on Human Rights appeals to Governments, competent agencies and institutions to increase considerably the resources devoted to building well-functioning

legal systems able to protect human rights, and to national institutions working in this area. Actors in the field of development cooperation should bear in mind the mutually reinforcing interrelationship between development, democracy and human rights. Cooperation should be based on dialogue and transparency. The World Conference on Human Rights also calls for the establishment of comprehensive programmes, including resource banks of information and personnel with expertise relating to the strengthening of the Rule of Law and of democratic institutions.

75. The World Conference on Human Rights encourages the Commission on Human Rights, in cooperation with the Committee on Economic, Social and Cultural Rights, to continue the examination of optional protocols to the International Covenant on Economic, Social and Cultural Rights.

76. The World Conference on Human Rights recommends that more resources be made available for the strengthening or the establishment of regional arrangements for the promotion and protection of human rights under the programmes of advisory services and technical assistance of the Centre for Human Rights. States are encouraged to request assistance for such purposes as regional and sub-regional workshops, seminars and information exchanges designed to strengthen regional arrangements for the promotion and protection of human rights in accord with universal human rights standards as contained in international human rights instruments

77. The World Conference on Human Rights supports all measures by the United Nations and its relevant specialized agencies to ensure the effective promotion and protection of trade union rights, as stipulated in the International Covenant on Economic, Social and Cultural Rights and other relevant international instruments. It calls on all States to abide fully with their obligations in this regard contained in international instruments.

D Human rights education

78. The World Conference on Human Rights considers human rights education, training and public information essential for the promotion and achievement of stable and harmonious relations among communities and for fostering mutual understanding, tolerance and peace.

79. States should strive to eradicate illiteracy and should direct education towards the full development of human personality and to the strengthening of respect for human rights and fundamental freedoms. The World Conference on Human Rights calls on all States and institutions to include human rights, humanitarian law, democracy and Rule of Law as subjects in the curricula of all learning institutions in formal and non-formal settings. Human rights education should include peace, democracy, development and social justice, as set forth in international and regional human rights instruments, in order to achieve common understanding and awareness with a view to strengthening universal commitment to human rights.

80. Human rights education should include peace, democracy, development and social justice, as set forth in international and regional human rights instruments, in order to achieve common understanding and awareness with a view to strengthening universal commitment to human rights.

81. Taking into account the World Plan of Action on Education for Human Rights and Democracy of the United Nations Educational, Scientific and Cultural Organization, adopted in March 1993 by the International Congress on Education for Human Rights and Democracy, and other human rights instruments, the World Conference on Human Rights recommends that

States develop specific programmes and strategies for ensuring the widest human rights education and the dissemination of public information, taking particular account of the human rights needs of women.

82. Governments, with the assistance of inter-governmental organizations, national institutions and non-governmental organizations should promote an increased awareness of human rights and mutual tolerance. The World Conference on Human Rights underlines the importance of strengthening the World Public Information Campaign for Human Rights carried out by the United Nations. They should initiate and support education in human rights and undertake effective dissemination of public information in this field. The advisory services and technical assistance programmes of the United Nations system should be able to respond immediately to requests from States for educational and training activities in the field of human rights as well as for special education concerning standards as contained in international human rights instruments and in humanitarian law and their application to special groups such as military forces, law enforcement personnel, police and the health profession. The proclamation of a United Nations decade for human rights education in order to promote, encourage and focus these educational activities should be considered.

E Implementation and monitoring methods

83. The World Conference on Human Rights urges Governments to incorporate standards as contained in international human rights instruments in domestic legislation and to strengthen national structures, institutions and organs of society which play a role in promoting and safeguarding human rights.

84. The World Conference on Human Rights recommends the strengthening of United Nations activities and programmes to meet requests for assistance by States which want to establish or strengthen their own national institutions for the promotion and protection of human rights.

85. The World Conference on Human Rights also encourages the strengthening of cooperation between national institutions for the promotion and protection of human rights, particularly through exchanges of information and experience, as well as cooperation with regional organizations and the United Nations.

86. The World Conference on Human Rights strongly recommends in this regard that representatives of national institutions for the promotion and protection of human rights convene periodic meetings under the auspices of the Centre for Human Rights to examine ways and means of improving their mechanisms and sharing experiences.

87. The World Conference on Human Rights recommends to the human rights treaty bodies, to the meetings of chairpersons of the treaty bodies and to the meetings of States parties that they continue to take steps aimed at co-ordinating the multiple reporting requirements and guidelines for preparing State reports under the respective human rights conventions and study the suggestion that the submission of one overall report on treaty obligations undertaken by each State would make these procedures more effective and increase their impact.

88. The World Conference on Human Rights recommends that the States Parties to international human rights instruments, the General Assembly and the Economic and Social Council should consider studying the existing human rights treaty bodies and the various thematic mechanisms and procedures 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.

89. The World Conference on Human Rights recommends continued work on the improvement of the functioning, including the monitoring tasks, of the treaty bodies, taking into account multiple proposals made in this respect, in particular those made by the treaty bodies themselves and by the meetings of the chairpersons of the treaty bodies. The comprehensive national approach taken by the Committee on the Rights of the Child should also be encouraged.

90. The World Conference on Human Rights recommends that States parties to human rights treaties consider accepting all the available optional communication procedures.

91. The World Conference on Human Rights views with concern the issue of impunity of perpetrators of human rights violations, and supports the efforts of the Commission on Human Rights and the Sub-Commission on Prevention of Discrimination and Protection of Minorities to examine all aspects of the issue.

92. The World Conference on Human Rights recommends that the Commission on Human Rights examine the possibility for better implementation of existing human rights instruments at the international and regional levels and encourages the International Law Commission to continue its work on an international criminal court.

93. The World Conference on Human Rights appeals to States which have not yet done so to accede to the Geneva Conventions of 12 August 1949 and the Protocols thereto, and to take all appropriate national measures, including legislative ones, for their full implementation.

94. The World Conference on Human Rights recommends the speedy completion and adoption of the draft declaration on the right and responsibility of individuals, groups and organs of society to promote and protect universally recognized human rights and fundamental freedoms.

95. The World Conference on Human Rights underlines the importance of preserving and strengthening the system of special procedures, rapporteurs, representatives, experts and working groups of the Commission on Human Rights and the Sub-Commission on the Prevention of Discrimination and Protection of Minorities, in order to enable them to carry out their mandates in all countries throughout the world, providing them with the necessary human and financial resources. The procedures and mechanisms should be enabled to harmonize and rationalize their work through periodic meetings. All States are asked to cooperate fully with these procedures and mechanisms.

96. The World Conference on Human Rights recommends that the United Nations assume a more active role in the promotion and protection of human rights in ensuring full respect for international humanitarian law in all situations of armed conflict, in accordance with the purposes and principles of the Charter of the United Nations.

97. The World Conference on Human Rights, recognizing the important role of human rights components in specific arrangements concerning some peace-keeping operations by the United Nations, recommends that the Secretary-General take into account the reporting, experience and capabilities of the Centre for Human Rights and human rights mechanisms, in conformity with the Charter of the United Nations.

98. To strengthen the enjoyment of economic, social and cultural rights, additional approaches should be examined, such as a system of indicators to measure progress in the

realization of the rights set forth in the International Covenant on Economic, Social and Cultural Rights. There must be a concerted effort to ensure recognition of economic, social and cultural rights at the national, regional and international levels.

F Follow up to the World Conference on Human Rights

99. The World Conference on Human Rights recommends that the General Assembly, the Commission on Human Rights and other organs and agencies of the United Nations system related to human rights consider ways and means for the full implementation, without delay, of the recommendations contained in the present Declaration, including the possibility of proclaiming a United Nations decade for human rights. The World Conference on Human Rights further recommends that the Commission on Human Rights annually review the progress towards this end.

100. The World Conference on Human Rights requests the Secretary-General of the United Nations to invite on the occasion of the fiftieth anniversary of the Universal Declaration of Human Rights all States, all organs and agencies of the United Nations system related to human rights, to report to him on the progress made in the implementation of the present Declaration and to submit a report to the General Assembly at its fifty-third session, through the Commission on Human Rights and the Economic and Social Council. Likewise, regional and, as appropriate, national human rights institutions, as well as non-governmental organizations may present their views to the Secretary-General on the progress made in the implementation of the present Declaration. Special attention should be paid to assessing the progress towards the goal of universal ratification of international human rights treaties and protocols adopted within the framework of the United Nations system.

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Justice – Not Impunity

Published by the ICJ, Geneva, and the Commission nationale consultative des droits de l'homme (CNCDDH), Paris, (1993). Available in English, French and Spanish 259 pp.
35 Swiss francs, plus postage.

The ICJ and the CNCDDH organized, under UN auspices, an International Meeting on Impunity, held at the UN office in Geneva in November 1992, the elements of which are presented in this book. Authors from Africa, the Americas, Asia, Eastern and Western Europe, including government officials, philosophers, historians, magistrates, lawyers, lecturers in law, human rights activists, journalists and priests, contributed to this book, enriching the debate with their own national and international experiences of and approaches to the world-wide problem of impunity.

Towards Universal Justice

Proposals of the ICJ at the June 1993 World Conference on Human Rights, Vienna
Published by the ICJ, Geneva 1993

In English, French and Spanish. 88 pp. 15 Swiss francs, plus postage.

In publishing this booklet, the ICJ submits some practical recommendations to the UN World Conference in order to strengthen the international mechanisms for the protection of human rights. The book is divided into two main parts. The first argues for the establishment of a new UN instrument: a permanent International Penal Court to confront the problem of the impunity of war criminals and human rights violators globally. The second offers suggestions on reforming some of the existing human rights mechanisms, known as the extraconventional mechanisms, to counter more effectively State non-compliance of existing international law.

CIJL Yearbook

Published by the CIJL, Geneva 1993

In English, French and Spanish. 103pp. 25 Swiss francs, plus postage.

The second volume of the Yearbook of the Centre for the Independence of Judges and Lawyers (CIJL) is devoted to an analysis of the legal protection of lawyers. This issue provides a forum for several distinguished lawyers from all over the world to evaluate this protection at the national and international levels. Special emphasis is given to how legal protection, or the lack thereof, affects the lawyer's role to protect human rights.

Attacks on Justice

Published by the CIJL in English. 224pp. Geneva 1993. 25 Swiss francs, plus postage.

The fifth Annual Report of the Centre for the Independence of Judges and Lawyers (CIJL) reports that at least 352 jurists from 54 countries were targets of persecution in the last year as they carried out their work. Of these, 32 were killed, three disappeared, 34 were attacked, 107 suffered reprisals for carrying out their professional duties, 81 received threats of violence and 95 were detained. The report consists of two parts: the first is a description of the legal system as it affects the independence of the judiciary and the second lists individual cases of persecution, country by country.

Report on the Trial of Xanana Gusmao in Dili, East Timor

Published by the ICJ in English. 56pp. Geneva 1993. 15 Swiss francs, plus postage.

This is the report on the trial of Mr Xanana Gusmao in the district court at Dili, East Timor, which concluded on 21 May 1993. Mr Fredun De Vitre, a jurist from India observed the trial for the ICJ. The observer's main concern related to the fairness of the trial process. The East Timorese resistance leader was sentenced to life imprisonment; the sentence was later reduced to 20 years by presidential decree.

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