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STATUS OF PREPARATION OF PUBLICATIONS, STUDIES AND DOCUMENTS FOR THE WORLD CONFERENCE

Report of the Secretary-General

Addendum

1. The attention of the Preparatory Committee is drawn to the attached document entitled "Towards a more effective and integrated system of human rights protection by the United Nations" prepared by Mr. Nigel S. Rodley. The study was commissioned by the Centre for Human Rights pursuant to General Assembly resolutions 45/155 of 18 December 1990 and 46/116 of 17 December 1991.

2. The theme of the study corresponds to the fifth objective of the World Conference on Human Rights; this objective, set out in paragraph 1 (e) of resolution 45/155, is the following:

> "To formulate concrete recommendations for improving the effectiveness of United Nations activities and mechanisms in the field of human rights through programmes aimed at promoting, encouraging and monitoring respect for human rights and fundamental freedoms".

3. Indicative annotations issued by the Secretariat of the World Conference relating to the theme of the following study are to be found in paragraphs 13 and 14 of document A/CONF.157/PC/20.

TOWARDS A MORE EFFECTIVE AND INTEGRATED SYSTEM OF HUMAN RIGHTS PROTECTION BY THE UNITED NATIONS

by

Nigel Rodley

Note: Unedited text for circulation to the fourth session of the Preparatory Committee. The final edited version will be prepared for the World Conference.

Contents

I Introduction

1. The first phase of the United Nations' activity in the field of human rights was one of standard-setting. As a study prepared for the General Assembly has pointed out, "[i]t would seem to be universally accepted that human rights standard-setting is one of the United Nations greatest, and potentially most enduring, achievements."[1] The process may be expected to continue: despite criticisms of too many international standards being drawn up, the same study concluded that a "moratorium on new standards is undesirable and unworkable."[2]

2. A second and (many, including the author of this study, believe), supremely important phase began effectively in the late 1960s, with the development of machinery and procedures aimed at seeking to give effect to the standards that had been adopted. For victims of human rights violations and for non-governmental organizations, national and international, working to protect them, there was now hope that the United Nations would show it was "serious" about the standards it had set by seeking to hold its Member States to them.

3. There are at present seven bodies charged with supervising respect for international human rights treaties: the Human Rights Committee (HRC),[3] the Committee on Economic, Social and Cultural Rights (CESCR),[4] the Committee on the Elimination of Racial Discrimination (CERD),[5] the Group of Three on Apartheid,[6] the Committee on the Elimination of Discrimination against Women (CEDAW).[7] the Committee against Torture

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1 A/44/668, para.146.

2 Id., p.7, recommendation 25.

3 Established under the International Covenant on Civil and Political Rights.

4 Established by the Economic and Social Council pursuant to the International Covenant on Economic, Social and Cultural Rights.

5 Established under the International Convention on the Elimination of All Forms of Racial Discrimination.

6 Established under the International Convention on the Suppression and Punishment of the Crime of Apartheid.

7 Established under the Convention on the Elimination of All Forms of Discrimination against Women.

(CAT),[8] and the Committee on the Rights of the Child (CRC).[9] All of the treaties require States Parties to report periodically to these bodies and defend their reports before them. Three of the bodies may consider interstate complaints of non-compliance either as of right (CERD, Convention Article 11) or where the States in question have so agreed (HRC, Covenant Article 41, and CAT, Convention Article 21). So far there have been no interstate complaints. The same three may also consider individual complaints in respect of States Parties accepting the procedure (HRC, (First) Optional Protocol to the Covenant; CERD, Convention Article 14; and CAT, Convention Article 22). In addition, the CAT may of its own motion consider apparent systematic practices of torture under Article 20 of the Convention establishing it, except as regards States Parties that have made the reservations contemplated in Article 28.

4. The treaties and, in general, the powers conferred on the Committees only affect States Parties to them. The process of ratification or accession to them is protracted and none of them has secured universal ratification. The United Nations and especially its Commission on Human Rights, however, could not ignore grave and widespread human rights violations occurring around the world. Between 1967 and the present it set up a series of procedures for considering such violations. Some were general, some thematic and some country-specific. A list may be found in Annex 1. Key ones will be considered in more detail below.

5. Two hypothetical problems:

A. A citizen of State X is held under conditions giving grounds to fear that she is being tortured. A family member writes to the United Nations for help. Subsequently, she is tried and convicted of a criminal offence. She is sentenced to death. Her lawyer then writes to the United Nations alleging that she was convicted on the basis of a false confession extracted by torture because of her peaceable attempts to expose official corruption. State X is a party to the International Covenant on Civil and Political Rights and its Optional Protocol and to the Convention against Torture, having accepted the individual complaint procedure under Article 22. By the time of the lawyer's complaint, the following UN bodies could potentially be involved: the Human Rights Committee, the Committee against Torture, the Special Rapporteurs on torture and on summary or arbitrary executions and the Working Group on Arbitrary Detention.

B. The human rights situation in State Y has for years given grounds for concern. In combating an armed insurgency, its security forces routinely round up suspected

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8 Established under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

9 Established under the Convention on the Rights of the Child.

opposition sympathizers, interrogate them under torture, often denying the detentions and then killing suspected active collaborators of the insurgents, sometimes concealing the bodies, sometimes leaving them in places where they will be found by passers-by. A Commission on Human Rights Special Rapporteur on the human rights situation in State Y has already been appointed. A local respected non-governmental organization communicates detailed information of an alleged massacre by the security forces of most of the inhabitants of a village, many of the bodies exhibiting signs of torture. Those not killed were taken away by the troops. State Y is a party to the Convention against Torture. The massacre could be relevant to the work of the Committee against Torture (systematic practice under Article 20), the Working Group or Enforced or Involuntary Disappearances, the Special Rapporteurs on torture and on summary or arbitrary executions, the confidential procedure for dealing with communications on situations appearing to reveal a consistent pattern of gross and reliably attested violations of human rights (Economic and Social Council resolution 1503 (LVIII)) and the Special Rapporteur on State Y.

In respect of both hypothetical instances, there could be the further involvement of the Secretary-General using his "good offices"[10] or "best endeavours".[11] Furthermore, regional machinery may come into play.

6. The above hypothetical, but sadly not untypical, situations raise questions about three clusters of relationships: the treaty bodies with each other, the treaty bodies with non-treaty bodies and the non-treaty bodies with each other. Since issues concerning the relationships among the treaty bodies themselves have been largely dealt with in the General Assembly study referred to above[12] this paper will explore the relationships among the non-treaty bodies and between the non-treaty bodies and the treaty bodies, with a view to identifying what steps, consistent with the effective protection of human rights, could be taken to rationalize the current system. The author will not explore ideas, however desirable in principle, that appear to him to be overly ambitious in the present political climate and at the current stage of institutional development, such as a world human rights court. On the other hand, such ideas

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10 See, generally, B G Ramcharan, Humanitarian Good Offices in International Law (Dordrecht, Martinus Nijhoff, 1983).

11 In a number of resolutions, beginning with resolution 35/172 of 15 December 1980, the General Assembly has asked the Secretary-General to use his "best endeavours" in death penalty cases where basic safeguards have not been respected.

12 Supra note 1. See, also, R Higgins, "The United Nations : Some Questions of Integrity", 52 Modern Law Review 1, at 19 (1989) and M G Schmidt, "Individual Human Rights Complaints Procedures Based on United Nations Treaties and the Need for Reform", 41 International and Comparative Law Quarterly 645 (1992).

could become realistic after a period of evolution that could begin with the adoption of the main proposals canvassed here.

II Historical Background

7. The development of a series of international human rights treaties was logical, even if partially the result of particular political junctures.

8. Political factors were clearly relevant to the adoption of the Convention on the Elimination of All Forms of Racial Discrimination. The International Covenants were languishing in the General Assembly and it was not known whether or when they would eventually be adopted, nor how long it would take to secure wide ratification. United Nations members attached priority to combating racial discrimination and doubtless felt that a political consensus could be built around a treaty whose sole purpose was to deal with this particular human rights violation. The drafting of the Convention on the Elimination of All Forms of Discrimination against Women was initiated during the ten-year period between the adoption of the Covenants in 1966 and their entry into force in 1976, that is, before the Covenants held out clear prospects of assistance and, again, in respect of an issue that might be seen as susceptible of rallying more support than the all-embracing Covenants. Similar considerations doubtless applied to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, whose drafting was initiated in 1977, that is, just a year after the Covenants came into force on receiving the required 35 ratifications or accessions.

9. But there remained a substantive logic behind the separate instruments. The Covenants of necessity dealt with a wide range of human rights in general terms. Treaties that were specific to a particular kind of right could address the problem in greater detail. For example, not every human rights violation could, like torture, be treated as a crime.[13] Only some violations would be committed if states failed to regulate certain behaviour of private individuals. In other words, specialized treaties could spell out preventive measures, repressive measures and the legal consequences of violation of the general rule.

10. The need for separate machinery was far less obvious. Indeed, an attempt to place the Human Rights Committee established under the International Covenant on Civil and Political Rights in charge of supervising the Convention against Torture was only abandoned on legal grounds, when the United Nations Legal Counsel advised that the Covenant would require amendment to achieve the objective.[14] Of course, political perceptions could be relevant too.

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13 See Articles 4-8 on the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

14 E/CN.4/1981/WG.2/WP.6.

When the International Covenant on Economic, Social and Cultural Rights was adopted, it was far too controversial for its supervision to be consigned to a quasi-judicial body of experts, such as the Human Rights Committee. Twenty-one years later the Economic and Social Council set up just such a committee to discharge its functions under that Covenant.[15]

12. The problem of rationalizing the treaty-mechanisms is beyond the scope of this study.[16] The point of the foregoing is to serve as a contrast to the factors conducing to the piecemeal evolution of the non-treaty-based procedures. That evolution is much more readily attributable to the gradual, persistent development of political will to deal on a universal basis with violations of the most basic norms of human dignity.

12. The cornerstone of the process was the adoption in 1967 by the Economic and Social Council, on the recommendation of the Commission on Human Rights, of resolution 1235(XLII) of 6 June 1967. By this resolution the Council authorized the Commission "to examine information relevant to gross violations of human rights and fundamental freedoms, as exemplified by the policy of apartheid as practised in the Republic of South Africa and the Territory of South West Africa and to racial discrimination as practised notably in Southern Rhodesia" and to "make a thorough study of situations which reveal a consistent pattern of violations of human rights, as exemplified" by the same situations.

13. The specified examples are indicative of the political concern that led to the resolution's adoption. The Commission had long considered that it should not discuss or, at any rate, take any action on alleged human rights violations in specific countries. In the wake of decolonization a new majority emerged within the United Nations that found intolerable the continuation of apartheid and the remnants of colonization in southern Africa. This was further evidenced by the Commission's establishment in 1967 of the Ad Hoc Working Group of Experts on southern Africa.

14. However, the new majority was not keen completely to undermine the previous abstentionist line. Thus, when later in 1967 the Sub-Commission on Prevention of Discrimination and Protection of Minorities, acting on information supplied by non-governmental organizations (NGOs), referred not only the situation in southern Africa, but also those in Greece (after the 1967 military coup) and Haiti (under President François Duvalier), the Commission reacted negatively. It set in motion a review of how the

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15 Economic and Social Council resolution 1985/17 of 28 May 1985.

16 See the studies noted at footnotes 1 and 13 supra. Suffice to say, that the author of this study shares the scepticism that the authors of those papers evince in discussing the difficulties arising from proposals for a "superbody" or "super-Committee" to replace the existing network of treaty bodies.

Commission and Sub-Commission should deal with "communications" from non-official sources alleging serious human rights violations. The upshot was the adoption by the Economic and Social Council, again on the recommendation of the Commission, of resolution 1503 (XLVIII) of 27 May 1970.

15. The effect of this resolution was to modify the procedure for dealing with individual communications complaining of human rights violations, as laid down in 1959 by Council resolution 728F (XXVIII) of 30 July 1959. According to the latter resolution the Secretariat was to prepare a monthly confidential list containing a brief indication of the substance of such communications and any replies from governments. The lists were circulated to but not discussed by the Commission and Sub-Commission. The result of the 1503 procedure was to provide a system for formal consideration of non-official communications when they address "situations which appear to reveal a consistent pattern of gross and reliably attested violations of human rights". This system is characterized by its confidentiality. So no longer could the Sub-Commission, acting under resolution 1235, deal publicly with information submitted by NGOs with a view to securing public Commission action.

16. This did not mean that the Commission or the Sub-Commission could not act in the public domain, just that they could not do so on the basis of information from unofficial sources: after all the Ad Hoc Working Group of Experts continued its work from year to year. It was also clear that the language of resolution 1235, albeit implicitly assigning a certain priority to the situations in southern Africa, was generic.[17] So it was an essentially political question as to what other situations with consistent patterns of gross violations of human rights might come to be considered.

17. The first such other situation was that obtaining in Chile in the wake of the violent military overthrow of the constitutional Government of President Salvador Allende in September 1973. The worldwide revulsion against both the overthrow and its methods, including widespread murder, enforced disappearance and torture, led the Commission on the recommendation of the Sub-Commission and the General Assembly,[18] to set up a working group to investigate the situation.[19] In 1978 a Special Rapporteur replaced the working group. The function of Special Rapporteur continued until 1990, only being discontinued by the

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17 Also the General Assembly in 1968 established the Special Committee [of three Member States.] to Investigate Israeli Practices Affecting the Human Rights of the Population of the Palestinian People and Other Arabs of the Occupied Territories. By definition the territorial scope of this work fell outside any claim to domestic jurisdiction.

18 Sub-Commission resolution 8 (XXVII) of 21 August 1974; General Assembly resolution 3219 (XXIV) of 6 November 1974.

19 Commission on Human Rights resolution 8 (XXXI) of 27 February 1975.

Commission when a constitutional government with an electoral mandate was about to resume governmental authority. It was not until the 1980s that a number of other situations were subjected to formal Commission scrutiny on the basis of reports prepared by a Special Rapporteur, a Special Representative, a Special Envoy, an Expert, or, on occasion, by the Secretary-General, if the Commission so requests. Those presently under consideration may be found in Annex 1.

18. Two other developments in the way of country-specific attention should be noted at this stage. The first is the availability of the advisory services and technical assistance programme. The benefits of this programme are open to any Member State seeking them from the Secretariat. They can include anything from training of law enforcement personnel in international standards relevant to their functions to the identification of the library needs of the judiciary. In a number of situations, the Commission has nominated experts to explore the advisory services needs of a number of governments. This has tended to occur as regards new Governments that have assumed power in the wake of a constitutional process, after a period of non-constitutional government characterized by human rights violations that received attention by the Commission either under the 1503 procedure or through a Special Rapporteur or Representative. The mandates of the advisory services experts have come typically to include a fact-reporting function, not least because the reduction of scrutiny proved, as feared by a number of (especially non-governmental) observers, to be premature. At present, there is only one such expert, on Guatemala. The tendency to continue the consideration of situations under the advisory services programme once it has become clear that the situation needs sustained scrutiny is open to serious criticism: it indicates a lack of political will to deal with the problem in the way it deserves and it degrades and distorts the advisory services system itself. On the other hand, some scrutiny is better than none. But a more appropriate technique would be to require a report from the Secretary-General, as happened in 1992, by Commission resolution 1992/64 of 3 March 1992, in respect of the human rights situation in Romania.

19. The second development has been the establishment of a standing, on-the-spot monitoring function. So far these have been within the framework of overall peace settlements after a period of intense civil conflict, where the United Nations has an established presence in assisting various aspects of implementing the peace agreement. Building on experience gained in Namibia and Angola, UNTAC and ONUSAL are pioneering this form of monitoring, which at present can, in any event, only happen with the consent of all parties, including the Government. The Commission's Special Rapporteurs on Iraq[20] and the former Yugoslavia[21] have called for such monitoring in respect of those countries. Monitoring of this sort would

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20 A/47/367, paras. 17-26.

21 Eg. A/47/166-S/24809.

have a valuable preventive function. The expected forthcoming operation in Haiti may offer further useful experience. It is important that such exercises not be isolated from the overall purview of the Centre for Human Rights and other elements of the Organization's human rights activities on the country in question.

20. Throughout the period since the institution of the so-called public procedure, there have been many situations characterized by violations as serious as those under scrutiny that have escaped formal public examination by the Commission. Until 1991, an evident example was that of Iraq. The reason for such omissions is not hard to find: members of the Commission are representatives of Governments, not independent judges. Governments frequently see their function as acting in their or their States' political interest, rather than on the merits of any given situation. Their behaviour may be insensitive to the victims of human rights violations and reckless of the institutional integrity of the United Nations, but it is not, regrettably, unnatural or surprising. The challenge is to find institutional forms conducive to the impartial protection of human rights.

21. The development of thematic machinery has been a response of immeasurable importance to that challenge. The first such mechanism was the Working Group on Enforced or Involuntary Disappearances, set up by the Commission in 1980. The political context for its creation was concern about the widespread practice of the security forces of a number of countries of detaining and then concealing the whereabouts and denying the detention of suspected "subversives", violent or otherwise.[22] In particular, allegations that the practice in Argentina ran into the thousands (allegations subsequently confirmed by an official Argentinian investigation)[23] were prominent. It is generally accepted that it was precisely the absence of political will to authorize a public investigation of the situation in Argentina that led the Commission to follow the more indirect route of setting up the Working Group. It has been reliably documented that Argentina was active in seeking to keep the powers of the Group as vague and non-coercive as possible.[24] (While the country had for some time been under consideration in the "1503 procedure", it was clear that its then Government was content to accept this, seeing the procedure as a screen behind which public scrutiny could be avoided.[25]) In the event, two words in the mandate of the Working Group, whereby it was to act "effectively" and "expeditiously",[26] provided the basis for the Group's developing the wide

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22 See, eg., General Assembly resolution 33/173 of 20 December 1978.

23 CONADEP, NUNCA MAS (Buenos Aires University Press, 1985).

24 See I Guest, Behind the Disappearances (Philadelphia, University of Pennsylvania Press, 1990), chapter 15.

25 Id., especially pp.137-39.

26 Commission on Human Rights resolution 20 (XXXVI) of 29 February 1980.

range of actions it now has, including urgent appeals in cases of threatened enforced disappearance, dialogue with States concerning allegatons of cases and practices of enforced disappearance, visits to countries where such practices appear to be occurring and reporting annually to the Commission on Human Rights.

22. Once the first thematic mechanism was in place, it was possible to build on the precedent it represented to tackle other grave violations of human rights. The first such development was the creation in 1982 of the Special Rapporteur on summary or arbitrary executions. This occurred in a political context with two principal elements. The first element was the concern already expressed by the General Assembly at the incidence of death penalties taking place around the world without the protection of basic safeguards, such as a fair trial or right of appeal, and even sometimes retroactively, that is, on the basis of offences or sanctions laid down after the acts in question had been committed.[27] This concern reflected, in turn, the failure of the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders (1980) to take action on the issue of capital punishment.[28] While there had been no consensus on this matter, it was felt that abuses of capital punishment should be tackled. The second element was a growing awareness of the widespread perpetration of extra-legal executions, that is, the summary killing of people without even the pretence of a trial. This had already been the subject of a resolution of the Sixth Crime Congress[29] and, at the opening of the thirty-eighth session of the Commission in 1982, the Director of the Division of Human Rights had drawn vivid attention to this problem. Indeed, he pointed to a number of countries where "deliberate killings perpetrate by organized power" were occurring and which seemed to be immune from specific public scrutiny.[30] The Commission decided to recommend to the Economic and Social Council the creation of the Special Rapporteur on summary or arbitrary executions and the Council acted on the recommendation by its resolution 1982/35. The Special Rapporteur's powers were couched in language similar to that laying down the functions of the Working Group and his activities have been similar to those of the Working Group.

23. The next development was the establishment of the Special Rapporteur on torture in 1985. At the close of the Commission's fortieth session in 1984, the Assistant-Secretary-General for Human Rights had noted the need to complete the coverage of the three "fundamental phenomena", that is, to give torture a fact-finding mechanism such as had been

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27 General Assembly resolution 35/172 of 15 December 1980.

28 A/CONF.87/Rev.1, chapter IV, Report of Committee I, Annex.

29 Id., chapter I.

30 E/CN.4/1982/SR.1.

developed for enforced disappearances and summary executions.[31] He repeated the point at the forty-first session the following year and the Commission acted.[32]

24. In fact, a proposal to this effect had been made in the General Assembly as early as 1977.[33] What made it possible the best part of a decade later was another combination of factors: the existence of the Working Group on Enforced or Involuntary Disappearances and the Special Rapporteur on summary or arbitrary executions; the Commission having in 1984 completed its drafting of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the General Assembly having adopted it the same year; the awareness of international public opinion of the existence of the practice of torture, in the wake of a 1984 campaign against torture launched by a major non-governmental organization;[34] and the call from the responsible Secretariat official.

25. Thus, piecemeal, was the triad of mechanisms developed to tackle the triad of criminal human rights violations. In practice, what we have seen is a step-by-step approach consistent with the evolutionary rather than revolutionary style of governmental, especially inter-governmental institutions.

26. Meanwhile, in 1986, the Commission established its first procedure dealing with the so-called fundamental freedoms, namely, freedom of conscience, in the form of the Special Rapporteur on the implementation of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief. By 1991, it had established the Working Group on Arbitrary Detention, whose mandate includes detention incompatible with the fundamental freedoms of expression, association and assembly, as well as, presumably, conscience. Also, in 1990 the Commission established a mechanism to protect a particular kind of victim; this was the Special Rapporteur on the sale of children, child prostitution and child pornography. Others, for example on racism, are in the offing.

27. As far back as 1950, there were proposals for the establishment of a United Nations High Commissioner for Human Rights to take up complaints of human rights violations.[35] In the early 1980s, the Sub-Commission on Prevention of Discrimination and Protection of Minorities

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31 E/CN.4/1984/SR.63, para. 48.

32 E/CN.4/1985/SR.27, para.42.

33 A/C.3/32/SR.37.

34 Torture in the Eighties (London, Amnesty International Publications, 1984); N S Rodley, The Treatment of Prisoners under International Law (Oxford, Clarendon Press, 1987), p.122.

35 See, generally, R S Clark, A United Nations High Commissioner for Human Rights.

studied the idea of creating such a post. These proposals, of course, either preceded or were considered in the earliest days of the development of the thematic machinery. By creating these mechanisms, the Commission has arguably come close to covering the range of human rights violations that could have comprised a substantial part of the possible mandate of an eventual High Commissioner for Human Rights.

28. Furthermore, in addition to the formal machinery, the role of the good offices of the Secretary-General should be recalled. Since that role is normally exercised as a function of quiet diplomacy, it is not possible to explore it in depth here.[36] Suffice it to say that successive Secretaries-General have exercised their good offices for humanitarian purposes, as well as to avoid or alleviate international friction and conflict. Indeed, the General Assembly has repeatedly encouraged the Secretary-General to use his "best endeavours" in cases of threatened arbitrary executions. A judicious use of good offices closely articulated with the activities of other machinery could make an important contribution to the protection of human rights. This would require a capacity in the Secretariat for developing sensitively-crafted policies based on strategic thinking.

III Relationship among the Non-Treaty Bodies.

29. The relationship among the non-treaty bodies can be divided into three sub-sets of relationship. The first is the relationship among the country-specific procedures; the second is that among the thematic bodies; and the third is that between the country-specific machinery and the thematic machinery.

A. Relationship among the country-specific procedures

30. It will be recalled that the reason for both public and confidential procedures was the Commission's perceived need to treat information from non-official sources more discreetly than that from the actual membership of the United Nations' human rights bodies. This was at a time when it was rare for the members of these bodies to raise human rights concerns in other countries and when non-governmental organizations were generally not permitted either to have country-specific statements circulated under Economic and Social Council 1296 (XLIV) governing consultative status or to make country-specific oral interventions in meetings of the bodies.

31. Over the years the role of NGOs has evolved beyond recognition. Information from NGOs alleging human rights violations in Member States in all parts of the world is to be found in numerous documents issued in the "NGO" series and is a substantial part of the oral debate under various agenda items. As such it plays an important role in decisions on what

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36 See Ramcharan, supra footnote 11.

situations should be scrutinized, for example, by a Special Rapporteur. It is also generally accepted that NGOs are the main source of information for the thematic machinery, whose reports are themselves influential in the determination of situations appropriate for special scrutiny.

32. There was always something conceptually odd about the idea that situations characterized by the term "consistent pattern of gross violations of human rights" should then be considered in a manner perceived as shielding the perpetrators of such violations from public attention. That oddity seems even less explicable in the greater openness now found in other parts of the machinery.

33. Long-standing procedural problems with the 1503 procedure remain. Authors of communications are left in the dark as to the action, if any, taken on the basis of their allegations while Governments have numerous opportunities to respond: there is no pretence of an equality of arms. The process is protracted in a way that requires information to be increasingly out of date as it passes through the system. Despite several precedents to the contrary, there is a continuing controversy as to the propriety of dealing by public process with a situation that is the subject of the confidential procedure. Yet even where a situation is being examined in public procedure, there is no automatic means of ensuring that non-official information will go to that procedure rather than to the confidential one.

34. Should it then be concluded that the 1503 procedure has become obsolete? Such a conclusion would be extremely premature. Even with its present disadvantages, it offers some hope that a minimum of international attention will be focussed on grave situations in respect of which there is not the political will to act more vigorously. That is, after all, why even experienced NGOs continue to submit communications for consideration under the procedure. Furthermore, it is not hard to conceive of improvements, for example, by facilitating the flow of up-to-date information into the process once a situation has been taken up. Moreover, it would then be possible to articulate the procedure more coherently with the public procedure: for instance, if a situation requires consideration beyond a stipulated (brief) period of time, of if the State in question fails to co-operate effectively, it would qualify automatically for action under the public procedure (i.e. a Special Rapporteur or a Secretary-General's report). However, if the structural recommendation made later in this paper for the creation of a senior co-ordinating official who would be enabled to initiate action in the public domain on suitable situations were to be implemented, it could be that this would herald an evolution that would justify a review of the continuing utility of the procedure.

B. Relationship among the thematic bodies - a "super-thematic-body"?.

35. The main issue arising from a consideration of the relationship among the thematic mechanisms is to assess the balance of advantages and disadvantages of having their activities spread among so many bodies. Put another way, might not some "super-thematic rapporteur or working group" analogous to the proposed super-committee for the treaty bodies be more effective?

36. The main disadvantage of the present system has already been alluded to in the Introduction. A number of the most serious human rights crises in the world are characterized by human rights violations that fall within the mandates of several of the mechanisms, especially those of the Working Group on Enforced or Involuntary Disappearances and the Special Rapporteurs on summary or arbitrary executions and on torture. This means that each of those that may be involved may find itself separately approaching the same Government. From the point of view of the Government, there is the problem of having to respond on similar issues to different requests for information and co-operation. They have publicly complained that this can be a source of frustration and strain on resources for them. From the point of view of the bodies themselves, it means that they may unnecessarily duplicate efforts and make excessive demands on the already exiguously stretched resources of the Secretariat. Indeed, it may even be possible for Governments to co-operate with more than one, for example, by inviting two to visit the country in question, and then criticize discrepancies in tone or content, thus playing one off against the other. It may also result in the artificial situation where one mechanism visits a country and then considers itself precluded from examining a major incident falling within the mandate of the other.

37. There are, however, also substantial advantages to the present system. All the phenomena that constitute the subject-matter of the thematic bodies have their own characteristics and require a special expertise. That expertise is relevant to the recommendations that can be made to Governments and in identifying appropriate areas of further standard-setting. For example, two recent texts were drafted with the participation and reflect the experience of two of the bodies: the Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions and the draft Declaration on the Protection of All Persons from Enforced Disappearance.[37] To the extent that there may be reasons, not connected with the merits of the alleged information, preventing one body from acting on its mandate, another may still be able to act. Also, it may well be that the present situation reflects an inescapable political reality, that is, that Governments will accept the flexibility of special rapporteurs for some areas of activity, but require the political protection,

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37 The Special Rapporteur on summary or arbitrary executions and the Working Group on Enforced or Involuntary Disappearances respectively, were involved in the elaboration of these instruments.

with its attendant cumbersomeness, of working groups for others. (While the Working Group on Enforced or Involuntary Disappearances may have been established in that form because of the uncharted course it was to embark on, thus being seen as an historical and amendable phenomenon, no such thing could be said for the creation of the latter Working Group on Arbitrary Detention. It is understood that some Governments that agreed to the creation of the Working Group would not have agreed to the establishment of a special rapporteur on arbitrary detention. This may have been because of the novelty of a mandate clearly framed to cover the possibility of formal findings on individual cases. Of at least equal importance will have been the lack of clarity regarding the scope of "arbitrary detention' and its extra sensitive nature.) Finally, a cluster of bodies leaves open the possibility of tailoring new machinery to new issues, as evidenced by the new study of the Special Rapporteur on displaced persons or the proposed Special Rapporteurs on racism and on freedom of expression. This desirable trend could well be inhibited if one body were responsible for all issues.

38. One further important factor has to enter into the equation. That is, the question of resources. At first sight, the plethora of machinery, especially in cases of overlap, would seem to suggest that integration would be more resource-efficient. On closer examination, this seems far less certain. It is clear that if one body were to do the work of all its members it would have to spend far more time away from their regular vocations than is now the case. It is also clear that steps have been taken towards giving a more rational allocation to the Secretariat's limited resources, with some staff servicing several bodies on the basis of regional expertise, than was the case before with different staff working for each body. Despite this those resources are already painfully inadequate for the work to be done and the turnover of staff seems to have prevented full implementation of the model of regional expertise allocation. This is a problem that has hampered the creative evolution of the thematic bodies' methods of operation. The case has been made eloquently in a statement by a member of the Working Group on Enforced or Involuntary Disappearances to the first meeting of the Preparatory Committee for the World Conference on Human Rights.[38] Until there has been substantial alleviation of the mechanisms' present staffing needs, discussion of any possible marginal efficiencies to be gained by harmonization of the procedures could be considered diversionary.

39. What could make a marked difference to the coherence of the machinery, subject to the provision of the necessary resources, would be the existence of a guiding hand capable of ensuring that the right body responds to the right situation, with authority to charge that body with representing other bodies whose mandates may also be concerned. The senior co-ordinating official proposed later in this paper could provide that guiding hand, a hand that, once in place, could also assess realistically proposals for further rationalization of the system.

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38 Excerpts of the statement are contained in E/CN.4/1992/18, Annex II.

C. Relationship between the country-specific machinery and the thematic machinery

40. The co-existence of the country-specific machinery and the thematic machinery does not raise issues of the same administrative magnitude and complexity as the two previous sub-sets of relationship just discussed. This is mainly because relatively few situations are subject to country-specific scrutiny, at least in public.

41. However, the observations made above regarding Secretariat resources remain apposite, as far as the public country-specific scrutiny is concerned, since it is the same radically understaffed part of the Secretariat, the Special Procedures Section, that is responsible both for thematic and country rapporteur work. The 1503 procedure and the (optional) individual complaints procedures of the treaty bodies are handled by the also overworked Communications Section, while the advisory services experts, despite their fact-finding functions, are serviced by the Advisory Services and Technical Assistance Section. (The latter is a dysfunctional consequence of political and terminological factors prevailing over functional coherence.) All need access to professiional regional or country expertise, sufficient to permit the careful and integrated development of a strategy capable of securing improvements in any given human rights situation.

42. It should be understood that, in general, the functions of the thematic machinery are different from those of the country rapporteurs. The main difference is that the latter are involved in fact-finding and reporting. They have a judgmental function. In contrast, the thematic bodies have chosen to see themselves as having a humanitarian function to solve problems rather than judge official behaviour. Also, they take up individual cases, often on an urgent basis, whereas the country rapporteurs tend to concentrate on the overall situation in "their" countries, rarely acting urgently. On the other hand, the thematic mechanisms will tend to draw general conclusions on a comparative basis. However, the individual case mandate of the Working Group on Arbitrary Detention departs from the non-judgmental norm. Nor is there anything in the mandates of the other thematic bodies that requires them to adopt such an abstentionist posture and the reports of some disclose moves towards a more judgmental approach. Similarly, when these other thematic bodies produce reports on country visits, the non-judgmental approach is, of necessity, less in evidence. Such visits, nevertheless, do not normally occur in respect of countries already within the jurisdiction of a country rapporteur.

43. Of greater concern is the lack of correlation between situations benefiting from a rapporteur and those whose situations, as evidenced by the reports of more than one thematic body's report, would appear to merit similar concern. Ideally, the Commission would establish a system whereby a certain intensity of apparent violation as disclosed in, say, two annual reports of, say, two of the bodies would automatically qualify for scrutiny by a country

rapporteur. If that were to prove politically overambitions, an alternative option would be that, in such a case, one of the thematic mechanisms would be charged, for example, by the senior co-ordinating official discussed below, with engaging in a similar fact-finding process. What would then be lost would be the sustained scrutiny over the necessary period that a country rapporteur could offer, since the thematic body would not be able to ensure that level of coverage over a possible period of years. One way of mitigating the negative effect of this reduced attention would be to follow the practice of the Inter-American Commission on Human Rights; that is, in the years after the production of a country-specific study, the annual report of the thematic mechanism in question would have a substantial section reviewing developments in the country in question.

IV Relationship between the Non-Treaty Bodies and the Treaty Bodies

44. Machinery established by the Commission or the Economic and Social Council has sometimes been seen as a temporary substitute pending the availability and applicability of appropriate machinery established by treaty obligation. This is because the commitments contained in treaties are beyond doubt legal, whereas other international human rights standards are based on instruments which, while they may reflect rules recognized under general international law, are not per se legally binding. Similarly, the findings of treaty bodies, albeit not of a formal adjudicatory nature, carry the authority of the overall legal framework represented by the treaty. Thus, when the Economic and Social Council adopted resolution 1503 (XLVIII) of 27 May 1970, it provided that the procedure set up under the resolution "should be reviewed if any new organ entitled to deal with...communications [concerning situations which appear to reveal a consistent pattern of gross and reliably attested violations of human rights] should be established by the United Nations or by international agreement". This was understood by some to contemplate the eventual entry into force of the International Covenant on Civil and Political Rights. After the Covenant entered into force in March 1976, there was a move in the late 1970s to initiate such a review. After the Secretariat had prepared an analysis of the problem in 1979, the 1503 procedure remained intact.[39] Presumably this result reflected the weight of arguments, according to which the Human Rights Committee could only consider a systematic practice of violations of the Covenant in the case of an inter-state complaint under Article 41 (which had not yet entered into force and which has still not been used) and could only act on non-official complaints in respect of communications submitted by or on behalf of individual victims in respect of States Parties to the Optional

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39 E/CN.4/1317: "Analysis of existing United Nations procedures for dealing with communications concerning violations of human rights (Prepared by the Secretary-General pursuant to commission resolution 16 (XXXIV))".

Protocol. Even here, the Committee has no power to consider the general situation in countries from which individual communications arise.

45. The inescapable lesson from this experience is that it is necessary to identify not only an overlap in subject-matter between the mandates of a non-treaty and a treaty procedure but also a duplication of function, before considering whether one should yield to another. What then are the main particularities and commonalities of both groups of procedure?

46. First, none of the treaty procedures can study types of human rights violation on the basis of comparative, world-wide information. Nor does their one common function, the periodic examination of reports submitted by States Parties, permit them to do so, even in respect of the more limited range of States subject to the treaty: the restricted sources of information and the intermittence of their examination dictates this lack of capacity. Second, except as regards those States Parties to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment that have not made the reservation to Article 20 contemplated in article 28, none of the treaty bodies can look at a systematic practice of violation of the treaty's provisions.

47. From this it follows that the treaty mechanisms provide no substitute for the examination of general situations offered by either the public or confidential country-specific procedures. It also follows that, except as regards the States Parties to the Convention against Torture mentioned in the previous paragraph, the treaty machinery does not afford an alternative to coverage by the thematic machinery of a generalized practice of violation falling within their mandate.

48. Apart from the exception of the Convention against Torture just mentioned, it is in the area of individual cases that there is some potential for overlap. Of course, even here that potential is limited to those States that have accepted the optional individual complaints system of the Covenant (Optional Protocol), the Convention on the Elimination of All Forms of Racial Discrimination (Article 14) and the Convention against Torture (Article 22). Moreover, unlike the thematic mechanisms, the treaty bodies do not engage in preventive action on individual cases where there is merely a threat of a grave violation. Nor, with the exception of the Human Rights Committee's Special Rapporteur for New Communications (as regards cases involving capital punishment)[40] do they engage in urgent actions. On the other hand, the thematic mechanisms, other than the Working Group on Arbitrary Detention, have so far

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40 That is, cases where the Committee can, under Rule 86 of its Rules of Procedure, indicate interim measures to avoid "irreparable damage", a power generally restricted to death penalty cases.

tended to refrain from forming conclusions as to whether or not a violation has taken place in the case of a particular individual.

49. For most purposes, then, there is surprisingly little overlap of function. Nevertheless, where a violation is alleged to have occurred, it would be confusing for all concerned if the case were to be considered both by a treaty body and a thematic body which can reach formal findings on individual cases. In practice this does not occur, either because a victim with a knowledgeable adviser will know how to choose or because, in the absence of such an adviser, he or she will usually be advised by the Secretariat that a choice should be made. The ability of the treaty body to make a more authoritative finding will tend to commend that option to an author of a communication. In any event, the Secretariat needs the capacity and coordination to be in a position reliably to guide such authors of communications in their choice.

50. Similarly, to the extent that a choice needs to be made, death penalty cases falling within the mandates of both the Commission's Special Rapporteur on summary or arbitrary executions and the Human Rights Committee's Special Rapporteur on New Communications are probably best handled by the latter. This leaves only the question of systematic practices of torture potentially falling within the mandates of the Special Rapporteur on torture and the Article 20 powers of the Committee against Torture. It may be that the same considerations and preference for the treaty body apply. However, bearing in mind the largely confidential nature of the Article 20 procedure and the fact that the Committee against Torture has only just begun developing an experience with the procedure, it is probably too soon to draw any firm conclusions on the matter of whether it should be necessary to choose between the two bodies.

51. In any event, the global reporting and studying functions of the thematic machinery remains necessary. Therefore, to the extent that there is a need to choose action by a treaty body rather than a thematic body, the latter should have access to the work of the former, with a view to ensuring the completeness of the thematic body's perspective. Indeed, there is much to be said for members of treaty bodies to have access to the reports of the thematic machinery and, at least, the public, country-specific machinery, since these could valuably inform all aspects of the work of the treaty bodies. Indeed, the Committee on the Rights of the Child has invited the participation of the Special Rapporteur on the sale of children, child prositution and child pornography and of the Special Rapporteur on Yugolavia. The other treaty bodies could usefully consider the possibility of emulating this initiative.

V Implementation Models and Techniques

52. The United Nations has developed a broad range of non-coercive models and techniques to contribute to the more effective protection of human rights. In ascending order of intrusiveness the models may be roughly categorized as follows:

1. Advisory Services. By means of seminars, conferences, training programmes etc., the United Nations assists Member States both in improving their capacity to ensure respect for human rights, particularly as regards agencies for law enforcement and the administration of justice, and in discharging their obligations at the international level, for example, in organizing effective reporting in conformity with their obligations under various human rights treaties.

2. Quiet diplomacy of the sort typically undertaken by the Secretary-General when using his good offices on humanitarian issues. This can involve him or one of his senior officials making representations, at Headquarters, UNOG or UNOV, to the Permanent Representative of a Member State or to a visiting senior official from the Member States; or he may use his good offices when visiting Member States.

3. Intercession and fact-clarification. Here United Nations bodies raise questions about alleged human rights violations and report on their activities with indications of any official responses, without resorting to formal findings or conclusions. This non-judgmental model is typically found in the practice, discussed earlier, of several of the thematic bodies and of the Secretary-General when requested to report on human rights matters on specific countries.

4. Judgmental fact-finding. Here the body in question, for example, a country rapporteur, draws conclusions from its assembling of information, with a view to expressing an opinion about the credibility or otherwise of allegations considered.

53. Similarly, the Organization has evolved a range of techniques, several of which can be applicable to more than one of the above models. The main ones, again in ascending order of intrusiveness, are:

(a) Voluntary reporting requests. From 1956 to 1977, there existed a system of consideration of periodic reports, established under Economic and Social Council resolution 624 B (XXII) of 1 August 1956 by which the Commission, assisted by the Sub-Commission, reviewed reports from Member States on "developments and the progress achieved...in the field of human rights". The procedure was eventually formally terminated by the General Assembly (resolution 35/209 of 17 December 1980), because

it had become "obsolete, ineffective or of marginal usefulness".[41] From time to time Member States have been asked to provide information regarding the application of various specific human rights non-treaty instruments, such as the Declaration on the Protection of All Persons from Being Subjected to Torture or Other Cruel, Inhuman or Degrading Treatment or Punishment. These have also fallen into obsolescence. Sometimes the Secretary-General may be requested to send out periodic questionnaires, such as those relating to the implementation of the Standard Minimum Rules for the Treatment of Prisoners and other instruments adopted within the framework of the Crime Prevention and Criminal Justice programme. While these have been maintained, the number of Member States responding to these quinquennial questionnaires has tended to be disappointing. Also the responses are not published by the Secretariat which provides a comparative analysis of the responses, that does not lend itself to country-by-country review. Occasionally, individual States may be invited to report voluntarily on their human rights situations (as happened in respect of Sri Lanka, for example, under Commission resolution 1987/61 of 12 March 1987).

(b) Obligatory reporting. Review of periodic reports is the standard technique of the treaty instruments. Coupled with the practice of requiring States Parties to respond to questions on their reports, these reviews are generally thought to be helpful, at least in promoting a dialogue between the treaty body and the State in question. To the extent that the treaty bodies are beginning to formulate specific views on the contents of reports under review, that could enhance the utility of the technique.

(c) Seeking responses on alleged cases and situations of human rights violation. This is the typical method of operation of the country-specific and thematic procedures of the non-treaty bodies, often involving urgent intervention in cases of alleged grave threatened human rights violations, such as enforced disappearance, summary or arbitrary execution and torture. Some treaty bodies are also empowered to use this technique where the treaty in question provides for this on an optional basis.

(d) Country visits. The thematic and country-specific non-treaty mechanisms engage in such visits, with the consent of the State to be visited. The Committee against Torture also may do this under Article 20 of the Convention against Torture, again with the authorization of the State Party concerned. This technique potentially permits both effective and reliable fact-finding and a deeper and wider dialogue with the State's authorities.

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41 United Nations Action in the Field of Human Rights (New York, United Nations, 1983), Sales No. E.83.XIV.2, p.325, para.22.

(e) On-the-spot monitoring. This involves United Nations personnel being stationed in the country in question. So far it has only happened in the context of peace settlements, in which the United Nations has a general monitoring role, as well as a human rights monitoring role. The key current examples are ONUSAL and UNTAC. Again the consent of the State, including the parties to the conflict brought to an end by the peace settlement, is required. This technique has as much a preventive and deterrent as a fact-finding function.

VI Conclusions and Recommendations : Towards a More Effective and Integrated System of Protection

54. The United Nations was slow to proceed beyond standard-setting to implementation. For a long time, even mere discussion of the human rights situation of a Member State without its consent was widely considered as intervention in matters falling essentially within its domestic jurisdiction. Therefore, the first machinery developed for the purposes of implementation was that created by international treaty: by definition, if a State accepted treaty obligations that included measures for reviewing its compliance with the obligations, it was consenting to the review. Even then, the early norm was that the treaty bodies could only review reports submitted by States Parties; further scrutiny, for example, of individual cases, was only possible if a State Party accepted a further optional procedure.

55. Between 1967 and 1970, the basis was laid for consideration of situations - not individual cases - characterized by systematic practices of serious human rights violations, regardless of whether or not the State in question was party to a human rights treaty. Two parallel systems obtained: one was the public examination of situations raised by members of the Commission on Human Rights or its Sub-Commission on Prevention of Discrimination and Protection of Minorities; the second was the confidential examination of situations on the basis of information supplied by non-official sources. These procedures came to be supplemented by the appointment of advisory services experts who could be given a fact-finding mandate should the situation require it, albeit at the expense of the integrity of the advisory services programme.

56. Then, from 1980 to 1991, there was created a series of mechanisms dealing with particular types of human rights violation. These could take up even individual cases and they reported publicly on their activities, on a country-by-country basis

57. The humanitarian good offices of the Secretary-General could also be deployed on an ad hoc, discretionary basis. These activities are not usually carried out in the public domain.

58. A number of factors are relevant to assessing the relationship between the confidential and public country-specific scrutiny procedures. First, information from non-governmental sources by way of written statements and oral presentations, is much more integrated with the activities of the Commission and its Sub-Commission than was the case where the confidential procedure was devised (see paragraphs 30-31 above), so the confidential procedure is no longer the only or main means of getting NGO information before the United Nations. Second, the confidential procedure denies equality of arms between the author of a communication and the State whose practices are challenged, it is protracted and it is deprived of up-to-date information. Third, according to one view frequently deployed especially by States seeking to avoid consideration of a situation in the public procedure, the very involvement of the confidential procedure is a bar to a situation's being handled by the public procedure. This strengthens suspicions that the private procedure is a shield for Governments rather than a weapon for their victims. Piecemeal improvements could be envisaged with a view to putting the two procedures into a relationship more of complementarity than of mutual exclusivity. One means would be to ensure that situations being dealt with under the confidential procedure were not deprived of up-to-date information. This would allow for far more realistic treatment under the confidential procedure and would pave the way for a firm linking of both: after a situation being considered by the Commission under the confidential procedure has remained there for a specific period, say, a maximum of two years, it would automatically be transferred to the public procedure.

59. As regards the relationship among the thematic mechanisms, the main problem is the potential duplication of effort, with the attendant confusion created for Governments, potential manipulation by them and occasional problems falling into the gaps between them. For the reasons given earlier, harmonization offers no instant solution. A substantial increase in Secretariat resources for servicing them is essential. In particular, the Secretariat needs far more country-specific or regional expertise than it has at present, so as to be able to make effective analyses of specific cases and situations and provide independent, authoritative support for the range of thematic (and country) procedures. There is clearly a need for the work of the procedures to be co-ordinated, including the possibility of periodic meetings, and only after there has been some experience of such co-ordination will it be appropriate to consider further notions of rationalization of the mechanisms, including integration.

60. There is, at present, no major problem of overlap between the country-specific and thematic machinery. However, to the extent that both sets draw on the same limited Secretariat resources, those of the Special Procedures Section and, in lesser measure, the Communications Section, there is inevitable and regrettable competition for those resources. This strengthens the argument for increasing them. A creative, but resource-intensive, experiment in co-operation between both types of machinery is represented by the association of the thematic bodies with the work of the Special Rapporteur of the former Yugoslavia. But this could only be a rare response to a special situation. One development in the way of ensuring greater substantive coherence between the country-specific and thematic machinery would be desirable. That is, that a certain level of coverage by the thematic mechanisms would lead to the automatic naming of a country rapporteur. If this were not possible, one of the thematic mechanisms would be charged with undertaking a comprehensive study of the situation in question.

61. As between the treaty bodies and the non-treaty bodies, there is only limited overlap, mainly as regards the treatment of individual cases. The treatment of individual cases by the treaty bodies is at the option of States Parties to the treaties and so concerns a relatively small number of States. Since, except for the Working Group on Arbitrary Detention, the non-treaty bodies do not generally make formal findings, it is probably in the interests of the alleged victims, subject to the advice of the Secretariat in casu, to have their cases dealt with by the relevant treaty body. The same may well go for alleged victims of arbitrary detention, given the necessarily greater authority of the Human Rights Committee. To the extent that it is desirable to avoid overburdening and confusing Governments with multiple requests for information on individual cases, it may be necessary for a choice to be made and preferable to leave that choice to the author of the communication, again subject to the advice of the Secretariat. Nevertheless, the urgent intervention activities of the non-treaty bodies should continue to remain available to relevant cases other than perhaps in cases involving capital punishment that can be dealt with by the Human Rights Committee's Special Rapporteur on New Communications. Again any choice between the latter and the Special Rapporteur on summary or arbitrary executions should be left to the author of the communication, subject to the advice of the Secretariat. At this stage it is too early to tell whether a similar choice should be made, in respect of alleged systematic practices of torture, as between the Committee against Torture acting under Article 20 of the Convention against Torture and the Special Rapporteur on torture. In any event, the treaty bodies and the non-treaty bodies should be in possession of such of the reports of one that may be relevant to the work of the other. The participation of the non-treaty bodies in the work of the treaty bodies should be encouraged.

62. Here again, effective co-operation requires resources. In addition to the aforementioned arguments, it should be understood that resources are also needed for meetings of the various Secretariat officials who would be involved in working on cases of the sort hypothesized in the Introduction. The officers need to be permanent and of high calibre. They should be able to develop sophisticated country-strategies drawing as necessary on the various models and techniques available.

63. The United Nations has evolved a range of models and techniques to promote and protect human rights and fundamental freedoms. The models include advisory services, quiet diplomacy, intercession and fact-clarification, and judgmental fact-finding. The techniques include request and review of voluntarily submitted reports, obligatory reporting and review, seeking responses to allegations of human rights violation in individual cases and/or general situations, country visits and on-the-spot monitoring. The availability of one or other of these models and techniques or any combination of them is a function of the history of their piecemeal development. Ideally, there would be a system whereby every alleged case of a human rights violation or, where warranted, every situation characterized by systematic human rights violations would be capable of being handled by the whole range of models and techniques according to need. This implies one single coherent, but flexible, system.

64. Early proposals for a High Commissioner of Human Rights were motivated by such an approach. So, perhaps, is the call from the Latin American Regional Preparatory Meeting to this Conference for a General Assembly feasibility study of the idea of a United Nations Permanent Commissioner for Human Rights.[42] It is doubtful, even now, that it would be realistic for the World Conference on Human Rights to initiate such a radical move. Moreover, there is, at present, no obvious means of circumventing the formal and conceptual gap between the implementation of treaties and the implementation of non-treaty-based obligations.

65. This does not mean that it is premature to be considering a generalized structural response, over and above the foregoing machinery-specific recommendations, as a step in the direction of more fundamental rationalization. It seems clear to the author of this study that the Conference could valuably propose consideration of the idea of more effective co-ordination of the existing machinery. The purpose of this would be to make that machinery more efficient, less cumbersome and more effective. It is believed that, by thus rationalizing the procedures, it would be possible eventually to rationalize the machinery engaged in the procedures. The essence of the idea is that a senior co-ordinating official of high authority be established to ensure that the best use is made of the cluster of machinery and procedures available to advance the protection of human rights.

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42 A/CONF.157/LACRM/12/Add.1, para.25.

66. This too would be a natural evolution. It was in the context of the discussions in the early 1980s about a possible High Commissioner for Human Rights, that it was decided in 1982 to upgrade the former Division of Human Rights to the status of a Centre headed by an Assistant-Secretary-General for Human Rights rather than a Director, as had been the case from the time of the founding of the United Nations. For a short period between 1987 and 1992 the Centre was put under the direct responsibility of an Under-Secretary-General for Human Rights, namely, the Director-General of the United Nations Office at Geneva. The situation has now reverted to the post-1982 position, with the Centre being headed by an Assistant-Secretary-General. The present idea would not involve a major further evolution as regards status. It involves some development of the functions, a possible change in the manner of appointment and a possible change in the title.

67. The status of the post would be at Under-Secretary-General level. The day-to-day work of the Centre could continue to be under the responsibility of either an Assistant-Secretary-General or a Director.

68. As to functions, the main change between those of the present Assistant-Secretary-General and the proposed senior co-ordinating official is that while the former's functions involve responsibility for co-ordinating Secretariat services provided for the various mechanisms discussed, the latter would have a role in co-ordinating the work of the mechanisms as such. Thus, for example, the co-ordinating official would be able to channel information relating to the mandates of more than one thematic mechanism to the one most apt to follow up on the information. S/he would be able to recommend the establishment of a Special Rapporteur on a country or a situation and would be able to select from among potentially competing machinery that which should engage in major fact-finding exercises. The choice would take into account which models and action techniques were best suited to the problem at hand. Especially important would be his/her annual report to the Commission. This report would include recommendations for improvement and rationalization of aspects of the system, as well as of the system as a whole. The recommendations would be on the basis of practical experience.

69. On the other hand, as is implicit in the above, the co-ordinating official would not have any authority to change the system; that authority would remain with the Commission and its superior bodies. S/he could create no new component of the system, nor change the mandate or working methods of the existing components, except insofar as one component were delegated to represent the mandate concerns of another existing component empowered to use the same working methods.

70. Pending further exploration of this idea and the consequent fleshing out of its elements that would be needed, it is probably too soon to say how closely the co-ordinating official would work with the Assistant-Secretary-Genral or Director responsible for the day-to-day running of the Secretariat. What is clear is that the effective discharge of the new functions would most likely be of a full-time nature. The scope of the functions would include elements that are inevitably within the competence of UN Headquarters, for example, the development of on-the-spot monitoring machinery arising out of peace settlements. This, in turn, would almost certainly require the official to operate out of both New York and Geneva. Indeed, the improvement of co-ordination with the human rights elements of the Vienna-based crime prevention and criminal justice sector could well suggest time spent at Vienna.

71. The method of appointment of the senior co-ordinating official will require reflection. It would not be impossible for it to be simply an appointment by the Secretary-General. There are, however, arguments in favour of following a model similar to that applicable to the appointment of the High Commissioner for Refugees, that is, appointment by the General Assembly on the Secretary-General's nomination for a fixed, but perhaps renewable term. These arguments include the enhancement of the official's authority implicit in the mandate that is given by the political organ containing the whole membership of the United Nations; the desirability of having such political support for an official endowed with even the limited powers of initiative suggested for his/her functions; and, indeed, the possible need for such political involvement as a means of reassuring those Governments that may have misgivings even about an innovation that may seem modest to others. To those that may fear that such political involvement could be, or be perceived as, inimical to the independent and impartial discharge of the official's functions, it may be pointed out that the existing system of protection would remain in place and unimpaired until such time as it is changed by the relevant political bodies.

72. The title of the senior co-ordinating official is the least important of the issues to be resolved, provided that it does not disguise the nature of the authority and functions envisaged for him/her. There is much to be said for the title of High Commissioner for Human Rights, if only because of the model in the field of refugees. Alternative titles to that have included or might include, United Nations (Permanent) Commissioner for Human Rights (following that for Namibia), United Nations Attorney (General) or Procurator (General) for Human Rights and United Nations Human Rights Ombudsman. The author of the present study, bearing in mind the specific nature of the proposal being made and the historical, political and cultural sensitivities that the above may touch for some delegations, offers United Nations Co-ordinator-General for Human Rights as an additional possible denomination for the post. It could also have the advantage of avoiding raising too high expectations of the role of the post.

73. It is assumed that the World Conference on Human Rights would not be able to work on all aspects of the recommendations, machinery-specific or cross-machinery or structural, contained in this study. What it could and is invited to consider doing is to urge that all parts of the United Nations system (including the Secretariat itself) assign an upgraded priority to the human rights programme; to insist on the central priority that human rights protection should have within that programme; to call for the resources commensurate with the professional discharge of the programme in general and especially its protection function; to express approval for the general direction of the recommendations contained in this study; and, in particular, to commend to the General Assembly the initiation of a decision-making process that would lead to the appointment of a high-level co-ordinating official with the authority necessary to effect and promote the more effective, flexible and integrated use of existing machinery for the implementation of human rights and, drawing on the experience so acquired, to review the work of the machinery with a view to making recommendations further improvements and rationalization aimed at ensuring the same objectives.

VII Summary of Recommendations

74. The following is a guide to the recommendations that emerge from this paper:

(a) The work of the United Nations for the protection of victims of human rights violations is of supreme importance and should be given commensurate priority by all parts of the United Nations system, including Member States and the Secretariat as a whole (paragraphs 2 and 73).

(b) It is necessary to ensure that all the models and techniques available to the United Nations be used as part of an integrated system aimed at providing the most effective response, on the basis of properly conceived strategies to human rights problems in individual States (paragraph 63).

(c) Secretariat resources and management need to be such that existing machinery can be serviced not only more adequately but also in a manner that insures their optimum utilization in accordance with the goals stated in (b) above (paragraphs 38, 41, 59, 60 and 62).

(d) A top-level co-ordinating official, perhaps to be called United Nations Coordinator-General for Human Rights, should be appointed with a power of initiative to ensure that available United Nations human rights machinery is deployed as necessary to maximum effect, and to ensure coherence and cooperation between the human rights programme and other programmes that have, or should have, a human rights component (paragraphs 27, 34, 39 and 64-72).

(e) If a particular human rights situation appears in a given number of thematic bodies' reports for more than a given number of years, a country rapporteur should be appointed. If this is not possible, one of the thematic bodies should be charged with conducting a study, including a visit to the country in question, on behalf of all the concerned bodies (paragraphs 43 and 60).

(f) Alleged overlaps between treaty and non-treaty bodies being more apparent than real, choices will only occasionally need to be made and these are best left to the victims or other authors of communications, subject to the advice of the Secretariat. Cooperation between the treaty and non-treaty bodies should be encouraged (paragraphs 46-51 and 61).

(g) The Secretary-General's good offices deserve further development and could best be deployed in close consultation with the standing machinery (paragraph 28).

(h) It is too early to envisage a "super-thematic body" and the trend towards creating new individual thematic bodies is to be welcomed (paragraphs 26, 37 and 59).

(i) There is a need for the thematic bodies generally to be able to share resources, harmonize their practices and concert their activities (paragraph 59).

(j) The 1503 procedure should be maintained at least until recommendation (e) above is in place and functioning effectively, but in the case of non-cooperation by the State concerned or a situation being considered for more than a brief period of time, it should automatically be transferred for action in the public procedure. In any event, a minimum rationalization requires that once an alleged 1503 situation is under consideration, new communications should automatically go to the stage of next examination (paragraphs 34 and 58).

(k) The advisory services programme is potentially a valuable promotional and preventive resource; it should not be abused and undermined as a substitute for country scrutiny when this is needed (paragraph 18).

(l) On-the-spot monitoring techniques can and should be expanded and when these are put in place within the framework of a peace-settlement, they should be properly articulated with other activities of the human rights programme (paragraph 19).

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