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REVIEW OF FURTHER DEVELOPMENTS IN FIELDS WITH WHICH
THE SUB-COMMISSION HAS BEEN CONCERNED

Written statement submitted by the International League for
Human Rights (category II), Procedural Aspects of International
Law Institute (The) International Human Rights Law Group (roster)
non-governmental organizations in consultative status

The International League for Human Rights and Procedural Aspects of International Law Institute, (The) International Human Rights Law Group welcome the proposals concerning the principal terms of reference for the mandate of a United Nations High Commissioner for Human Rights contained in Sub-Commission resolution 1982/27.

In a statement circulated last year (E/CN.4/Sub.2/1982/NGO/2), the International Human Rights Law Group and the Procedural Aspects of International Law Institute suggested some basic principles that might be considered during the drafting of the proposed mandate. These were:

1. The competence of the High Commissioner should include issues relating to the entire range of civil, political, economic, social, and cultural rights, including addressing alleged violations of those rights wherever and whenever they might occur. The primary, although not necessarily exclusive, source of these rights should be the International Bill of Human Rights.
2. Without detracting from the scope of competence, the High Commissioner should pay particular attention to human rights situations of a life-threatening and urgent nature, including the right to life, freedom from torture, and the right to essential food and shelter. In such situations, the High Commissioner should be guided by humanitarian considerations and should not be bound by technical rules relating to exhaustion of domestic remedies or other concepts designed for judicial or quasi-judicial bodies.

3. The High Commissioner should have the competence, with the consent of the Government(s) concerned, to engage in on-site observation or fact-finding related to alleged violations of human rights. In situations in which prima facie evidence of serious human rights violations exists, the High Commissioner should not be barred from noting, in such manner as he may think appropriate, the refusal of any State to respond to the High Commissioner's requests for information regarding the alleged violations.
4. At the request of the State(s) involved, the High Commissioner should be enabled to mediate, negotiate, or otherwise offer his good offices in any way which will further the promotion and protection of human rights.
5. The High Commissioner should be permitted to seek information and assistance from any State, organization or individual, including other United Nations organs or specialized agencies, in the course of his duties.
6. The High Commissioner should not be viewed primarily as a co-ordinator of the human rights activities of other United Nations bodies, although he may provide such co-ordination where appropriate. The High Commissioner should have the authority to request information from the United Nations Centre for Human Rights and should work closely with the Director of the Centre in the performance of his duties.
7. The High Commissioner may request that any or all communications concerning human rights received by United Nations bodies be brought to his attention. With respect to communications not actively being considered under other United Nations procedures, the High Commissioner may bring the attention of the State(s) concerned to such communications and take such other steps, publicly or privately, which he may deem appropriate.
8. The High Commissioner should promote public education and discussion of human rights issues, including the promotion of the ratification of international human rights treaties and attendance at appropriate international conferences dealing with human rights.
9. The High Commissioner may submit information and views to all United Nations organs, specialized agencies, the Human Rights Committee, regional intergovernmental organizations, and other relevant institutions. The High Commissioner should be enabled to request that items be included in the agendas of the General Assembly, the Economic and Social Council, the Commission on Human Rights, and other United Nations organs as he may deem appropriate.
10. The High Commissioner should exhibit independence and impartiality and should be an expert in the field of human rights. He should be elected by the General Assembly, upon the nomination of the Secretary-General, for a term of no less than five years. He should report annually to the Economic and Social Council and the General Assembly, in addition to the submission of such special reports as he may deem appropriate.

This statement by the International League for Human Rights and the Procedural Aspects of International Law Institute is aimed at making some suggestions for possible revision of the draft in light of those principles.

The first six of these principles and principle 9 have their counterparts in the draft. We believe, however, that paragraph 1 (c) (ii) of the draft could be improved, so far as principle one, relating to the interdependence of all rights, is concerned by including a reference to such situations as massive starvation, denial of basic shelter, destruction of culture or denial of the right to education.

The power of the High Commissioner to initiate direct contacts contained in paragraph 1 (c) of the draft is crucial. Of course, the High Commissioner would not be able to dictate a particular result, but direct contacts have proven to be extremely beneficial in the ILO and in other parts of the United Nations system. Sensitively used, they would be beneficial in the High Commissioner's work also.

The co-ordination powers contained in paragraph 1 (e) of the draft are important also. The High Commissioner's office would not be an operational agency in the sense of having large powers of its own available to deal with particular situations. While co-ordination will not be its main function, it will on occasion be helpful if the office is able to facilitate the mobilization of significant resources by other agencies.

We suggest that some reference still needs to be made in the draft to the sources of information upon which the High Commissioner might rely. In line with the notion that one of the functions of the High Commissioner would be to deal with areas currently not within the jurisdiction of other United Nations bodies, we mention again principle 7 suggested above. The High Commissioner must have access to material available within the United Nations.

We cannot underestimate the importance of the High Commissioner to the whole promotional work of the General Assembly in the field of human rights. The power of the High Commissioner to encourage the ratification of human rights treaties is probably implicit in paragraph 1 (a) of the draft, but we suggest that a specific reference should be made along the lines of our proposed principle 8 above.

Essential to the success of such an office is a high degree of independence and impartiality. We believe that while independence and impartiality are undoubtedly taken for granted in the draft, it would be helpful to spell this out expressly.

In sum, we look forward to the finalization of the principal terms of reference for the mandate of a United Nations High Commissioner for Human Rights and urge the Sub-Commission to give careful consideration to the proposals outlined above for inclusion in the final document.