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COMMISSION ON HUMAN RIGHTS

Sub-Commission on Prevention of
Discrimination and Protection
of Minorities
Thirty-fifth session
Agenda item 4

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

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By its decision 3 (XXXIV), the Sub-Commission decided to consider at its 1982 session the positive role the High Commissioner for Human Rights as a United Nations official should play. Pursuant to this decision, the Commission on Human Rights by its resolution 1982/22 requested the Sub-Commission "to formulate a first study on possible terms of reference for the mandate of a High Commissioner for Human Rights ... and to submit its proposals to the Commission on Human Rights at its thirty-ninth session".

While any steps taken toward the creation of an office of United Nations High Commissioner for Human Rights are to be commended, the potential positive impact of such an office will depend greatly on the terms of reference under which any High Commissioner will operate. These terms of reference should be formulated as broadly as possible, so as to permit maximum flexibility for the High Commissioner in the promotion and protection of human rights.

Among other points, the following principles might be considered during the Sub-Commission's first study on this issue:

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.