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Issues and modalities for the effective universality of international human rights treaties

Working paper prepared by Mr. Emmanuel Decaux in pursuance of Sub-Commission resolution 2002/115*

Summary

By its decision 2002/115, the Sub-Commission on the Promotion and Protection of Human Rights, mindful that, in the Vienna Declaration and Programme of Action, the World Conference on Human Rights recommended that a concerted effort should be made to encourage and facilitate the ratification of international human rights treaties and protocols with the aim of universal acceptance, and seeking to work towards the achievement of that objective, decided to request Mr. Emmanuel Decaux to prepare a working paper, without financial implications, on issues and modalities for the effective universality of international human rights treaties, for submission to it at its fifty-fifth session.

* In accordance with General Assembly resolution 53/208, paragraph 8, this document is submitted late so as to include the most up-to-date information possible.

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The present working paper reviews efforts carried out since the World Conference on Human Rights, the tenth anniversary of which is being marked this year. It examines the earlier discussions on ways and means of encouraging the universal acceptance of human rights instruments, and in particular Mr. Vladimir Kartashkin's paper on observance of human rights by States which are not parties to United Nations human rights conventions (E/CN.4/Sub.2/1999/29 and E/CN.4/Sub.2/2000/2). The issue has become still more relevant following the Secretary-General's recent initiatives aimed at simplifying the preparation of States' reports and the note by the Office of the High Commissioner for Human Rights entitled "Effective functioning of human rights mechanisms: treaty bodies" (E/CN.4/2003/126).

In this context, the present report contains a survey from which it emerges that over 200 ratifications are still needed in order to achieve universal ratification of the six human rights instruments for which monitoring bodies exist. At the same time, it can be seen that almost two thirds of the non-ratifications are concentrated in 30 or so States. These figures should not give rise to discouragement at the cumbersome nature of the reporting system - on the contrary, there is an urgent need for redoubled efforts to achieve universal ratification of all the relevant treaties, including the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, which has recently entered into force.

The report also seeks to refine the terms used in the discussion, and suggests legal and practical avenues to be pursued. Initially, the concept of universal treaties should be refined, an inventory of the relevant treaties should be drawn up, and methods for monitoring compliance with commitments and encouraging ratification should be assessed, particularly that of "good practice" in the United Nations system and other international systems.

Subsequently, in the light of these elements, the paper examines the most effective means of launching a constructive dialogue with States concerning the legal, political, social or other difficulties encountered in the process of ratification, entry into force, interpretation and application of the treaties in question, with a view to effective universality "for all". In this regard, it might be useful to convene a seminar with support from interested States and non-governmental organizations to create a "grid" for use in organizing dialogue with States concerning the ratification of universal treaties.

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Introduction

1. By its decision 2002/115, the Sub-Commission on the Promotion and Protection of Human Rights, mindful that, in the Vienna Declaration and Programme of Action, the World Conference on Human Rights recommended that a concerted effort should be made to encourage and facilitate the ratification of international human rights treaties and protocols with the aim of universal acceptance, and seeking to work towards the achievement of that objective, decided to request Mr. Emmanuel Decaux to prepare a working paper, without financial implications, on issues and modalities for the effective universality of international human rights treaties, for submission to it at its fifty-fifth session.

2. The present working paper, submitted in response to the Sub-Commission's decision, seeks to clarify this issue, by placing it in its recent context. The topic was raised briefly at the fifty-fourth session of the Sub-Commission, under agenda item 6 (para. c) (Other issues), in the Secretary-General's note (E/CN.4/Sub.2/2002/29) prepared in pursuance of Sub-Commission resolution 5 (XIV). This exercise involving a presentation of new developments had, it seems, gradually become a mere formality, even if agenda item 6 (para. c) is in future to be called "New priorities". (It is significant that this note by the Secretary-General is referred to in a sort of no-man's-land in the annotations to the provisional agenda (E/CN.4/Sub.2/2002/1/Add.1, para. 86.) Yet the information on the status of the treaty bodies which appears in this note is of particular importance for the international system for the protection of human rights as a whole. In that regard, the Sub-Commission should enjoy a special position, as each of the treaty bodies is restricted by its own viewpoint.

3. It should be emphasized that the present working paper does not seek to evaluate effective respect for human rights in the countries concerned, as the ratification or non-ratification of a treaty is no pointer to the application of human rights standards. The Constitution of South Africa, for example, highlights guarantees of economic and social rights, whereas the country has not yet ratified the International Covenant on Economic, Social and Cultural Rights despite having signed it in 1994. The reverse is also true, unfortunately, and ratification cannot be an end in itself. Similarly, many States ratify treaties but attach a plethora of reservations, some of which run counter to the aim and purpose of the treaty itself (this fundamental topic has been analysed by Ms. Françoise Hampson under Sub-Commission decision 2002/110). The present paper is designed solely to identify, in the legal field, the issues raised by the universal ratification of human rights treaties and to seek, in the practical field, the most effective modalities for achieving the objective laid down at the World Conference on Human Rights.

I. EARLIER EFFORTS

4. It must be acknowledged that, 10 years after the World Conference on Human Rights, the formal commitments as to universal ratification of treaties which were set out in the Vienna Declaration and Programme of Action have not been fulfilled. Despite the Sub-Commission's efforts, no review in this area has yet been carried out, at a time when, on the initiative of the Secretary-General, attention is being refocused in new directions.

A. Human rights commitments adopted at the World Conference on Human Rights

5. The States attending the World Conference on Human Rights set themselves the goal, among others, of the universal ratification of human rights treaties:

> "The World Conference on Human Rights welcomes the progress made in the codification of human rights instruments, which is a dynamic and evolving process, and urges the universal ratification of human rights treaties. All States are encouraged to accede to these international instruments; all States are encouraged to avoid, as far as possible, the resort to reservations" (A/CONF.157/23, chap. I, para. 26).

6. More specifically, in the second part of the Programme of Action, the Conference

> "strongly recommends that a concerted effort be made to encourage and facilitate the ratification of and accession or succession to international human rights treaties and protocols adopted within the framework of the United Nations system with the aim of universal acceptance. The Secretary-General, in consultation with treaty bodies, should consider opening a dialogue with States not having acceded to these human rights treaties, in order to identify obstacles and to seek ways of overcoming them" (ibid., chap. II, para. 4).

7. The Conference even set out precise deadlines in areas to which it attached priority:

> "The World Conference on Human Rights, welcoming the early ratification of the Convention on the Rights of the Child by a large number of States […], urges universal ratification of the Convention by 1995 […]" (ibid., chap. I, para. 21).

> "Measures should be taken to achieve universal ratification of the Convention on the Rights of the Child by 1995 […]" (ibid., chap. II, para. 46).

> "The United Nations should encourage the goal of universal ratification by all States of the Convention on the Elimination of All Forms of Discrimination against Women by the year 2000" (ibid., para. 39).

> "The World Conference on Human Rights welcomes the ratification by many Member States of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and encourages its speedy ratification by all other Member States" (ibid., para. 54).

8. The wording is more tortuous in the case of the International Convention on the Elimination of All Forms of Racial Discrimination, as the Conference confines itself to appealing to "all States parties to the Convention […] to consider making the declaration under article 14 of the Convention", without mentioning non-parties (ibid., para. 21). Similarly, the Conference rather vaguely "invites States to consider the possibility of signing and ratifying, at the earliest possible time, the International Convention on the Rights of All Migrant Workers and Members of Their Families" (ibid., para. 35). Lastly, it "appeals to States which have not yet done so to accede to the Geneva Conventions of 12 August 1949 and the Protocols thereto […]" (ibid., para. 93).

9. While underlining the desirability of a follow-up to the Conference and an initial overall review in 1998 on the occasion of the fiftieth anniversary of the Universal Declaration of Human Rights, the Programme of Action concluded that "special attention should be paid to assessing the progress towards the goal of universal ratification of international human rights treaties and protocols adopted within the framework of the United Nations system" (ibid., para. 100). Ten years later, the need for such a review is all the more pressing.

B. Work of the Sub-Commission

10. Paradoxically, it was at the time when the Conference unanimously emphasized this "dynamic process", in a demonstration of political will which overcame the customary inertia based on the primacy of judicial autonomy and State sovereignty, that the Sub-Commission seems to have given up any ambition to study systematically the issue of encouraging universal acceptance of human rights instruments. In its resolution 1994/31, the Sub-Commission,

> "*Recalling* its resolution 1992/1 of 14 August 1992, in which it requested its Chairman to appoint one of its members to report to the Sub-Commission on the progress made in the universal acceptance of human rights instruments,
>
> "*Bearing in mind* steps taken in earlier years by the Sub-Commission to consider ways and means of encouraging Governments which had not yet done so to ratify or accede to international human rights instruments,
>
> "*Considering* that since 1979, the year when the Sub-Commission began systematically to address the issue of encouraging universal ratification of international human rights instruments, no substantive progress has been made in its attempt to convince Governments of the utility of the involvement of the United Nations in assisting them to ratify human rights instruments,
>
> "*Taking note* of the absence of any formal response from Member States to the invitations extended to them to offer clarification as to why they are unable to ratify these instruments,
>
> […]
>
> "1. *Decides* to discontinue consideration of this matter under a separate agenda item;
>
> "2. *Also decides* to take up these issues when they arise under the existing items of its agenda."

11. In doing so, the Sub-Commission appeared to have given way to discouragement and put an end to 15 years of systematic efforts in which "no substantive progress [had] been made", confining itself henceforth to addressing the issue in a vertical manner, under the various topics on its agenda, and no longer in a horizontal manner, from the legal standpoint. It had previously set up a sessional working group, on the basis of resolution I B (XXXII) of 1979, to consider ways and means of encouraging States to ratify international human rights instruments. That

resolution listed the following instruments: the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights and the Optional Protocol to it, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Prevention and Punishment of the Crime of Genocide, the International Convention on the Suppression and Punishment of the Crime of Apartheid, the three slavery conventions, and the Protocol amending the Slavery Convention signed at Geneva on 25 September 1926. The Sub-Commission subsequently added the Convention on the Elimination of All Forms of Discrimination against Women and the Convention for the Suppression of the Traffic in Persons. The working group operated with difficulty from 1979 to 1984 (resolution 1984/36), examining replies received from States and hearing their "clarifications".

12. However, the issue was raised again, in an indirect manner, with the activities of Mr. Vladimir Kartashkin on observance of human rights by States which are not parties to United Nations human rights conventions. Mr. Kartashkin presented an initial working paper (E/CN.4/Sub.2/1999/29), following Sub-Commission decision 1998/115, followed by a supplementary working paper (E/CN.4/Sub.2/2000/2), under Sub-Commission resolution 1999/28. Mr. Kartashkin perceptively analysed the failure of earlier efforts:

> "Action by the working group proved unsuccessful for a variety of reasons: the failure to elaborate precise and clear rules of procedure defining its methods of work; the sessional and non-continuous nature of its work during sessions of the Sub-Commission, which hampered detailed consideration of matters falling within its sphere of competence; the overburdening of the agenda with discussion of the reasons for non-ratification of many human rights instruments; the unwillingness of some States to cooperate with the working group and transmit information about factors impeding ratification of human rights instruments, and a number of other circumstances. However, the main reason for the lack of success in the work of the working group was that it examined the question of non-ratification of international human rights conventions by the States concerned without any reference to their observance of the fundamental rights and freedoms enshrined in the Universal Declaration and other United Nations instruments" (E/CN.4/Sub.2/1999/29, para. 21).

13. Following these two important papers, the Sub-Commission adopted resolution 2000/23 entitled "Observance of the human rights and fundamental freedoms contained in the Universal Declaration of Human Rights by States which are not parties to the International Covenants on Human Rights", in which it requested the High Commissioner "to convene, with the participation of the members of the Sub-Commission, a seminar of States which are not parties to the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights […] with a view to examining comprehensively obstacles to ratification of the Covenants and to looking for ways of surmounting them". For this purpose the Sub-Commission requested the Office of the High Commissioner "to seek the views of the States concerned and interested non-governmental organizations, and to gather all available information about existing obstacles to effective enjoyment of the human rights and fundamental freedoms embodied in the Universal Declaration of Human Rights and about obstacles to ratification of the Covenants and the measures being taken by States to remove them". Lastly, it

recommended "that the participants in the seminar formulate agreed recommendations concerning the creation of a permanent or temporary mechanism for encouraging efforts by States to observe the human rights and fundamental freedoms contained in the Universal Declaration and for encouraging their ratification of the International Covenants on Human Rights".

14. Unfortunately, the Commission did not take any action on the draft decision submitted to it by the Sub-Commission (E/CN.4/2001/2, chap. I, draft decision 11). At its fifty-third session, the Sub-Commission, by decision 2001/121, decided to adjourn the debate on draft resolution E/CN.4/Sub.2/2001/L.37, entitled "State cooperation with United Nations human rights mechanisms".

C. Other relevant activities

15. The Secretary-General himself conducted an extensive campaign on the occasion of the Millennium Summit to promote ratification of all the treaties of which he is the depositary, but it seems that here too the results were unconvincing. Nevertheless, specific conclusions have yet to be drawn. Indeed, since the publication of his report entitled "Strengthening of the United Nations: an agenda for further change" (A/57/387), the Secretary-General has assigned priority to rationalization of the reporting system, underlining "the difficult demands reporting to six committees imposes on States parties", as pointed out in the High Commissioner's note entitled "Effective functioning of human rights mechanisms: treaty bodies" (E/CN.4/2003/126, para. 2). On the occasion of this review, the situation was outlined in a background document prepared by the Secretariat:

> "… Universal ratification of the core human rights treaties has been encouraged by the United Nations, with the Vienna Declaration and Programme of Action strongly recommending that a concerted effort be made to encourage ratification with the aim of universal acceptance. As at 1 April 2003, each State had ratified at least one of the seven core human rights treaties, and 157 States, or 81 per cent, had ratified four or more. Current ratifications of the seven principal human rights conventions and covenants open for ratification stand at 975. Universal ratification of these instruments would result in 1,358 ratifications. Each of these treaties contains reporting requirements for States parties, and some provide optional complaint and inquiry procedures (…).
>
> "In the 10 years since the World Conference on Human Rights in Vienna in 1993 there have been 232 additional ratifications of the six core human rights treaties which were in force at that time, constituting an increase of 32 per cent. Twenty-one States have also become party to the Migrant Workers' Convention. (…) The reports of those States parties amounted to 7,000 pages of documentation. Treaty bodies issued decisions on 59 individual communications. In total, during 2001 more than 600 separate documents relating to the sessions of the human rights treaty bodies were processed by the Secretariat, amounting to more than 16,000 pages" (HRI/ICM/2003/3, paras. 10-11).

16. As far as the Secretariat is concerned, it is clear that "universal ratification, combined with strict adherence to reporting obligations by States parties, will result in a considerable increase in the workload of the treaty bodies" (ibid., para. 13). It would no doubt be wise to plan

as of now for the impact of universal ratification of treaties, as Mr. Philip Alston has already tried to do as an independent expert (E/CN.4/1997/74). Indeed, he advocated specific measures to deal with progress "towards universal ratification". There were four such recommendations:

> "(a) Consultations with the leading international agencies to explore their potential involvement in a ratification campaign;
>
> "(b) The appointment of special advisers on ratification and reporting and the earmarking of funds for those purposes;
>
> "(c) Special measures should be explored to streamline the reporting process for States with small populations;
>
> "(d) Particular attention should be paid to other substantial categories of non-parties" (ibid., para. 111, and E/CN.4/2000/98, para. 5).

17. Yet as increasing emphasis is currently placed on the practical drawbacks of the rise in the numbers of States parties, there is a risk of losing sight of what is most important - the legal issues involved in genuine universality, which is far from having been achieved. The quantitative dimension of the problem, which cannot be ignored, must not overshadow the "qualitative leap" involved in the ideal of universal ratification.

18. Meanwhile, the Commission, following its two-yearly custom (see resolution 2000/67), adopted resolution 2002/78 on the status of the International Covenants on Human Rights, in which, after noting that the two Covenants, "together with the Universal Declaration of Human Rights, form the core of the International Bill of Rights", it

> "2. *Welcomes* the initiative of the Secretary-General at the Millennium Summit to invite heads of State and Government to sign and ratify the International Covenants on Human Rights and expresses its deep appreciation to those States that have done so;
>
> "3. *Appeals strongly* to all States that have not yet done so to become parties to the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights, as well as to accede to the Optional Protocols to the International Covenant on Civil and Political Rights and to make the declaration provided for in article 41 of that Covenant;
>
> "4. *Invites* the United Nations High Commissioner for Human Rights to intensify systematic efforts to encourage States to become parties to the International Covenants on Human Rights and, through the programme of technical cooperation and advisory services in the field of human rights, to assist such States, at their request, in ratifying or acceding to the Covenants and to the Optional Protocols to the International Covenant on Civil and Political Rights with a view to achieving universal adherence".

19. The same could be said for the ritual calls for the ratification of the other relevant instruments, as well as for the factual information regularly presented by the Secretariat. There is a clear contradiction between goals and means, between the strongly reaffirmed desire for "universal acceptance" of the principal human rights treaties and the wait-and-see attitude which seems to prevail in practice.

II. NEW DEVELOPMENTS

20. Consequently, it seems all the more appropriate to adopt a new approach to this entire issue, which is of fundamental importance in both legal and practical terms, given present circumstances.

A. Human rights treaties

21. An initial uncertainty to be dispelled relates to the scope of the human rights conventions explicitly referred to by the World Conference on Human Rights. This has theoretical implications, insofar as speaking of "core instruments" seems to imply a de facto or de jure hierarchy among international treaties. It also has material consequences, since the World Conference referred not only to human rights conventions in the strict sense, but also to the Geneva Conventions and their additional protocols, as well as the Rome Statute of the International Criminal Court, which was in gestation at that time. Only a legal analysis of the differentiation of formal sources and the nature of the commitments entered into would make it possible to focus the discussion.

22. But it is above all in practical terms that the emphasis placed on the six core instruments has a perverse effect. At a time when the focus is on a few treaties which benefit from a monitoring body and a reporting mechanism, it would not be without merit to consider older conventions which lack any effective monitoring machinery. In that regard, the experience of the Working Group on Contemporary Forms of Slavery shows clearly that the efficiency of the system is threatened more by a lack of reports than by a surfeit, with "orphan conventions" abandoned to their fate. The Secretariat confines itself to forwarding to the Working Group an updated list of States parties to the conventions on slavery and the traffic in persons. In the absence of a dialogue with the States parties, monitoring of these fundamental instruments - which have been officially entrusted to the Sub-Commission - comes to an abrupt halt. The prospect of any investigation of the cause of non-ratification by third States seems even further out of reach. In this regard at least, it would not have been without value for the Sub-Commission to have been involved, as such, in the many ongoing consultations on the reporting system.

B. Current situation

23. If for the moment we confine ourselves provisionally to the analytical framework adopted by the Office of the High Commissioner, two instruments must certainly be singled out. First, the Convention on the Rights of the Child, which, with 191 ratifications and 2 signatures, is close to universal ratification, and second, the International Convention on the Protection of

the Rights of All Migrant Workers and Members of Their Families, which has recently entered into force, on receipt of the first 20 ratifications. The campaign for large-scale ratification of the Convention, in particular on the part of host countries in order to permit its effective application, should constitute an objective in itself.

24. Leaving aside these two extreme situations, we may draw up the following list of conventions in decreasing order of numbers of ratifications, on the basis of the most recent statistics (June 2003) from the Office of the High Commissioner. It should be noted that the Office's Internet site gives a list of States parties for each instrument and a list of States which are "non-parties", whereas the official documents transmitted by the Secretariat mention only the list of parties. But only a three-dimensional approach would provide a comprehensive picture. Special attention should be paid to signatory States, which have indicated their intention to make a commitment and are bound by the obligations set out in article 18 (para. a) of the Vienna Convention on the Law of Treaties:

- Convention on the Elimination of All Forms of Discrimination against Women: 170 ratifications and 24 non-parties, including 3 signatories;

- International Convention on the Elimination of All Forms of Racial Discrimination: 165 ratifications and 29 non-parties, including 8 signatories (the most recent being the Comoros, Paraguay, Sao Tome and Principe in 2000 and Nauru in 2001).

- International Covenant on Civil and Political Rights: 149 ratifications and 45 non-parties, including 8 signatories (Guinea-Bissau, the Lao People's Democratic Republic, Nauru in 2001 and Andorra in 2002);

- International Covenant on Economic, Social and Cultural Rights: 147 ratifications and 47 non-parties, including 7 signatories (Bahrain, Turkey and the Lao People's Democratic Republic in 2000);

- Convention against Torture: 133 ratifications and 61 non-parties, including 12 signatories (the most recent being the Comoros, Guinea-Bissau and Sao Tome and Principe in 2000, Madagascar and Nauru in 2001, Andorra and San Marino in 2002).

25. Simply in quantitative terms, firstly, it would be interesting to study more precisely how the "dynamic process" referred to by the World Conference on Human Rights has evolved in time and space. And above all to imagine how to relaunch this virtuous spiral, at a time when the ratification effort seems to be running out of steam. There had been 678 ratifications by 1 January 1993 and 853 ratifications by 30 May 1996 - an increase of 25 per cent in a little over three years. The current total of 955 ratifications, 10 years after the World Conference, reflects a marked deceleration and a shortfall of over 200 ratifications compared with the target of universal ratification for the six selected instruments. If the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families is taken into account, the goal is still more distant, with 975 ratifications and a shortfall of 383. A chronological table of ratifications would be illuminating in this regard.

26. But a horizontal reading would be most useful, as the treaty bodies can focus only on States which are parties or non-parties to a specific treaty, whereas a wide variety of situations are to be found where ratification or non-ratification is concerned. While it has become commonplace to emphasize the dissuasive nature of reports, it would certainly also be appropriate to take into account the size and resources of States, without calling into question the principle of the legal equality of States or the commitment of all Members to fulfil in good faith the commitments they have assumed under the United Nations Charter (Art. 2). A table based on population data would also make it possible to take the full measure of the Charter principle of "universal respect for, and observance of, human rights and fundamental freedoms for all" (Art. 55 (para. c)). Yet it must be recognized, as Mr. Philip Alston has already underlined, that many non-parties are what have come to be called "micro-States".

27. As of now we may note that almost two thirds (130) of the 209 non-ratifications are concentrated in some 30 States (the other States have no more than two ratifications outstanding). These are:

- Brunei Darussalam, Cook Islands, Marshall Islands, Kiribati, Federated States of Micronesia, Nauru (with three signatures), Niue, Oman, Palau, Sao Tome and Principe (with 5 signatures) (- 5 ratifications outstanding);

- Comoros (with 2 signatures), United Arab Emirates, Malaysia, Myanmar, Saint Kitts and Nevis, Samoa, Singapore, Swaziland, Tonga, Tuvalu, Vanuatu (- 4 ratifications outstanding);

- Bahamas, Bhutan, Fiji, Lao People's Democratic Republic (with 2 signatures), Liberia (2 signatures), Maldives, Mauritania, Pakistan, Papua New Guinea, Qatar, Holy See, Saint Lucia (- 3 ratifications outstanding).

28. Some States - other than the above-mentioned States - have ratified neither of the two Covenants, though they stand at the heart of the international system for the collective safeguarding of human rights. They are Andorra (with one signature), Antigua and Barbuda, Saudi Arabia, Bahrain, Cuba, Indonesia, Kazakhstan and Turkey (2 signatures).

29. Other States - and important ones at that, as we know - have ratified only one of the two Covenants, thus creating an imbalance which runs counter to the principle that human rights are indivisible:

- States which have not ratified the International Covenant on Economic, Social and Cultural Rights: South Africa (signature), Belize (signature), Botswana, United States of America (signature) and Haiti;

- States which have not ratified the International Covenant on Civil and Political Rights: China (signature), Guinea-Bissau (signature), Solomon Islands and Mozambique.

C. Terms of the study

30. The figures speak for themselves, and we might content ourselves with acknowledging our powerlessness year after year, and consider that a minimum threshold has been reached, or else that universal ratification would be impossible to cope with. Yet the reaffirmed goal of universal ratification of international human rights treaties should not remain a pious hope, or a Utopia. It is true that the States parties to a treaty are not, by definition, more virtuous than others, but by ratifying they confirm their commitment to respecting universal human rights at the national level, they submit to a collective discipline, through a continuous dialogue with specialist independent bodies and, where appropriate, they agree to international appeals which reinforce and guarantee domestic remedies. If they do not accept the universal treaties referred to at the World Conference on Human Rights, the States Members of the United Nations are subject only to the bodies set up under the Charter, and in particular the Commission on Human Rights and its subsidiary bodies. To be fully logical, States should willingly accept this dual system, by cooperating fully with the machinery of the Commission and ratifying the universal treaties.

31. In this context, a more aggressive approach by the Sub-Commission would be very useful, not to challenge States a priori, but to make them aware of the new situation introduced by the World Conference on Human Rights, which means that they may no longer take refuge behind the ramparts of national sovereignty and ignore universal treaties. Aside from the issues of principle relating to the nature of international human rights law, raised by Mr. Kartarshkin in his study, there is a need to identify practical methods for conducting a dialogue with States, on the model of the Sub-Commission's working group, which functioned from 1979 to 1984, and in the light of the residual mandate of the Working Group on Contemporary Forms of Slavery in this area.

32. More generally, it seems essential for the Sub-Commission to participate fully, as such, in the ongoing consideration of the future of the international system for the protection of human rights, of which it is an independent element.

33. In that regard, the purely legal issues which form part of its agenda - such fundamental questions as the status of international instruments or the system of reservations to treaties, for example - cannot be relegated to the position of "other issues". It is suggested that these legal issues should be regrouped under agenda item 3, now entitled "Administration of justice, rule of law and democracy". This would be all the more logical in that the concept of the rule of law implies a reference both to the domestic order and to respect for international law. The question of the ratification of universal treaties is thus located at the interface between these two legal orders.

34. The future study should seek to clarify the various issues raised by the effective universality of human rights treaties, at the theoretical and the practical level:

(a) The first task should be to refine the concept of universal treaties or treaties of universal scope, particularly in the field of human rights, from the standpoint of public international law;

(b) A second purpose of the study would be to draw up an inventory of the relevant treaties and pragmatically assess the machinery for monitoring commitments and encouraging ratification by States so as to provide a systematic view of the situation, which is more varied and more balanced than the picture given by the six treaties which have monitoring bodies;

(c) A third aspect of the study would be to take into account relevant experience in other treaty monitoring systems, particularly those of the International Labour Organization and the United Nations Educational, Scientific and Cultural Organization, in order to identify "good practice".

(d) A final aspect of the study would be to consider the most effective modalities which would allow a constructive dialogue with States concerning legal, political, social or other difficulties encountered in the ratification, entry into force, interpretation and application of the treaties in question, with a view to seeking effective universality "for all";

(e) This study should take into account the parallel efforts designed to improve the human rights treaty system, particularly the initiatives of the Secretary-General, and should be carried out in close cooperation with all the interested parties. In this regard, it might be useful to convene a seminar with support from interested States and non-governmental organizations to create a "grid" for use in organizing dialogue with States concerning the ratification of universal treaties.
