HUMAN RIGHTS: INTERNATIONAL PROTECTION, MONITORING, ENFORCEMENT
Human Rights: International Protection, Monitoring, Enforcement

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Preface

The present volume – Human Rights: International Protection, Monitoring, Enforcement – is the third and last in the series which began in 1998 with Human Rights: New Dimensions and Challenges and continued in 2000 with Human Rights: Concept and Standards. Thus, the initiative aimed at the preparation and publication of the UNESCO manual for teaching human rights at the higher education level comes to a successful conclusion.

The international protection of human rights may be presented in many ways: from the point of view of organs, instruments, means of protection, or from the point of view of the protection of specific categories of human rights or persons belonging to vulnerable groups. This volume adopts a method which may be qualified as institutional. It gives, first, the presentation of the United Nations system of protection which may be seen as universal, followed by an analysis of regional systems.

Article 1 of the 1945 Charter of the United Nations lists among its purposes ‘... promoting and encouraging respect for human rights and for fundamental freedoms’. It further provides that the General Assembly shall initiate studies and make recommendations for the purpose of ‘... assisting in the realization of human rights and fundamental freedoms’ (Article 13), whereas the Economic and Social Council may make recommendations ‘... for the purpose of promoting respect for, and observance of human rights and fundamental freedoms for all’ (Article 62). It also entitles the Economic and Social Council to set up commissions for the promotion of human rights (Article 68). This led to the establishment of the Commission on Human Rights which plays an important role in the protection of human rights.

Although the Charter can be seen as the starting point for the creation of the United Nations machinery and system of human rights protection, many years nevertheless elapsed before a system comprising reports, State complaints and individual communications, as well as establishing treaty bodies, came into being. It is enough to note that the Universal Declaration of Human Rights of 1948 did not foresee any procedure or organ to monitor its implementation.

The first chapter of this volume gives a comprehensive, holistic view of the United Nations human rights machinery and procedures, including the very important role played by the Commission on Human Rights, the treaty bodies and the Office of the United Nations High Commissioner for Human
Rights. The United Nations system also comprises specialized agencies of which two, in the context of human rights protection, deserve special attention – namely, the International Labour Organization (ILO) and the United Nations Educational, Scientific and Cultural Organization (UNESCO). The former because it is the oldest international organization, established in 1919, which developed, long before the United Nations, a very elaborate system of promotion and protection of human rights in its field of competence, including the monitoring of the implementation of conventions adopted by it. As far as UNESCO is concerned, it is worth noting that the Organization has created a permanent system of reporting on education for peace, human rights, democracy, international understanding and tolerance. It also instituted, in 1978, a special procedure for individual communications concerning alleged violations of human rights in UNESCO’s fields of competence. The right to present communications does not result from any special human rights instrument adopted by the Organization; communications may be directed at any Member State of UNESCO. Although not mentioned specifically in this manual, we should not forget that other members of the United Nations system, such as the Food and Agriculture Organization (FAO), the World Health Organization (WHO), the United Nations High Commissioner for Refugees (UNHCR), the United Nations Development Programme (UNDP) and the United Nations Children’s Fund (UNICEF) play an important role in the promotion and protection of human rights.

Part II of this volume is devoted to the presentation of regional systems of human rights protection. The trend towards closer political, economic and cultural cooperation has led to the creation of regional organizations and regional systems of human rights protection. It has already brought to life three regional systems: the first was created by the Council of Europe in 1950 based on the European Convention for the Protection of Human Rights and Fundamental Freedoms; the second was created in 1969 by the Organization of American States (OAS) on the basis of the American Convention on Human Rights; and the third was created in 1981 on the basis of the African Charter on Human and Peoples’ Rights, by the Organization of African Unity (now the African Union). The fourth regional system which may be qualified as *in statu nascendi* is that of the League of Arab States, dated 1994. The Vienna Declaration and Programme of Action of 1993 gives a positive evaluation of regional arrangements, noting that they play a fundamental role in the protection of human rights. Indeed, the regional systems reinforce, develop and advance the universal standards. Suffice it to observe that the Council of Europe has adopted nearly 30 regional human rights instruments including the European Convention for the Protection of Human Rights and Fundamental Freedoms and the European Social Charter.

The regional procedures differ as far as their organs and ways and means of protection of human rights are concerned. The most advanced is the European system which gives individuals the right to present cases of alleged violations of human rights to the European Court of Human Rights.
The importance of this development cannot be overestimated as, for the first time in the history of international law, a very important precedent has been set. The European Court of Human Rights is open to individuals who can take their States before an international tribunal because of alleged violations of their rights. This procedure is not optional; the ratification or accession to the European Convention makes it binding for the States. As one can also learn from the chapter on this question, the European system referred to in the singular is composed of several systems of protection: the system of the Council of Europe; the human dimension system established by the Organization for Security and Cooperation in Europe (OSCE); the European Union; and sub-regional systems.

The American system is based on the possibility of presenting petitions to the Inter-American Commission on Human Rights. The Inter-American Court of Human Rights, created by the American Convention on Human Rights, can judge cases presented to it by the Commission and by States. Individuals have no direct access to the Court. However, this question of access, already accepted by the Council of Europe, is now being discussed in the Organization of American States.

The African system is based on petitions which may be presented to the African Commission on Human and Peoples' Rights. The Organization of African Unity (OAU) attempted to follow the examples of the other systems and establish an African Court on Human and Peoples' Rights. The Protocol to the African Charter on Human and Peoples' Rights on the establishment of an African Court on Human and Peoples' Rights was adopted by the OAU in 1998. Until now, it has only been ratified by five States and has not yet entered into force.

The populous Asian region has no regional or sub-regional procedures for the protection of human rights. The World Conference on Human Rights (Vienna, Austria, 1993) strongly emphasized the need to establish regional and sub-regional arrangements for the promotion and protection of human rights where they do not already exist. The General Assembly, as well as the Commission on Human Rights, adopted a series of resolutions in which they confirmed the value of regional arrangements for the promotion and protection of human rights in the Asian and Pacific region.

An analysis of universal and regional systems of human rights protection allows the observation of differences in the scope of the protection of various categories of human rights. The reasons for this are manifold and can be traced back to the time of the Cold War and the contradictions and polemics concerning the importance and legal character of economic, social and cultural rights. For this very reason, neither the European nor the American Convention on Human Rights has embraced all human rights; they are limited to civil and political rights. Consequently, these systems of protection were limited to these rights. The situation was remedied with the adoption, in 1961 by the Council of Europe, of the European Social Charter (revised in 1996) and the introduction in 1995 of a procedure of collective complaints concerning non-implementation of the Charter. The American system was also extended to these rights after the adoption of the
Additional Protocol to the American Convention on Human Rights in the Areas of Economic, Social and Cultural Rights of 1998. The only system of protection which, from the very beginning, grants equal status to all categories of human rights is that based on the African Charter on Human and Peoples’ Rights. It is worth noting that, on 7 December 2001, the European Union adopted the European Charter of Fundamental Rights which also follows the principle of unity of all human rights: civil, cultural, economic, political and social.

Differences in the scope of protection can be seen in the case of the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). As clarified by the Committee on Economic, Social and Cultural Rights in Comment No. 3 of 1990, the concept of ‘progressive realization’ of economic, social and cultural rights formulated in Article 2 of the ICESCR embraces obligations of conduct and obligations of result binding upon States Parties. This article, speaking about all appropriate means to be undertaken by States, covers not only legislative but also administrative, financial, educational, social and other measures. Although the justiciability of these rights is challenged, the Committee stressed that at least some of them are justiciable and can be guaranteed by judicial remedies. For this reason, the adoption of the Optional Protocol to the ICESCR, now under consideration in the Commission on Human Rights, and the establishment of a new procedure for communications which will allow individuals to present petitions concerning alleged violations of their economic, social and cultural rights, are of paramount importance. Bearing in mind that the possibility of individual communications already exists in the case of civil and political rights, in accordance with the Optional Protocol to the ICCPR the principle of the indivisibility of human rights leads to the logical conclusion that both categories of human rights – civil and political and economic, social and cultural – should have the same guarantees.

The unquestionable progress achieved by the United Nations, its specialized agencies and regional organizations in the development of the international system of protection of persons belonging to vulnerable groups does not mean that this system as a whole can be recognized as fully satisfactory. The advancement and development of the protection is uneven. No doubt, recent years have witnessed the further strengthening of the protection of women’s and children’s rights, both on the universal and regional levels. Suffice it to note that the Committee on the Elimination of Discrimination against Women, after the entry into force in 2000 of the Optional Protocol, is authorized to receive communications from individuals concerning alleged violations by States Parties to the Convention on the Elimination of All Forms of Discrimination against Women.

In some cases, such as that of the rights of migrant workers and their families, attempts to establish a system of protection have been blocked for several years. The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, adopted by the General Assembly in 1990, entered into force in July 2003. It took thirteen
years to obtain the 20 ratifications needed. This Convention foresees, in order to monitor its implementation, the establishment of a Committee on the Protection of the Rights of All Migrant Workers and Members of their Families which should become the seventh human rights treaty body.

Sometimes the protection of certain groups is more advanced on a regional than on a universal level. Thus, the rights of persons belonging to minorities are far better protected in the European system by the Organization for Security and Cooperation in Europe and the Council of Europe, as well as by a number of treaties concluded among Central and Eastern European States, than by the United Nations.

The non-effectiveness of the protection of some vulnerable groups is often demonstrated by the fact that, as in the case of disabled persons, aliens, prisoners or the elderly, their rights are formulated by non-binding declarations or they are, like people with HIV/AIDS, not protected at all by any specific instrument.

Part III, containing five chapters, raises the question of how international human rights protection can be further strengthened. It starts with reflections on the importance of national systems of protection which should involve legislative, judiciary and executive powers. It goes without saying that the very existence of a national system of protection is *conditio sine qua non* of the effectiveness of a universal or a regional system. Claims to international mechanisms can be presented after the exhaustion of all domestic remedies. Creation of national mechanisms is therefore an obligation of States formulated by international instruments. In recent years in many countries, national institutions such as ombudspersons, human rights commissions and, in some cases, even special human rights ministries have been established.

For the protection of human rights, for their defence and for the elimination of impunity of violators, the adoption of the principle of criminal responsibility for the crime of genocide, crimes against humanity or war crimes is of great importance. This new approach is reflected in the establishment of the International Criminal Tribunals for the Former Yugoslavia and for Rwanda and the adoption of the Rome Statute of the International Criminal Court (ICC) which entered into force on 1 July 2002. It will now act as a deterrent against massive violations of human rights making this a great step forward in the international protection of those rights. No doubt its effectiveness will depend on its universality and the support of all permanent members of the Security Council.

In the post-Cold War period the United Nations Security Council is increasingly taking action to deal with massive human rights violations by imposing sanctions foreseen by Chapter VII of the United Nations Charter. Although it advances the cause of human rights, sometimes it raises questions about the ultimate result of sanctions and, in particular, unilateral ones, which often victimize populations rather than the decision-makers responsible for wrongdoings.

A step which might strengthen protection is linked with the elaboration of a set of human rights indicators. They could provide treaty bodies with a
means for measuring the progress in the implementation of human rights and a method for determining difficulties or problems encountered by States. Indicators could also help to reveal the extent to which certain rights are, or are not, enjoyed in practice and to provide a means to measure and compare the performance of individual countries.

The volume ends with reflections concerning the role of non-governmental organizations in the protection and enforcement of human rights. They are the essential part of the ‘human rights movement’ which, to a great extent, brought about the advancement of human rights and the reinforcement of their protection. Non-governmental organizations participate in the monitoring procedures, collect and disseminate information on human rights violations, mobilize international public opinion, condemn and exert pressure on human rights violators, and create human solidarity.

It is worth noting that, on 10 December 1998, the United Nations General Assembly adopted the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms. The Declaration contains an enumeration of different legal guarantees if there is a human rights violation, the right for an effective remedy and protection, public hearings, independent judicial authorities and compensation. It states in Article 2: ‘Each State has a responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, *inter alia*, by adopting such steps as may be necessary to create all conditions necessary in social, economic, political and other fields.’ In this context, we may also recall that the Universal Declaration of Human Rights, in its Article 28, proclaimed: ‘Everyone is entitled to a social and international order in which the rights and freedoms set forth in the Declaration can be fully realized.’

This volume is presented to readers in the hope that it will be used not only as a source of information on the protection of human rights but also as a practical guide on how to use existing procedures for the defence of those rights.

The editor would like to express his warmest thanks to the authors – well-known specialists from different countries and regions – for their readiness to cooperate and update their contributions. The volume could not have been published without the support, professional help and fruitful collaboration, over many years, of Ashgate Publishing and UNESCO. From the long list of persons who in various ways contributed to the preparation of this volume, words of special gratitude should be directed to Pierre Sané, Assistant Director-General of the Sector of Social and Human Sciences, to Vladimir Volodin, Chief of the Human Rights and Development Section of the Division of Human Rights within the same sector and to Gillian Whitcomb, Chief of the Communication, Information and Publication Section of the sector. Deepest thanks are also expressed to Sheila Bennett for her devotion to the manual and her close cooperation in the preparation of all three volumes.

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PART I
THE UNITED NATIONS SYSTEM
INTRODUCTION

Lessons drawn from the Second World War, especially those concerning the inability of the pre-war international community to prevent the plans of those whose actions tragically affected millions of lives, led political, social, and intellectual leaders to the conclusion that an effective protection of human rights was indispensable if future generations were to be spared a similar experience. It was also recognized that to achieve this end, human rights standards should not remain simply ‘law in books’ – just a beautiful promise. The rule, already in place at the domestic level, that appropriate organs and procedures are necessary to make them ‘law in action’ was also accepted at the international level. The critically evaluated weakness of the League of Nations in this regard was fairly helpful in outlining the place of human rights in the United Nations system. Though varying political interests and visions as to the role of the international community in the field of human rights made it impossible to go further, the United Nations Conference on International Organization (San Francisco, USA, 1945) gave expression to the principle of the internationalization of human rights in the Charter of the United Nations.¹ The subsequent months and years showed the internal dynamics of human rights, embodying the dreams of people, and brought amazing progress not only in standard-setting but also in creating organs and procedures to protect these rights. While looking at the results achieved in building this machinery, a human rights student might indeed be astonished that, despite the Cold War, despite diverging political and economic interests and despite cultural differences, such an impressive international human rights framework has been developed.
About 30 human rights treaties, as well as 50 declarations and resolutions— the latter sometimes referred to as 'human rights soft law'— have been adopted. The opinion is widely held that the 'codification' of human rights has by and large been completed; this does not mean, of course, that, in some cases, further drafting of human rights norms is, or will no longer be, necessary. Since about 1976 (the year when the International Covenants on Human Rights entered into force), the international community has, however, attached primary importance to the implementation of these rights. Initially, emphasis was placed on international monitoring of the observance of, and ex post measures addressing, violations of human rights. At that time, particular importance was attached to the activities of intergovernmental bodies, in particular the Commission on Human Rights, and the system of reporting by states to the established bodies about the fulfilment of their human rights commitments. Later, the communications procedures protecting individuals claiming to be victims of human rights violations or addressing mass and gross human rights violations\(^2\) gained increasing importance. At present, especially since the 1993 World Conference on Human Rights in Vienna, the previous approach to the protection of human rights has been supplemented by the emphasis placed on the prevention of human rights violations and a proactive attitude to their protection (human rights advocacy). At the 54th session of the Commission on Human Rights, commemorating the 50th anniversary of the Universal Declaration of Human Rights, the Secretary-General of the United Nations appealed to the international community to make the twenty-first century the age of prevention.\(^3\) It is important to bear in mind this evolution in order to understand problems related to the effectiveness of international human rights mechanisms.

The consensus around human rights achieved at the 1993 World Conference in the post-Cold War spirit was reinforced by the United Nations Millennium Declaration in which all states declared to spare no effort to promote respect for all internationally recognized human rights and fundamental freedoms, including the right to development.\(^4\) The Vienna Declaration and Programme of Action adopted by the 1993 Conference recognized the necessity for a continuing adaptation of the United Nations human rights machinery to the current and future needs with a view, in particular, to improving its coordination, efficiency and effectiveness.\(^5\) This process launched at the General Assembly session in the same year by the the establishment of the post of the High Commissioner continues. The remarks below will refer to its essential elements.

**Principles of the Machinery**

The Vienna Declaration and Programme of Action reaffirms and/or develops the following principles which should guide the international human rights machinery:
UN Mechanisms to Promote and Protect Human Rights

- Human rights are universal. The Vienna Declaration and Programme of Action stresses that 'The universal nature of these rights and freedoms is beyond question' and continues 'While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms';

- The promotion and protection of human rights constitute a legitimate concern of the international community;

- Member states are obliged to develop international cooperation, including cooperation with the United Nations, to promote human rights;

- All human rights are indivisible, interdependent and interrelated. The Vienna Declaration and Programme of Action calls on the international community to treat them 'globally in a fair and equal manner, on the same footing, and with the same emphasis'. It also emphasizes that 'Democracy, development and respect for human rights and fundamental freedoms are interdependent and mutually reinforcing'.

Looking at these principles as a whole, one can observe that they produce a consistent body, the components of which are logically interconnected. However, this harmony is fragile and sensitive to a preferential emphasis placed on one or another principle. The debates in the Third Committee of the General Assembly and in the Commission on Human Rights concerning the reform of the human rights machinery should be consulted to discover related problems. Some of them will be highlighted below.

HUMAN RIGHTS MACHINERY

The Main Structure of the Machinery

The human rights machinery may be perceived in a narrow and broad sense. First, this notion embraces organs and procedures dealing explicitly and directly with human rights in the framework of the United Nations. This category includes:

1. intergovernmental organs established on the basis of the Charter of the United Nations (policy-making organs): the General Assembly, the Security Council, the Economic and Social Council, and the Commission on Human Rights. The Commission on the Status of Women and the Commission on Crime Prevention and Criminal Justice also address human rights issues within their respective mandates;
2. bodies established by human rights treaties;
3. reporting, communications, and investigating procedures established by policy-making organs and treaty-based bodies;
the parts of the United Nations Secretariat responsible for human rights activities, especially the United Nations High Commissioner for Human Rights. The Division for the Advancement of Women and the Centre for International Crime Prevention have also human rights responsibilities. The Office of the High Commissioner for Human Rights and the Division for the Advancement of Women adopt joint work plans.

In the broad sense, the notion 'human rights machinery' also includes those organs and procedures which have been established within the United Nations specialized agencies and programmes and deal, inter alia, with human rights or with specific aspects of human rights. Such organs and procedures exist in the framework of the International Labour Organization, UNESCO, the United Nations High Commissioner for Refugees, UNICEF, the United Nations Development Programme, and the United Nations Congresses on the Prevention of Crime and Treatment of Offenders. In this context, the International Criminal Tribunal for the former Yugoslavia, the International Criminal Tribunal for Rwanda, and the International Criminal Court also need to be mentioned because of their competence to address the accountability of the perpetrators of human rights violations.

Policy-making Bodies

The General Assembly

While the General Assembly has an overall competence to deal with all the matters covered by the Charter of the United Nations, human rights issues are subject primarily to debate in its Third Committee (Social, Humanitarian and Cultural Committee). Nevertheless, decisions taken by other main committees of the General Assembly may also have an impact on this area. For instance, the Fifth (Administrative and Budgetary) Committee, while adopting the budget of the Organization, decides about an important part of the financial framework of United Nations human rights activities. The Sixth Committee participates in the standard-setting process. The auxiliary bodies of the General Assembly frequently deal with human rights, thus contributing to development in this area. For example, the International Law Commission participates in standard-setting, and special committees of the General Assembly dealt, or are dealing with, decolonization, apartheid, the situation in Namibia and the rights of the Palestinian People.

The General Assembly adopted the Universal Declaration of Human Rights, both International Covenants on Human Rights, all other United Nations human rights treaties and all the major declarations concerning this field which, before adoption, were subject to drafting within the United Nations system, including the Committees of the General Assembly themselves. Yet drafting international instruments does not exhaust the activities

Matters considered by the General Assembly may be categorized in the following groups:

1 substantive human rights issues;
2 ‘human rights situations’ (this notion is used by the United Nations bodies to refer to situations of alleged human rights violations on a large scale);
3 draft conventions or declarations; and
4 organizational matters.

For example, the agenda of the Third Committee of the General Assembly at its 56th session in 2001, included under agenda item 12 the following issues:13

- implementation of human rights instruments
- human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms
- human rights situations and reports of Special Rapporteurs and representatives
- comprehensive implementation of and follow-up to the Vienna Declaration and Programme of Action

In addition, the following items of the General Assembly agenda were related to the United Nations human rights programme:

- promotion and protection of the rights of children (item 8)
- programme of activities of the International Decade of the World’s Indigenous People (item 9)
- elimination of racism and racial discrimination (item 10)
- right of peoples to self-determination (item 11).

The resolutions of the General Assembly reflect not only the assessments of this body but also – most frequently – include recommendations for further action by the international community as a whole, and specifically by governments, components of the United Nations system, and non-governmental organizations and the wider civil society.

At its 56th session, the Third Committee of the General Assembly dealt with thematic issues in more than 50 resolutions. Country-specific human
rights situations were subject to 11 resolutions in which the General Assembly articulated its position regarding the human rights problems in a given country and formulated recommendations for the respective governments. While the majority of the General Assembly resolutions are adopted by its Third Committee without a vote, country-specific resolutions in the majority of cases need a vote, since consensus is often impossible.

To handle its agenda, the Third Committee may create working groups which usually have an open-ended character. Such a working group was established after the World Conference on Human Rights (48th session) ‘... to discuss the ways and methods of implementation of the Vienna Declaration and Programme of Action’. The Group, *inter alia*, drafted the resolution concerning the establishment of a High Commissioner for Human Rights.

*The Security Council*

Article 24 of the Charter of the United Nations confers on the Security Council ‘... primary responsibility for the maintenance of international peace and security’. For many years, this crucial decision-making body refrained from specifically recognizing human rights as a determining factor in its considerations, noting their controversial nature in international relations. Human rights issues were usually referred to as humanitarian problems. The situation gradually changed in the 1990s. The human rights abuses have been recognized as one of the root causes of contemporary armed conflicts and, at the same time, the protection of human rights as one of essential elements of peace-making and peace-building. Tragedies of this period, such as those in Rwanda and in the Balkans with thousands of victims of the most serious violations of human rights, were not without influence on this process. Today, Security Council decisions frequently address human rights issues in the context of peace and security.\(^{14}\) Peace accords supported by the Security Council contain references to human rights. It has become a rule that the Security Council, when establishing a peace operation includes a human rights component in it (see also the section, 'United Nations High Commissioner for Human Rights: from Headquarters to the Field'). Reports of the Secretary-General to the Security Council contain human rights related analysis and recommendations. The Security Council has also requested reports of the Office of the High Commissioner of Human Rights when human rights violations posed a threat to peace and security. On some occasions, the Security Council established missions to carry out inquiries into human rights violations (1992 Commission of Experts on the Former Yugoslavia and 1994 Commission of Experts on Rwanda).

Special arrangements (the so-called Arria formula for informal meetings) are used to invite human rights experts to address members of the Security Council. For example, the Special Rapporteur on the Human Rights Situation in the Democratic Republic of the Congo was invited several times to provide a briefing. It seems that the next step may be a more regular appearance of the High Commissioner before this body. So
far, this has been rather exceptional, but such an exchange might enhance the input by the human rights mechanisms to the work of the Security Council.

The Economic and Social Council (ECOSOC)

Pursuant to Article 62, para. 2, of the Charter of the United Nations, the promotion and protection of human rights are among the main areas of the mandate of ECOSOC. In this framework, ECOSOC makes ‘... recommendations for the purpose of promoting respect for, and observance of, human rights and fundamental freedoms for all’, prepares draft conventions to be submitted to the General Assembly and convenes international conferences on subjects within its competence. ECOSOC’s 2001 agenda included the consideration of the reports of the following bodies: the Commission on Human Rights on its 57th session; the Human Rights Committee; the Committee on Economic, Social and Cultural Rights; and the United Nations High Commissioner for Human Rights.

ECOSOC is also the main United Nations coordinating organ in the economic and social field. For instance, at its session in 1998, within the framework of the so-called co-ordinating segment, it discussed the implementation of recommendations adopted by the 1993 World Conference on Human Rights by the United Nations agencies and programmes. The resolutions adopted by ECOSOC as a result of such debate are aimed to serve as a framework and guide for the work of the entire Organization.

Under Article 68 of the Charter of the United Nations, ECOSOC has set up commissions in the economic and social fields. Two of them have been established to deal with matters falling in the area of human rights – namely, the Commission on Human Rights and the Commission on the Status of Women. They report to ECOSOC annually, prepare relevant draft decisions and recommendations, as well as draft conventions and declarations. Resolutions of the Commissions that have financial implications, need to be approved by ECOSOC before implementation. In addition to these two bodies, other functional Commissions of the ECOSOC are also relevant to the human rights area, in particular Commission on Crime Prevention and Criminal Justice, Commission on Sustainable Development, and Commission for Social Development. The Office of the High Commissioner for Human Rights is developing cooperation with ECOSOC regional economic commissions.

ECOSOC made an important contribution to the development of procedures for dealing with human rights matters in the Commission on Human Rights and the Commission on the Status of Women. For instance, subsequent ECOSOC resolutions have marked the history of the communications procedures, which provide the framework for how the Commission on Human Rights deals with alleged human rights violations.

ECOSOC also decides about the consultative status that selected non-governmental organizations can enjoy under ECOSOC resolution 1996/31. This is relevant in the discussed context because of the fundamental contribution
that these organizations make to the work of the UN human rights mecha-
nisms (see the last section).

The Commission on Human Rights

*Status and composition* The Commission on Human Rights was created in 1946\(^\text{18}\) with the initial task of preparing the draft of the International Bill of Rights. It is most probable that, at that time, only a few expected the dynamism and spectacular turns in the development of this body in subsequent years. Although the Commission continues to occupy the same place within the United Nations system as an auxiliary body to ECOSOC, its actual role and position have become substantially more important. What began as a rather quiet, small body of experts representing various countries is today almost as big as ECOSOC itself. Initially composed of 18 Member States, the Commission has gradually increased its membership to 53. Its profile has developed to one of a fully intergovernmental body, which gives the Commission an important standing in international relations, although it also has its political costs. It could also be expected that sooner rather than later, the Commission will come across the issue of its status. Its link to the Charter of the United Nations is evident, since Article 68 of the Charter provides for setting up a commission for the promotion of human rights as a subsidiary body of ECOSOC. However, for some time already, some commentators have been raising the question whether, in the context of the advancement of human rights on the international and domestic agenda, the Commission’s position within the United Nations system should not be more important. It is striking that the international human rights parliament in which the Commission has grown up during the last five decades, occupies a rather modest place within that system.

The composition of the Commission is based on the principle of regional balance. In view of geographical distribution, the seats in the Commission are currently distributed as shown in Table 1.1.

### Table 1.1 Distribution of seats in the Commission on Human Rights

<table>
<thead>
<tr>
<th>African Group</th>
<th>Asia Group</th>
<th>Eastern European Group</th>
<th>Latin and Caribbean Group</th>
<th>Western European and Other Groups</th>
</tr>
</thead>
<tbody>
<tr>
<td>15</td>
<td>12</td>
<td>5</td>
<td>11</td>
<td>10</td>
</tr>
</tbody>
</table>

This allocation results from decisions adopted in 1990\(^\text{19}\) when the membership was increased by ten seats. At that time, a better representation of the numerous African countries, which had become independent in the framework of the decolonialization process, was pursued. This arrangement also
served the strengthening of the representation of developing countries in general. One has to note in this context, however, that changes in the composition of the Eastern European Group – the emergence of several new countries in the 1990s – have so far had no impact on the geographic distribution of seats in the Commission.

**Mandate and methods of work** The Commission’s mandate ranges from participation in standard-setting, monitoring and shaping the implementation of human rights through technical cooperation to ‘... any other matter concerning human rights’. The Commission submits proposals, recommendations and reports to ECOSOC, helping it coordinate United Nations activities in the field of human rights. Looking at the Commission’s legacy, one can see the merit of the observation made by the High Commissioner for Human Rights that: ‘the Commission on Human Rights has been the central architect of the work of the United Nations in the field of human rights.’

The work of the Commission is basically framed by the Rules of Procedure of the Functional Commissions of the Economic and Social Council. During the 1990s, the Commission on Human Rights made considerable efforts to reform its organization and methods of work. The World Conference on Human Rights forcibly stressed the need for ‘a continuing adaptation of the United Nations human rights machinery to the current and future needs’. In this context, the Conference also specifically referred to the elements of the Commission system, including the Sub-Commission and special procedures (see below). Responding to this call, the Commission launched its reforms, including the establishment of a special Working Group, already at its 50th session (1994), but failed to produce tangible results because of differences among the members. Nevertheless, these initial attempts generated a certain dynamic for the process and helped it move ahead with a largely successful reform that was launched by the statement of the Chairperson of the Commission’s 55th session, Ambassador Selebi from South Africa, on 28 April 1999. By virtue of this statement, a Working Group on Enhancing the Effectiveness of the Mechanisms of the Commission on Human Rights was established, and it presented its report to the Commission at its 56th session. The Commission, chaired at that time by Ambassador Anderson from Ireland, approved the proposals contained in this report by its decision 2000/109, ‘Enhancing the effectiveness of the mechanisms of the Commission on Human Rights’. The reform encompassed the work of the Commission itself, the Sub-Commission and the system of special procedures. The unanimous support for it was based on some important conceptual considerations referred to in the report of the Working Group, in particular that:

- none of the component parts of the United Nations human rights machinery function in isolation from each other;
- preference should be given to the maintenance of approaches which are perceived to be more democratic and representative than alternatives;
• a balance between the benefits of continuity and the benefits of renewal should be sought;
• a balance should be struck between civil and political rights and economic, social and cultural rights – the equal importance of both sets of rights should find a broad reflection in the United Nations human rights machinery.

The Commission holds its annual six-week long sessions between mid-March and the end of April. They are attended by governmental delegations of up to 50 members. Even if this number is exceptional, the size of delegations has indeed increased since the role, tasks and organization of the Commission’s work demand it. The agenda of a regular session of the Commission usually remains basically unchanged for long periods, which is understandable since, in a way, it reflects a balance of interests and preferences. After the 1993 World Conference on Human Rights, attempts to ‘rationalize’ the agenda remained central to various proposals targeting the reform of the Commission. Being, to a certain extent, a product of a spontaneous process over the years, the agenda was criticized for being too long, leading to an overloaded debate and frequent night sessions. Eventually, the Commission’s new agenda was introduced at its 55th session. The aforementioned Working Group recommended that the question of agenda reform should be kept under review, regarding inter alia, further re-clustering of its items.

The agenda of the Commission on Human Rights at its 58th session could be divided as follows:

1 organization of work, including election of officers and adoption of the agenda;
2 the work of the United Nations human rights organs and bodies, including the promotion of human rights;
3 thematic human rights issues; and
4 country-specific human rights situations.

To ensure more time for in-depth debate on different issues, attempts continue to biannualize some of the agenda items.

Since the late 1990s, the Commission on Human Rights has dedicated one meeting for a Special Dialogue on a so-called annual theme chosen by the Chairperson in consultation with the Bureau. Decision 2000/109 endorsed this practice and recommended that the selection of the annual theme should take into consideration the one decided on by the General Assembly for its activities. The subjects of the Special Dialogues were ‘Tolerance and Respect’ at the 57th session, ‘Poverty and the Enjoyment of Human Rights’ at the 56th session and ‘Rights of the Child’ at the 55th session. Unfortunately, members of the Commission could not agree on the theme for the Special Dialogue at its 58th session. Hopefully, this will remain an exception and not become a precedent.

At its 58th session, the Commission was faced with constraints resulting from some rather surprising budgetary cuts. Evening and night sessions
were almost entirely suppressed and the time at the disposal of the Com-
mission was thus reduced to 70 per cent of that available during the previous
session of the Commission in 2001. It was eventually possible to complete
work on the agenda but at the expense of the time granted to different
categories of speakers. As a consequence, it was stressed by many speakers,
including the Chairperson and the High Commissioner, that steps were
necessary to ensure appropriate presentation by holders of special proce-
dures of their findings and to provide a timeframe for their dialogue with
the Commission. Equally strong was the emphasis placed on guaranteeing
time for the participation in the debate of non-governmental organizations
commensurate with their role in the promotion and protection of human
rights.

At each session the Commission elects its Chairperson, three Vice-Chair-
persons, and a Rapporteur who form the Bureau and who, together with
the coordinators of regional groups, constitute its Expanded Bureau. While
electing the Chairperson, the Commission follows the principle of regional
rotation. It should be noted that the Bureau of the Commission plays a far
more important role than in the past, when its activities were limited to the
duration of the Commission’s session and to a meeting, following its clo-
sure, convened to discuss observations about the organization of the work
and to carry out consultations on such other matters as, for example, the
appointment of Special Rapporteurs. As of the 56th session, the Bureau has
developed into a permanent organ, holding meetings throughout the year.
This change coincided with the Bureau’s involvement in the Commission’s
reform – a process of a largely inter-sessional character. It was also, how-
ever, a response to those voices which asserted that, in view of the increasing
role of human rights in international relations, a certain continuation of the
Commission’s work is necessary between sessions. At its 58th session, the
Commission decided to elect the Bureau before the session at a special
meeting held on the third Monday in January. This will enable the Bureau
of the next session to lead in the preparation of the substantive agenda.

In the framework of the recent reform of the Commission’s work, a
decision was taken to convene the Commission in September for a one-day
informal meeting to facilitate the exchange of information just before the
session of the General Assembly. This decision was guided by the fact that
the agenda of, and attendance in, the Commission and the Third Commit-
tee of the General Assembly overlap significantly; this merits an enhanced
preparation to the General Assembly in the framework of the Commission.
These informal meetings do not have a formal outcome. Their programme
of work combines issues on the agenda of the Commission’s previous ses-
sion and those placed on the provisional agenda of the Third Committee.
Both members and observers highly appreciate these meetings that have
also become a bridging element between the Commission’s regular ses-
sions.

**Resolutions and decisions** To conclude the discussion on thematic issues or
country-specific situations, the Commission usually adopts a resolution.
Sometimes, mainly in organizational matters, it takes a decision. A statement by the Chairperson always presents the consensus position of the Commission (see Table 1.2).

Table 1.2 Resolutions, decisions and Chairperson’s statements

<table>
<thead>
<tr>
<th>Session</th>
<th>Number of resolutions</th>
<th>Number of decisions</th>
<th>Number of statements by the Chairperson</th>
</tr>
</thead>
<tbody>
<tr>
<td>58th</td>
<td>92</td>
<td>18</td>
<td>3</td>
</tr>
<tr>
<td>57th</td>
<td>82</td>
<td>19</td>
<td>3</td>
</tr>
<tr>
<td>56th</td>
<td>87</td>
<td>13</td>
<td>4</td>
</tr>
</tbody>
</table>

From among all the resolutions and decisions adopted at its 58th session, 71 (almost 60 per cent) were adopted without a vote and 39 were voted on. A request from a Commission member is necessary for a vote. An analysis of voting results provides students with analytical material for mapping current human rights controversies and identifying borderlines. It is also an important source of information for both diplomatic relations and campaigns by non-governmental organizations at the international and national levels.

The coordination of consultations on the text of a resolution is usually in the hands of the delegation or group of delegations, which initiated the item. To propose a resolution, a State delegation does not need to be a member of the Commission. However, for formal submission, a draft resolution must be sponsored by at least one member of the Commission. The mode of consultation on resolutions has an important impact on the Commission’s democratic nature. The large number of consultations taking place in parallel to the Commission’s meeting often makes the participation of smaller delegations, in particular, very difficult. Not surprisingly, voices highlighting the need for transparency and appropriate organization of the consultation process are vociferous from this corner. This is indeed a major problem for the Commission’s collective, participatory work. Some organizational steps, including the announcement of the time and location of consultations, the early launching of consultations, as well as making the Commission’s documentation, particularly the relevant reports, available well in advance before a given item is on the agenda, are examples of this type of corrective measures, recommended by decision 2000/19. It was agreed, among other things, that the intention to bring a thematic resolution to the attention of the Commission should be announced in advance of the session. In the case of resolutions addressing the human rights situation in a country, the delegation of that country should be informed no later than during the first week of the session.
Standard-setting  From its very establishment, the Commission on Human Rights has been the main United Nations body drafting international human rights standards and related procedural norms. Whether it is a draft human rights treaty or a draft declaration, the product of the Commission is forwarded through ECOSOC to the General Assembly for final adoption. In the opinion of the Working Group on Enhancing the Effectiveness of the Mechanisms of the Commission on Human Rights, ‘... standard-setting will continue to be one of the central functions of the Commission on Human Rights’. Unsurprisingly, the Working Group dedicated much attention to this issue and recommended the following rules, adopted subsequently by the Commission on Human Rights:

1 proposals concerning standard-setting should be forwarded to the Sub-Commission on the Promotion and Protection of Human Rights with the request to undertake a comprehensive analysis of the instrument envisaged and to prepare a draft text;
2 in order to pursue the objectives of the working group drafting an instrument, its Chairperson should be entitled to enter into informal contacts and consultations between meetings of the group;
3 the Commission should consider a specific timeframe (in principle not exceeding five years) for the completion of the work of a working group drafting an instrument.

The Commission also decided to consider the extension of the mandate of a working group, if necessary. Alternatively, the Commission could decide to provide a period of reflection (one to two years) that could be used by the Chairperson for further consultations or to examine the working methods applied by the working groups concerned.

Making the standard-setting process more effective and, in particular, shorter would be a major contribution to the promotion and protection of human rights and to the position of the Commission in general. It may be recalled that in the cases of both the 1992 Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities and the 1998 Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, commonly known as the Declaration on Human Rights Defenders, it took 13 years for the respective working groups to complete the drafting process. This observation should not, however, prompt any conclusions which would question the respectable achievements of the international community in human rights standard-setting during the last 50 years.

Country situations  If a human rights situation in a country is on the Commission’s agenda, or a member or group of members is expected to propose that the Commission take action on a country situation, the delegation of the country concerned may, in fact, take one of the following positions:
1. join the consultations and subsequently agree or disagree with the negotiated position of the Commission;
2. refuse to participate in the consultation process which does not exclude its public statements;
3. object to the consideration of the human rights situation in its country through a formal ‘no action motion’, which must be voted immediately.

A consensus position of the Commission can be articulated in a statement of the Chairperson that replaces a resolution. Since it is a negotiated text between interested delegations and the delegation of the country concerned and expresses the consensus position of the whole Commission, the Chairperson’s statement is perceived as a softer step vis-à-vis a country’s human rights situation than a resolution even though for the same reasons, it can have greater impact on future developments than a resolution which may be stronger in its language but rejected by the government concerned. This dilemma is not unusual for the Commission’s members.

It goes without saying that the agenda items related to country situations are the most spectacular moments of the session, drawing the attention of the delegations, non-governmental organizations and the media. Nor is it surprising that governments are ready to develop campaigns at different levels to avoid this sort of public scrutiny over their human rights record. It is widely said that the debates on country situations are highly politicized, but it is nevertheless the Commission’s responsibility to react impartially to serious human rights violations. The High Commissioner for Human Rights, in her closing address to the Commission on 26 April 2002 stressed:

I am particularly worried about a possible trend seeking to weaken the role of protection that this Commission has been exercising. One could see this in the voting on country situations, where there has been, at this session, a preference for an approach excluding action if consensus was not possible. The core role of the Commission in protecting human rights through drawing attention to violations and abuses must be retained. But it is clear that, in the future, it needs to be matched by a much more significant commitment to provide resources for technical co-operation and advisory services to assist countries in building and strengthening their national capacity in the rule of law, the administration of justice, and adherence to human rights norms and standards. Criticism will then be perceived as constructive and forward-looking, not finger-pointing in a judgmental way.32

Controversies around the human rights situations in specific countries often make it indispensable to vote on the respective resolutions. Unfortunately, it also happens that governments refuse to recognize a resolution addressing them. Such an attitude of the government does not deprive, however, the resolution of its applicability. Reports requested are prepared and other steps undertaken. What sometimes takes place is a refusal by the government concerned to cooperate with a Special Rapporteur established for the country or to follow on other steps recommended by the Commission. Characteristically, however, governments usually, sooner or later, are inclined
to cooperate, even if initially opposed. The authority of the Commission and the attitude of the public informed about the process are important factors in this regard.

Reaction to emergencies  In 1990, in reaction to the Commission’s sessional mode of working and also to the need to equip this central human rights body with the opportunity to promptly react to large scale human rights emergencies, ECOSOC created the possibility of convening the Commission for special sessions. Since then, the Commission has been convened five times for such sessions: twice in 1992 regarding the situation of human rights in the territories of the former Yugoslavia; in 1994 regarding the situation of human rights in Rwanda; in 1999 regarding the situation in East Timor; and in 2000 regarding the situation of the human rights of the Palestinian people. Special sessions are convened if a request, which can be submitted by a member (or members) of the Commission, is endorsed by a minimum of half of its members. All requests for a special session have so far been successful. At a special session, the Commission exclusively debates the situation which provided the rationale for its convening. The Commission may adopt resolutions expressing its views and determining further measures to address the situation. Examples of such measures are: the nomination of a Special Rapporteur for the situation under discussion (former Yugoslavia, Rwanda); the establishment of a commission of inquiry into alleged human rights violations (East Timor, the Middle East); and the request to the Secretary-General or High Commissioner for Human Rights to report on the situation to the Commission and the General Assembly.

The Commission’s system  In carrying out its mandate, the Commission benefits from the input by its bodies and procedures that have now developed into quite a sophisticated system. ECOSOC empowered the Commission on Human Rights to establish two Sub-Commissions: the Sub-Commission on Freedom of Information and of the Press and the Sub-Commission on the Prevention of Discrimination and Protection of Minorities. The Commission elected both Sub-Commissions at its 1st session in 1947. The mandate of the first expired in 1952.

The Commission on Human Rights may also establish working groups which meet inter-sessionally. The objective of such working groups is to draft human rights treaties or declarations concerning human rights standards, to analyse substantive issues or deal with organizational matters. At present, the following working groups support the Commission: the Working Group on the Right to Development; the Working Group on Guidelines on Structural Adjustment Programmes and on Economic, Social and Cultural Rights; the Working Group on a draft United Nations Declaration on the Rights of Indigenous Peoples; and the Working Group on Situations established under item 9(b) to examine human rights situations referred to the Commission by the Working Group on Communications. If the matter under consideration permits, which is most frequently the case, these working groups have an open-ended character, which means that all those who
participate in the work of the Commission are entitled to take part in their
work in accordance with the same principles. Only the meetings of the
Working Group on Situations are open exclusively to the members. The
working groups drafting human rights instruments usually meet once a
year for two weeks. An essential tool of the Commission on Human Rights
constitutes its special mechanisms established to monitor the implementa-
tion of specific human rights standards (see 'Non-conventional procedures'
below). They include, among others, two Working Groups: on Arbitrary
Detention and on Enforced or Involuntary Disappearances.

Assessment  Any assessment of the Commission on Human Rights must
recognize its centrality within the United Nations human rights organs and
bodies. The High Commissioner pointed out that the Commission 'has a
history of solid achievement in both defining the content of international
human rights norms and in their promotion and protection ... The effective
functioning of the Commission is a legitimate concern for all of its partici-
pants, and more importantly for all those who rely on it'.

The Commission has provided the institutional framework for drafting
most of the human rights treaties and international declarations developing
human rights standards, including the Universal Declaration of Human
Rights and the International Covenants on Human Rights. Human rights
treaties and declarations, hammered out since 1948, produce not only an
impressive picture but are, indeed, the fundamental tool in the hands of the
international community. The Commission has elaborated major strategies
and procedures for the promotion and protection of human rights. Debates
in the Commission have contributed to the broadening of the United Na-
tions' agenda concerning human rights. Finally, it has been the Commission
that has responded to major human rights violations in different regions of
the world and has provided a platform for victims and their advocates to
address the international community. However, it is not only its substantial
output that proves the importance of the Commission; one can also see its
importance in such indicators as the increasing number of high-ranking
representatives of Member States and important world personalities who
come to the Commission as guest speakers. Many representatives of inter-
national and regional organizations, and a remarkable number of actively
participating non-governmental organizations, also give evidence of the
role played by this organ. The reform of the Commission in the follow-up to
the World Conference on Human Rights (see above) proves that the Com-
mission can mobilize its potential to reflect on its own work.

Anyone who follows the developments in the Commission on Human
Rights is also aware of the problems that affect this organ. As an intergov-
ernmental body, it is sensitive to the political processes that influence the
environment in which it addresses human rights problems. Otherwise it
would be difficult to explain why, even with regard to questions which
already seem to be resolved, tensions return and sometimes dominate the
debate. Hence, from different corners one can hear calls for a depolitiza-
tion of the human rights area, close cooperation between states and the
Commission on Human Rights, and a comprehensive understanding of the principle that the promotion and protection of human rights constitute a legitimate concern of the international community as stressed by the World Conference on Human Rights. It is noteworthy that the Secretary-General recognized it purposeful to make a strong statement on the role of the Commission in his report to the 57th session of the General Assembly:

The Commission on Human Rights is a vital part of the Organization, with a glorious history ... People all over the world look to it for protection of their rights and for help to win for themselves the better standards of life in larger freedom referred to in the Preamble to the Charter. I strongly urge Member States to keep in mind the true purpose of the Commission, and to seek ways of making it more effective. They must realize that, if they allow elections and debates to be dictated by political considerations, or by block positions, rather than by genuine efforts to strengthen human rights throughout the world, the credibility and usefulness of the Commission will inevitably be eroded.38

The Sub-Commission on the Promotion and Protection of Human Rights

**Mandate and composition** This Sub-Commission, formerly known as the Sub-Commission on Prevention of Discrimination and Protection of Minorities, was created in 1947 as a relatively small body of 12 members who were ‘... to undertake studies, particularly in the light of the Universal Declaration of Human Rights, and to make recommendations to the Commission on Human Rights concerning the prevention of discrimination of any kind relating to human rights and fundamental freedoms and the protection of racial, national, religious and linguistic minorities’. It was also expected to perform other functions entrusted to it by ECOSOC and the Commission on Human Rights.39 While the formal description of the main functions of the Sub-Commission has remained the same, its composition, agenda and overall profile have evolved significantly over the years. The Sub-Commission now has 26 members who have the same number of alternates and who are elected for a period of four years based on the principle of an equitable geographical representation.40 At present, seven experts come from Africa, five from Asia, five from Latin America and the Caribbean, three from Eastern Europe and six from Western European and other states.

**Evolution and reform** The legacy of the Sub-Commission is widely respected. It includes numerous drafts, studies, and proposals submitted to the Commission on Human Rights for further action. The findings and ideas elaborated by the Sub-Commission have frequently stimulated not only the Commission to take action, but also other parts of the United Nations human rights programme. The Sub-Commission’s contribution to the drafting of all the most important human rights standards is unquestionable. Finally, it has developed into an important component of the international monitoring of the implementation of human rights, especially within the ‘1503 procedure’. 
In the course of time, however, the Sub-Commission has been exposed to quite strong criticism for departing from its original mandate and profile. It has been pointed out that its discussions increasingly involve political components. The large participation of government's representatives, United Nations organs and bodies, and non-governmental organizations has complicated the preservation of the expert nature of this body, making its sessions similar to those of the Commission. Its growing workload has also caused concern, since analysis and studies expected from an expert body require more time for reflection and evaluations than that available. It was in this context that, in the framework of the recent reform of the Commission on Human Rights, the Working Group on Enhancing the Effectiveness of its Mechanisms reviewed extensively the work of the Sub-Commission and formulated several fundamental recommendations that have now been largely implemented. While recognizing the contribution of the Sub-Commission to the human rights work of the United Nations, the Working Group stressed the need for clarification and adjustment of its mandate. Taking into consideration that the Sub-Commission agenda had already included many elements which go well beyond the initial tasks of the prevention of discrimination and protection of minorities, the Working Group recommended renaming this body to the Sub-Commission on the Promotion and Protection of Human Rights.

Studying the documents of the Working Group one gets the impression that two main considerations guided the reform of the Sub-Commission. First, the Working Group endeavoured to reinstall the Sub-Commission as an indubitably auxiliary body of the Commission, while avoiding overlapping of agendas and methods of work of both organs. Second, the Group was guided by a rather common criticism of the Sub-Commission for having lost much of its independency, and thus credibility and influence, as result of its increasingly political profile. Reform proposals therefore sought the reinforcement of the Sub-Commission's independency as an expert body.

The Working Group called upon the Commission on Human Rights to strengthen its role in setting priorities for the work of the Sub-Commission and to ensure that duplication with work of other competent bodies and mechanisms was avoided. The Sub-Commission should concentrate on studies, research and providing expert advice requested by the Commission. Research and studies carried out by the Sub-Commission on its own initiative should comprise a modest fraction of its workload. It can debate only those country situations which are not dealt with by the Commission. It can also address serious violations of human rights in any country if they are of an urgent nature. However, such debates cannot be concluded by country-specific resolutions and can only be reflected in the summary records. The Working Group stressed that, while considering this question, it was aware that "... resolutions on country situations risk duplication with the work of the Commission and creating a perception of politicization of independent experts." Furthermore, the Sub-Commission was recommended not to adopt thematic resolutions, which contain references to specific countries. Finally,
its involvement in the communication procedure (‘1503’) has been substantially limited (see below).

The reform of the Sub-Commission envisages that this body will continue to play an important role in standard-setting. Before establishing a working group to draft a new human rights instrument, the Commission on Human Rights should ‘... where the necessary groundwork has not otherwise been undertaken, consider requesting the Sub-Commission to undertake a study on the question at hand and to prepare a draft text which should include a comprehensive analysis, with substantive comments’.44

Although it was recognized by the Working Group that the membership should be as small as possible, it was decided to maintain the present number of members (26) with a view to ensuring the effectiveness of this body and the appropriate representation of different regions and legal systems. In view of the existing electoral practice, it was not surprising that the Working Group linked the issue of elections with the question of the independence of this organ. The fact that candidates to the Sub-Commission had sometimes been designated from among high-ranking officials of governments, including ambassadors, was widely criticized. The Working Group also observed that the election of the members through the Commission was more transparent and democratic than the appointment of candidates. However, it refrained from indicating which categories of employment should be perceived as incompatible with membership in the Sub-Commission, recognizing this issue to be too complex. The Working Group only emphasized that ‘... persons putting their candidacies forward for membership, and governments in electing the membership, should be conscious of the strong concern to ensure that the body is independent and is seen to be so’. One can only agree with the Working Group’s conclusion that ‘Members of the Sub-Commission should maintain the highest integrity and impartiality and avoid acts which would affect confidence in their independence’.45

Organization of work The organization of work is based on ‘Guidelines for the application by the Sub-Commission on the Promotion and Protection of Human Rights of the rules of procedure of the functional commissions of the Economic and Social Council and other decisions and practices relating thereto’.46 The annual sessions are convened, at present, for three weeks in August (previously four weeks). They are attended by observers from states, United Nations agencies and programmes and other intergovernmental and non-governmental organizations in consultative status with ECOSOC. The agenda of the 53rd session (2001), which was the result of the reform of the Sub-Commission, nevertheless remained very, or even too, lengthy. It addressed numerous substantive items under the following general headings:

1 the question of the violation of human rights and fundamental freedoms;
2 the administration of justice;
3 economic, social and cultural rights;
4 the prevention of discrimination; and
5 other human rights issues.

The Sub-Commission placed 51 specific themes under these headings.

To illustrate the work of the Sub-Commission, one should also refer to the studies and analysis on its agenda. In 2001 the following six studies entrusted to its Special Rapporteurs were ongoing:

- globalization and its impact on the full enjoyment of all human rights
- the concept and practice of affirmative action
- the rights of non-citizens
- traditional practices affecting the health of women and the girl child
- terrorism and human rights
- human rights and human responsibilities.

The Sub-Commission also completed a study on ‘Indigenous peoples and their relationship to land’ and recommended to the Commission on Human Rights a study on ‘Promotion of the realization of the right to drinking water and sanitation’. In addition, the preparation of 16 working papers was entrusted to members of the Sub-Commission.

The work of the Sub-Commission is supported by its working groups. At present, the pre-sessional working groups include: the Working Group on Contemporary Forms of Slavery (established in 1974), the Working Group on Indigenous Populations (established in 1982), and the Working Group on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities (established in 1995). A sessional working group deals with the administration of justice, another one with the working methods and activities of transnational corporations, and still another one with communications, which addresses a consistent pattern of gross and reliably attested violations of human rights within its terms of reference (see below).

Assessment Looking at the recent changes in the work of the Sub-Commission, it appears that they have brought this organ much closer to its initial mandate as a body of independent experts constituting a think tank within the system of the Commission on Human Rights. Free from political constraints resulting from the representation of governmental standpoints, the Sub-Commission can play a very important role as a forum for analytical work, as well as in assisting the Commission in standard-setting and in efforts aimed at the full implementation of international human rights standards.

The Commission on the Status of Women

The Commission on the Status of Women was established in 1946 with the same status as the other functional commissions of ECOSOC. The initial number of 15 members has been gradually increased to 45. Commission
members are elected for a term of four years and represent member states. The Commission’s composition is based on the principle of equitable geographical distribution. In 1989, ECOSOC took the decision to replace the biannual cycle of the Commission’s sessions by annual sessions.

The Commission’s mandate includes the preparation of recommendations and reports to ECOSOC on the promotion of women’s rights in the political, economic, civil, social and educational fields. In 1987, ECOSOC decided to specify further this mandate by including the promotion of the objectives of equality, development and peace, the monitoring of the implementation of measures aimed at the advancement of women, and the evaluation of the progress made at the international, regional and domestic levels in this regard.\(^\text{51}\) Consideration of confidential and non-confidential communications concerning violations of the status of women\(^\text{52}\) also constitutes a part of the Commission’s mandate. In the follow-up to the 1995 Fourth World Conference on Women in Beijing, China, the Commission integrated into its work programme the implementation of the Platform for Action adopted by the Conference.

At its 45th session in 2001, two main themes headed the Commission’s agenda:

- women, the girl child and human immuno-deficiency virus/acquired immuno-deficiency syndrome (HIV/AIDS)
- gender discrimination and all other forms of discrimination, in particular racism, racial discrimination, xenophobia and related intolerance.

The Commission is the main forum within the United Nations system, which elaborates and implements programmes concerning the human rights and equal status of women. Its sessions are attended not only by governments, but also by representatives of United Nations agencies and programmes, regional organizations and non-governmental organizations. The Commission adopts its own resolutions and drafts to be considered by ECOSOC. It is also a catalyst for the coordination of efforts made by various organizations to develop the protection of women and facilitate their advancement.\(^\text{53}\)

United Nations High Commissioner for Human Rights

The genesis of the institution

During the preparatory process to the World Conference on Human Rights between 1991 and 1993, in the convenient political climate of the end of the Cold War, Amnesty International re-introduced the idea of a High Commissioner for Human Rights.\(^\text{54}\) However, it soon turned out that doubts and fears accompanying the concept of the new institution from the moment it was first proposed in 1948 had not disappeared, and the debate appeared again to be highly controversial. Nevertheless the World Conference
managed to recommend ‘... to the General Assembly that, when examining the report of the Conference at its 48th session, it begin, as a matter of priority, consideration of the question of the establishment of a High Commissioner for Human Rights for the promotion and protection of all human rights’. In early October 1993, the Third Committee of the General Assembly established an open-ended Working Group ‘... to discuss the ways and methods of implementation of the Vienna Declaration and Programme of Action’. In fact, the Working Group concentrated at that time on the recommendation concerning the High Commissioner. After a long and controversial debate, the participating delegations finally reached consensus shortly before the end of the autumn part of the 48th session. The General Assembly created the post of the High Commissioner for Human Rights on 20 December 1993, by resolution 48/141. The seat of the High Commissioner is located in Geneva. By giving consensus support to the creation of this new institution, the international community has empowered it with a strong moral and political legitimation.

The first United Nations High Commissioner for Human Rights, José Ayala Lasso (Ecuador) took up his duties in Geneva on 5 April 1994. The second High Commissioner, Mary Robinson began her tenure on 12 September 1997. Sergio Vieira de Mello (Brazil) became the third High Commissioner on 12 September 2002.

The status of the High Commissioner

The High Commissioner is appointed by the United Nations Secretary-General, subject to approval by the General Assembly. This procedure gives the mandate-holder high authority in contacts with governments, as well as United Nations organs and bodies. During the appointment process, due regard should be given to geographical rotation. The High Commissioner is expected ‘... to be a person of high moral standing and personal integrity and shall possess expertise, including in the field of human rights, and the general knowledge and understanding of diverse cultures necessary for impartial, objective, non-selective and effective performance of the duties [...]’. The term of office is four years and the incumbent may be re-appointed once only.

In accordance with resolution 48/141, the High Commissioner ‘... shall function within the framework of the Charter of the United Nations, the Universal Declaration of Human Rights, other international instruments of human rights and international law, including the obligations, within this framework, to respect the sovereignty, territorial integrity and domestic jurisdiction of states to promote the universal respect for and observance of all human rights, in recognizing that, in the framework of the purposes and principles of the Charter, the promotion and protection of all human rights is a legitimate concern of the international community’.

The High Commissioner enjoys the rank of an Under-Secretary General of the United Nations. The function of ‘... the United Nations official with principal responsibility for United Nations human rights activities ...’ places
him/her at the centre of the United Nations human rights programme in
genral, not only within the Secretariat of the Organization itself. In the
implementation of the mandate, the High Commissioner acts ‘... under the
direction and authority of the Secretary-General’ and ‘... within the frame-
work of the overall competence, authority and decisions of the General
Assembly, the Economic and Social Council and the Commission on Hu-
man Rights ...’ In other words, the competence of the High Commissioner
may not go beyond the competencies of these organs. The General Assem-
bly, the ECOSOC and the Commission on Human Rights can also address
their recommendations to the High Commissioner.

The High Commissioner’s close association with the main United Na-
tions organs relevant to human rights is also reflected in the competence to
make recommendations to the ‘... competent bodies of the United Nations
system in the field of human rights ... with a view to improving the promo-
tion and protection of all human rights’.\(^58\) In this way, the High Commissioner
has been equipped with a strong practical instrument for the implementa-
tion of his/her mandate. In practice, the incumbents regularly address the
General Assembly, ECOSOC, the Commission on Human Rights and other
human rights organs and bodies to share their views and present proposals
for action.

The responsibilities of the High Commissioner

Resolution 48/141 provides for the High Commissioner’s specific responsi-
bilities\(^59\) which may be categorized as follows:

- **Promotion and protection of human rights:**
  - promoting and protecting the effective enjoyment by all of all
civil, cultural, economic, political and social rights;
  - promoting and protecting the realization of the right to develop-
  - enhancing international cooperation for the promotion and pro-
  - providing advisory services and technical and financial assistance
  - with a view to supporting actions and programmes in the field of
  - human rights.

- **Reaction to situations challenging human rights:**
  - playing an active role in removing the current obstacles and in
  - meeting the challenges to the full realization of all human rights
  - and in preventing the continuation of human rights violations
  - throughout the world;
  - engaging in a dialogue with all governments with a view to secur-
  - ing respect for all human rights.

- **Co-ordination and adaptation to the existing needs of the United Nations
  system of human rights protection:**
  - co-ordinating activities for the promotion and protection of hu-
  - man rights throughout the United Nations system;
Human Rights

- co-ordinating relevant United Nations education and public information programmes in the field of human rights;
- strengthening the United Nations machinery in the field of human rights with a view to improving its efficiency and effectiveness.

The High Commissioner should take action, on his/her own initiative, to promote or protect human rights, wherever and whenever required. He/she is also obliged to carry out the tasks assigned by the competent bodies of the United Nations in the field of human rights, including the United Nations Secretary-General, the General Assembly, ECOSOC and the Commission on Human Rights. However, the mode of action, whether public or confidential, whether including an on-the-spot mission, the establishment of a monitoring system or the offering of good offices, lies within the discretion of the High Commissioner.

The High Commissioner should ‘... report annually on his/her activities, in accordance with his/her mandate, to the Commission on Human Rights and through the Economic and Social Council, to the General Assembly’. These reports are a useful source of information about the High Commissioner’s activities and his/her views concerning crucial human rights issues. In addition to annual reports, the High Commissioner submits, at the request of the Commission on Human Rights or the General Assembly or on his/her own initiative, reports on specific human rights issues or country human rights situations. These reports are prepared on the basis of information received from governments, various parts of the United Nations system, regional and international organizations and non-governmental organizations and collected by his/her Office. They can be of a factual or analytical nature. Sometimes, a visit by the High Commissioner or a representative or a fact-finding mission precedes the report. This increasing reporting activity coincides with reports of the Secretary-General to the various bodies which exclusively, or partially, cover human rights issues which are thematic or country related.

In some cases, the High Commissioner is requested, ‘... to keep Member States informed’ of the human rights developments in a country. In such situations, it is for the High Commissioner to choose the form of providing relevant information; it may be oral information or a part of a written general report, or a written specific report. In view of the recently developed permanent system of work of the Bureau of the Commission and the newly introduced informal meetings of the Commission in September, the High Commissioner also uses these opportunities to keep the Commission informed.

The Office of the High Commissioner (OHCHR) provides support to the High Commissioner and the United Nations human rights programme in general. Its responsibilities are determined by both the High Commissioner’s mandate and the tasks of the former United Nations Centre for Human Rights that had assisted human rights bodies and mechanisms until 1997 before it was integrated into the OHCHR.
The usual mutual influence between a programme and its secretariat is particularly strong in case of the OHCHR and the United Nations human rights programme. This is understandable in view of the wide programmatic mandate of the High Commissioner and his/her central position within the programme. The outline of the main trends in the evolution of the UN human rights programme below takes the indicated linkage as a point of departure.

**From standard-setting to standard-implementation** The value of human rights is largely tested by their implementation. Now that the main body of international human rights law has been established, the attention of the international community has shifted towards the impact of its standards on real life. It is inside the follow-up to the 1993 World Conference on Human Rights that the implementation efforts are more equally addressing all human rights. The United Nations human rights machinery embraces an increasing number of mechanisms serving economic, social and cultural rights. The agenda of the Commission on Human Rights today reflects, to a much larger extent, the balance between various categories of rights. The Office of the High Commissioner for Human Rights also strongly advocates this approach in its activities. Among the more recent projects, that related to the human rights aspects of poverty reduction programmes, which has led to the elaboration of draft guidelines, provides an example.

The indicated shift of attention does not mean that standard-setting belongs to the past only. Needs in this regard exist and will continue to exist. Among new instruments currently under discussion, the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, the Convention on Human Rights of Disabled Persons, a draft legally binding normative instrument for the protection of all persons from enforced disappearance, and the Declaration on the Rights of Indigenous Peoples can be mentioned.

**From a reactive approach to prevention of human rights violations** The United Nations human rights programme was initially conceived, in addition to standard-setting and the promotion of human rights, as a mechanism to report on developments in the field of human rights and follow-on recommendations of policy-making bodies. The present emphasis on prevention means a doctrinal shift, which is guided by the recognition that compensation to victims always comes somewhat too late. In the context of conflict prevention, the Secretary-General called for the United Nations to move ‘from a culture of reaction to a culture of prevention’ and formulated ten principles for a future approach, which *mutatis mutandis* may also be applied to the area of human rights. Measures undertaken by the United Nations, which may have a deterrent impact on human rights violations include *inter alia*: ‘urgent appeals’ by special procedures (see below); requests by treaty bodies for emergency reports; the urgent discussion of situations in bodies such as the Committee on the Elimination of Racial Discrimination; the urgent dispatch of personal envoys of the Secretary-
General, the High Commissioner for Human Rights, or of other organizations; the dispatch of human rights and humanitarian observers or fact-finders; the establishment of international courts; and proposals for the establishment of a rapid reaction force. The OHCHR, as well as special procedures of the Commission on Human Rights, treaty-based bodies and other parts of the human rights machinery, monitor situations involving a high human rights risk factor, contribute to early warning mechanisms of the United Nations, as well as provide expert advice regarding measures aimed at the resolution of human rights problems.

It has also been widely recognized that combating impunity is essential for the prevention of human rights violations. The United Nations human rights programme has carried out several inquiries into such breaches of international law. For example, under the mandate of the Commission on Human Rights, the Joint Investigative Mission of Special Procedures for the DRC was established in 1997, the International Commission of Inquiry on East Timor in 1999, and the Human Rights Inquiry Commission pursuant to resolution on violations of the human rights of the Palestinian people by Israel in 2001. In 1997, the Secretary-General established an Investigative Team for the DRC and in 2002 sent a forensic mission to Afghanistan. The General Assembly decided to establish a UN Investigation Team for Afghanistan in 1998. In 1999, the High Commissioner carried out an inquiry into human rights violations in the former republic of Yugoslavia, Kosovo. Finally, the government concerned can also ask for an inquiry, as was the case in 2000, when the International Commission of Inquiry was established for Togo. In almost all such situations, the OHCHR provides secretariat support.

From service to advocacy The establishment of the mandate of the High Commissioner opened new opportunities to the United Nations Secretariat in the area of human rights. A substantial part of this mandate is human rights advocacy – needless to say, a particularly complicated challenge in a multiple diversified world. Although the very notion of ‘advocacy’ does not appear in resolution 141, several provisions of this document determine the High Commissioner’s responsibilities in this regard. In particular, two of them need to be mentioned here – namely those which establish the responsibility of the High Commissioner to play ‘an active role in removing the current obstacles and in meeting the challenges to the full realization of all human rights and in preventing the continuation of human rights violations throughout the world ...’ and to engage ‘in a dialogue with all Governments in the implementation of his/her mandate with a view to securing respect for all human rights’.

Advocacy means an active advancement and defence of human rights in all countries, following the principle that ‘nobody is perfect’. Advocacy also consists in supporting those who work for human rights, including organs and bodies of the United Nations, non-governmental organizations and other partners, which entails facilitating dialogue between governments and the United Nations human rights machinery, in particular special procedures and treaty bodies.
The High Commissioner's dialogue for human rights may take different forms. While on missions, the High Commissioner always addresses human rights problems encountered in the visited country. This could include structural problems, for example, gender discrimination, the existence of penalties unacceptable from the human rights points of view, access to education, or interventions on behalf of, for example, human rights defenders or those imprisoned for their political views. On some occasions, the High Commissioner appoints a personal envoy to undertake missions to facilitate the achievement of human rights goals. This happened, for example, with a view to addressing the situation of persons deprived of liberty in the context of the Kosovo crisis. While performing his/her advocacy function, the High Commissioner also refers to the public at large through statements, press releases and interviews.

From formal scrutiny to technical cooperation One of the major changes in the human rights programme has resulted from the recognition that reviewing and commenting on country human rights records, though vital, is not enough. Without national capacities to promote and protect human rights, comments and advice coming from the human rights bodies may remain ineffective. The United Nations human rights programme is, therefore, increasingly involved in assistance to countries to develop national infrastructures for human rights.

The United Nations Voluntary Fund for Technical Cooperation in the field of human rights, established in 1987, is annually funding projects in approximately 35 countries, which include a variety of activities, ranging from constitutional and legislative reform assistance to training for relevant professional groups, such as the administration of justice, police and prison officials. Support for national human rights institutions established in accordance with the Paris Principles is one of its central sub-programmes. To cope with the increasing demand, OHCHR cooperates with UNDP, UNICEF, UNESCO and other organisations.

From Headquarters to the field One of the most striking changes the United Nations human rights programme launched in the 1990s was with its operationalization. Twenty-six human rights field presences have been deployed around the world, from Cambodia to Colombia, from the Great Lakes of Africa to the Balkans and Mongolia. At the beginning of this process, the impartial, independent and objective monitoring of the human rights situation on the ground, in direct contact with victims, witnesses and authorities, was seen as the particular contribution of field presences. Over time, this function has usually been combined with technical assistance, as, for example, in Colombia, Cambodia, and Abkhazia/Georgia.

More recently, however, new important developments have taken place. First, following the review of peace operations at the request of the Secretary-General, human rights components have become an integral part of peace operations established by the Security Council. OHCHR provides substantive and, to some extent, organizational support to them (for exam-
ple, in Sierra Leone, Angola, DRC). Second, United Nations country teams are getting increasingly involved in human rights work. Here the OHCHR plays the role of the substantive resource unit. And, finally, the OHCHR is building up a network of its regional/subregional advisors who must cooperate with regional organizations, United Nations agencies and programmes, governments and civil society.

*From isolation to an integrated approach and partnerships* Initially, human rights was perceived as a specialized area with few links to other major United Nations activities. The end of the Cold War and the 1993 World Conference on Human Rights gave an important impetus to further advancing human rights on the United Nations agenda. The aforementioned Secretary-General’s ‘United Nations: Programme of Change’ integrated human rights into the programme of all the most important management structures of the United Nations. The High Commissioner for Human Rights is present in all four Executive Committees: Peace and Security, Social Affairs, Development, and Humanitarian Affairs. Examples of programmatic changes are provided by the documents issued by developmental organizations, for example, the UNDP and the World Bank.69 This structural process, sometimes called ‘mainstreaming human rights’, is supported by OHCHR, which develops links with partners within and outside the United Nations. Particularly important is that an understanding emerges among OHCHR partners that integrating human rights into their programmes does not mean just adding new tasks to their existing workload, but rather may help them to carry out their mandates more effectively since human rights standards provide an internationally agreed set of criteria for the orientation and assessment of their work.

*Treaty Monitoring Bodies*

*General*

*Ratification of human rights treaties* The implementation of the six core human rights treaties is monitored by special bodies established for that purpose. These are:

- the Committee on Economic, Social and Cultural Rights (CESCR) for the 1966 International Covenant on Economic, Social and Cultural Rights (ICESCR);
- the Human Rights Committee (HRC) for the 1966 International Covenant on Civil and Political Rights (ICCPR);
- the Committee on the Elimination of All Forms of Racial Discrimination (CERD) for the 1965 International Convention on the Elimination of All Forms of Racial Discrimination (ICERD);
- the Committee on the Elimination of All Forms of Discrimination against Women (CEDAW) for the 1979 International Convention on
the Elimination of All Forms of Discrimination against Women (ICEDAW);
- the Committee against Torture (CAT) for the 1984 International Convention against Torture and Other Cruel, Inhuman or Degrading Treatment and Punishment (ICAT);

The real position and the impact of the treaty-based bodies are basically determined by the level of ratification of the treaties. As of 8 February 2002, the overall number of ratifications of the six core conventions reached 941 (see Table 1.3):

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<th>ICESCR</th>
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<td>148</td>
<td>161</td>
<td>168</td>
<td>128</td>
<td>191</td>
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The independent expert on enhancing the long-term effectiveness of the United Nations human rights treaty system, Philip Alston, named by the Commission on Human Rights,\(^{70}\) recommended the following with a view to improving the ratification process:

1. consultation with the leading international agencies to explore their potential involvement in a ratification campaign;
2. appointment of special advisers on ratification and reporting, and the setting aside of funds for those purposes; and
3. examination of special measures to streamline the reporting process for states with small populations.\(^{71}\)

On the occasion of the 50th anniversary of the Universal Declaration of Human Rights, the Secretary-General and the High Commissioner called on all governments for the universal ratification of the six core human rights treaties by the year 2003. A call for universal ratification of human rights treaties was also included in the documents of the Millennium Summit of September 2000.\(^{72}\)

**Mandate** The establishment of the treaty monitoring bodies, composed of independent experts elected by State Parties and not acting as government agents, was a breakthrough in the approach to the control mechanisms in the field of human rights at the international level. The implementation of fundamental rights and freedoms has been put under the scrutiny and guidance of independent bodies which not only monitor how governments
Human Rights

comply with their obligations deriving from the ratified human rights treaties, but also contribute to the interpretation of the relevant standards, advise on their implementation and assist in the protection of victims of human rights violations. This has been achieved through mandating treaty bodies to:

1. examine the obligatory periodical reports delivered by governments;  
2. develop jurisprudence through the adoption of General Comments (see below); and  
3. consider communications concerning alleged human rights violations (with exceptions referred to below).

The mandate of treaty bodies is also determined by the fact that they have adopted a comprehensive approach in the interpretation of the states’ treaty obligations. The jurisprudence indicates that under the treaties, States Parties have the obligation to respect, fulfil and protect human rights. This means that treaty bodies do not exclusively examine whether the reporting government has interfered with the rights protected by a given treaty, but also review other action to which the State Party is obliged under the treaty.

The treaty bodies report annually about their activities to the General Assembly. In the case of the Committee against Torture, the relevant Convention also mentions States Parties in this context. The Committee on Economic, Social and Cultural Rights reports to ECOSOC which forwards the report to the General Assembly, and the Committee on the Rights of the Child reports every two years to the General Assembly. The concluding observations made by treaty bodies while considering States Parties’ reports, together with possible comments thereon made by States Parties, constitute parts of the annual reports.

**Composition**  
The membership of the treaty bodies has a great impact on their standing and work. Members are elected for four years and can be re-elected. To ensure their unbiased and multifaceted approach, the requirements of equitable geographical distribution of membership, of the representation of the different forms of civilization, and of the principal legal systems, are taken into account during the election process. Another principle states that one nationality can be represented by only one member in a given treaty body. Unfortunately, as stressed on various occasions, the composition of the treaty bodies does not always reflect a geographical and gender balance and, in this context, proposals are sometimes made to introduce quotas, for example, for different regions.

The fact that States Parties often make an effort to elect outstanding specialists to sit on the treaty bodies, and the independent behaviour of experts, are basic premises on which these bodies may build their prestige and authority. Almost 100 experts – members of the Committees – constitute a unique resource group of expertise for the United Nations human rights programme and the wider human rights community.
Organization of work  The treaty bodies work in sessions which take place two or three times a year for two or three weeks. Meetings of the treaty bodies are accessible to the public with the exception of those which deal with communications about human rights violations, and the parts of the proceedings that the rules of procedure, or the chairperson, recognize as private. There is a general rule that the concluding debate on a State Party report is also held in private. The only exception here is the Committee on the Elimination of Racial Discrimination (see below). In order to prepare the meetings and give the participants, particularly reporting states, the necessary time before the debate, the treaty bodies establish pre-sessional working groups convened in advance. In addition to the preparation of the review of the state reports (adoption of list of issues – see the section, ‘Reports to the treaty bodies’, below), such working groups may also focus on other aspects of the preparation of the session of the Committee as, for example, the allocation of time, the response to supplementary reports containing additional information, and draft General Comments.

Some treaty bodies have decided to dedicate one or more of their meetings to a general discussion on an issue of particular importance to their area of competence. In the case of the Committee on Economic, Social and Cultural Rights, such a discussion takes place at each session, usually on the Monday of the third week. As the Committee itself explains: ‘The purpose is twofold: the day assists the Committee in developing in greater depth its understanding of the relevant issues; and it enables the Committee to encourage inputs into its work from all interested parties.’ The Committee selected the following issues for its general discussions: the right to adequate food; the right to housing; economic and social indicators; the right to take part in cultural life; the rights of the ageing and elderly; the right to health; the role of social safety nets; human rights education and public information activities relating to the Covenant; the interpretation and practical application of the obligations incumbent on States Parties; a draft Optional Protocol to the Covenant; the revision of the general guidelines for reporting; the normative content of the right to food; globalization and its impact on the enjoyment of economic, social and cultural rights; the right to education; and, recently, the right of everyone to benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he/she is the author. The Committee on the Rights of the Child held, both in September 2000 and September 2001, a two-day general discussion on ‘Violence against children’. The meeting, which was attended by a large circle of participants, including experts, representatives of governments, intergovernmental and non-governmental organizations, produced an important set of observations and recommendations calling for action at the international and national levels.

General Comments  The treaty bodies are empowered to make General Comments as considered appropriate. In practice, such comments deal with fundamental human rights issues, both in the form of the Committee’s views on the content of human rights standards or an evaluation of typical
manifestations of state or international practice relevant to the implementa-
tion of these standards. In their General Comments, the Committees are
inclined to take a comprehensive approach reflecting different aspects of
the subject. Considerations concerning the content of the right in question
are usually placed in a broad comparative normative framework involving
both universal and regional regulations and jurisprudence. The General
Comments indicate the consequences of violations of a given right and
determine vulnerable groups; they are explicit in interpreting obligations
resulting from the treaty for states and other relevant actors; and formulate
clear recommendations. Although General Comments adopted by one
treaty body are not binding on other human rights organs and bodies, with
regard to either the interpretation or implementation of standards, they
constitute an important point of reference and, in fact, influence the percep-
tion of the binding human rights law and the assessment of its application.
The majority of the treaty bodies take advantage of such opportunities
quite often (see Table 1.4) and, today, it would be difficult to interpret the
standards contained in human rights treaties without placing them within
the background of General Comments.

Table 1.4  Number of General Comments by treaty-based bodies

<table>
<thead>
<tr>
<th>CESC</th>
<th>HRC</th>
<th>CAT</th>
<th>CERD*</th>
<th>CRC</th>
<th>CEDAW*</th>
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<tbody>
<tr>
<td>14</td>
<td>29</td>
<td>1</td>
<td>27</td>
<td>1</td>
<td>24</td>
</tr>
</tbody>
</table>

* CERD and CEDAW adopt ‘General Recommendations’.

Dialogue with partners While executing their monitoring functions, the treaty
bodies are guided by the principle of cooperation with states. The dialogue
is helpful for both a better understanding of problems encountered in the
process of implementation of human rights standards and providing ade-
quate advice on how to resolve them. For example, the Committee on
Economic, Social and Cultural Rights emphasized that the reporting obliga-
tions are designed to assist States Parties in fulfilling their obligations under
the Covenant, enable monitoring States Parties’ compliance with these oblig-
gations, and facilitate the realization of economic, social and cultural rights
in accordance with the provisions of the Covenant. Although the treaty
bodies consequently draw the attention of the governments concerned to
deficiencies in their human rights record, they refrain from public cam-
paigns in specific cases. To strengthen their impact, however, some treaty
bodies have adopted follow-up procedures allowing them to watch the
implementation of their recommendations.

United Nations agencies within their own mandates have also become an
important partner of the treaty bodies. Many instances illustrate this observa-
tion. The Human Rights Committee reports, for example, on its collaboration
with the United Nations Development Programme, in the context of the Memorandum of Understanding signed by the latter and OHCHR. On the one hand, the Committee notes that UNDP draws guidance from the Committee’s conclusions addressing State Party reports while developing its technical assistance programmes. On the other hand, the Committee benefits from the UNDP input while drawing up lists of issues on State Party reports. CERD decided already in 1972 to develop cooperation with the International Labour Organization (ILO) and the UNESCO and invited both organizations to attend its sessions. The ILO Committee of Experts on the Application of Conventions and Recommendations makes its reports submitted to the International Labour Conference available to the members of the Committee. UNHCR submits comments to the members of the Committee on reports of States Parties if this organization is active in the country concerned. Annual reports of treaty bodies and reports from annual meetings of chairpersons of these bodies provide other instances of this practice.

One can also observe an increasing involvement of civil society in the work of treaty bodies, in particular of non-governmental organizations (NGOs). Generally speaking, NGOs are an important source of information for members of the Committees. National NGOs are sometimes involved in the preparation of governmental reports. In some cases, the Committees receive separate reports from NGOs, parallel to state reports. Equally important is the fact, however, that the dialogue between governments and the Committees may stimulate an internal dialogue in countries based on international human rights standards and jurisprudence of the treaty bodies. The importance of NGOs in the work of the Committees has been reflected in rules of procedure adopted by these bodies. The Committee on Economic, Social and Cultural Rights was the most precise body in this regard by establishing criteria to be met by information provided by NGOs, according to which such information should: ‘(a) focus specifically on the provisions of the International Covenant on Economic, Social and Cultural Rights; (b) be of direct relevance to matters under consideration by the Committee; (c) be reliable; (d) not be abusive.’ The Committee also decided to make available any written information formally submitted to it by individuals or NGOs in relation to a State Party report as soon as possible to the representative of the state concerned.

Conditions of work For a long time, the treaty bodies have been facing serious problems concerning how to cope with their growing workload. The very limited time spent by the treaty bodies on sessions, the rapidly growing number of reports and individual communications to be considered and, in addition, the very limited resources available to support the treaty-bodies system have led to long delays in different procedures. The consequences may, of course, be serious; that is a diminishing impact of the treaty bodies and the treaty system in general. In response to this situation, the High Commissioner for Human Rights has taken steps to strengthen the support of the United Nations Secretariat for the treaty bodies through the following Plans of Action:
for Strengthening the Implementation of the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

- for Strengthening the Implementation of the International Covenant on Economic, Social and Cultural Rights

The Plans' central objectives are: '(a) to reduce the time lapse between the submission of reports by States Parties and their consideration by the respective Committees; (b) to reduce the backlog in complaints under the Human Rights Committee; and (c) to improve the follow-up to treaty body recommendations and observations by States Parties.' The Plans have permitted, inter alia, the deployment of additional staff to service the treaty bodies, an increase in the analytical capacity of these bodies, the development of a database and other information technology facilities, and even the holding of additional meetings of some bodies. In addition, the High Commissioner has also established a 'Petition Team'. However, the barrier to such attempts is finance. The very modest resources allocated to treaty bodies from the United Nations regular budget make it necessary to rely on voluntary funding. In turn, this does not guarantee a sufficient stability of the established capacities. According to a widely shared opinion, the Plans of Action should, therefore, be seen as temporary measures which should be replaced by an increase in funding from the United Nations regular budget.

The need for reforms

In his recent report, the Secretary-General stated that

The existing treaty bodies and human rights mechanisms and procedures constitute a large and intricate network. The growing complexity of the human rights machinery and the corresponding burden of reporting obligations strain the resources of Member States and the Secretariat. As a result, the benefits of the current system are not always clear.

The problems faced by the treaty bodies have recently been the subject of comprehensive studies. Various proposals have been made to make the treaty monitoring system more effective and less burdensome. Some of them appear to be rather radical, as, for example, the possibility of merging all the treaty bodies into one single Committee with overall competence, or the establishing of a human rights court to consider cases of human rights violations and, thus, eliminating the communication procedures from the agenda of the treaty bodies and reducing their workloads. Other proposals envisage consolidating state reports to different treaty bodies into one overarching report, reducing the scope of requested information, and better coordinating the periodicity of reports.
Substantial reforms would however, require, involvement and approval by States Parties. One can expect such a process to be long and complicated, given the highly differentiated levels of ratifications and subsequently composition of State Parties to specific treaties. These differences, as long as they exist, would rather speak in favour of self-contained implementation mechanisms for each of the treaties. Bearing this in mind, the aforementioned independent expert called for changes in the relevant procedural provisions of the human rights treaties to make them more susceptible to amendment. 90

Cooperation between treaty bodies  Despite differences in their mandates and methods of work, all treaty bodies manifest significant similarities. Already in 1988, the meetings of the Chairpersons initiated closer cooperation between the treaty bodies. At the beginning biannual, since 1995 the meetings have been convened annually by the Secretary-General. To illustrate the profile of the meetings – the 13th meeting, held from 18 to 22 June 2001,91 addressed such issues as: support for the work of the treaty bodies; cooperation between them and the Sub-Commission for the Promotion and Protection of Human Rights; various aspects of reform of the treaty body system; and the implementation of treaty body recommendations at the national level. The meeting also provided a framework for one-day consultations with representatives of governments. This informal dialogue was appreciated by both sides. For the Chairpersons, it was an opportunity to draw the attention of governments to the problems encountered by the treaty bodies; for governments, it was an important source of information and an occasion to present their concerns to the treaty bodies. The Chairpersons also met holders of the mandates of the special mechanisms of the Commission on Human Rights to discuss cooperation and to exchange experiences. This meeting recommended, inter alia, enhanced exchange of non-confidential information as well as mutual briefing on activities (including studies and country visits), cooperation in disseminating the expertise accumulated in the jurisprudence and other work of the treaty bodies and of mandate-holders of special procedures. The Chairpersons met the expanded Bureau of the Commission and representatives of the Sub-Commission to discuss cooperation with these bodies. They also received visits from representatives of the United Nations agencies and programmes and from NGOs.

The meetings of Chairpersons increasingly play the role of a sui generis coordinating forum for the treaty bodies.92 It seems, however, that the members of these bodies still feel the need for closer contacts. The Chairpersons endorsed the idea of inter-Committee meetings to develop common approaches to specific issues important to all the bodies and held the first such meeting in 2002 to address methods of work and reservations to the human rights treaties. 93
Individual treaty bodies

Committee on Economic, Social and Cultural Rights  The Committee on Economic, Social and Cultural Rights monitors the implementation of the International Covenant on Economic, Social and Cultural Rights. It is the only treaty-monitoring body which was not established by the respective treaty. The General Assembly, while adopting the Covenant decided that periodical reports on its implementation by States Parties would be considered by ECOSOC. In 1976, ECOSOC established a working group to assist it in considering the reports which, since 1981, was called the 'Sessional Working Group of Governmental Experts on the Implementation of the International Covenant on Economic, Social and Cultural Rights'. In 1985, this group was replaced by the Committee on Economic, Social and Cultural Rights which is similar in character to the treaty-based bodies but anchored in an ECOSOC resolution. The 18 members of the Committee are elected by ECOSOC, not by the States Parties to the Covenant. They meet twice a year for three-week sessions in Geneva. This annual cycle was extended in 2000 and 2001 to a third extraordinary session (see below).

The mandate of the Committee embraces:

1 monitoring the implementation of the Covenant by States Parties through the consideration of their periodic reports and advising them on the means needed to ensure full compliance with the standards laid down in the Covenant; and
2 the adoption of General Comments concerning the implementation of the Covenant.

In light of the ongoing theoretical and political disputes concerning the legal meaning of various standards laid down in this Covenant, the role of the Committee in the determination of their specific content and, thus, the treaty obligations, has gained particular importance.

The Committee thus often issues General Comments not only to articulate its opinion on various aspects of the implementation of the Covenant, but also to explore the content of the standards laid down therein. In 1999, the Committee adopted an Outline for Drafting General Comments on specific rights of the International Covenant on Economic, Social and Cultural Rights, according to which such comments should include the following sections:

1 introduction (general context);
2 normative contents of the right;
3 the obligations of the State Party;
4 obligations of other relevant actors, such as other States Parties, ECOSOC, other United Nations organs, the relevant specialized agencies, and civil society;
5 violations; and
6 recommendations to States Parties.
In its General Comments, the Committee on Economic, Social and Cultural Rights up to November 2002 has addressed 15 issues. At present, the Committee is working on three further General Comments: on Article 3 – equal rights of men and women; Article 15, para. 1(a) – the right to take part in cultural life; and on Article 15, para. 1(c) of the Covenant – intellectual property.

The controversies concerning the nature of economic, social and cultural rights have so far hindered the establishment of the procedure of individual communications and the Committee is not entitled to consider individual cases of alleged human rights violations. The World Conference on Human Rights encouraged ‘... the Commission on Human Rights, in cooperation with the Committee on Economic, Social and Cultural Rights, to continue the examination of optional protocols to the International Covenant on Economic, Social and Cultural Rights’. However, despite advanced projects elaborated within the academic community and a thorough analysis of a draft by the Committee, the Commission on Human Rights has not yet been able to begin formal drafting of the Optional Protocol. At its 57th session, the Commission decided to appoint an independent expert to examine this question. His mandate was renewed at the 58th session and the Commission asked him to report to its next session on the following issues:

1. the nature and scope of the obligations of States Parties under the Covenant;
2. conceptual issues regarding the justiciability of economic, social and cultural rights;
3. the benefits and the practicability of a complaints mechanism under the Covenant and the complementarity between different mechanisms.

At its 58th session, the Commission also decided to establish an open-ended working group of the Commission with a view to considering options regarding the elaboration of an optional protocol to the International Covenant on Economic, Social and Cultural Rights.

An important role is played by the Committee in international dialogue on economic, social and cultural rights. Examples are provided by the general discussion on intellectual property and human rights, organized together with the World Intellectual Property Organization in November 2000, and a consultation on human rights and trade and development with the participation of relevant United Nations agencies and programmes, other international organizations, national human rights institutions, and NGOs in May 2001. The Committee is developing dialogue with the World Bank and the International Monetary Fund, for example, regarding poverty reduction strategies. Its comments were submitted to the Convention drafting the European Charter of Fundamental Rights in Nice, adopted on 7 December 2000 by the European Union. These examples demonstrate that the Committee applies a broad interpretation of its mandate while looking for different methods to enhance the implementation of the Covenant.
The Committee's constant policy is to encourage the participation of NGOs in its activities. They provide the Committee with valuable information on the one hand and, on the other, give publicity to its findings at the country level. In May 1993, the Committee adopted rules\textsuperscript{100} by which NGOs are invited to provide written information relevant to its work any time. At the beginning of each session of the pre-sessional Working Group discussing preparations to review country reports, NGOs may submit relevant oral information. Finally, during the first afternoon of each session, the Committee offers an opportunity to NGOs to make oral presentations; those that wish to benefit from this arrangement have to inform the Committee in advance.

The Committee has undertaken measures to strengthen the impact of its work. Its Rules of Procedure allow it to examine compliance with treaty obligations in the absence of reports from the governments concerned. During 2000–2001, this happened twice. The present follow-up procedure to the Committee's concluding observations was established in 2000.\textsuperscript{101} The Committee may request a State Party to provide information in its next periodic report (or at an earlier date) about steps taken to implement the recommendations contained in the concluding observations. Such information is considered at the next meeting of the Committee's pre-sessional Working Group, which may recommend additional concluding observations in response to that information; or that further information be sought; or that the chairperson inform the State Party that the Committee will take up the issue at its next session. When the Committee considers that it has not received relevant information, it may request the State Party concerned to accept a mission consisting of one or two members of the Committee. Such a decision is of an exceptional nature and is taken only if the Committee concludes that no adequate alternative approach is available. The purpose of an on-site visit is: 'a) to collect the information necessary for the Committee to continue its constructive dialogue with the State Party and to enable it to carry out its functions in relation to the Covenant; (b) to provide a more comprehensive basis upon which the Committee might exercise its functions in relation to Articles 22 and 23 of the Covenant concerning technical assistance and advisory services'. The Committee's mission may gather information from all available sources and should analyse whether it should recommend to the State Party making the technical cooperation programme of the OHCHR available in this connection. If the State Party does not accept the proposed mission, the Committee may address related recommendations to ECOSOC. The Committee has applied the follow-up procedure in relation to two States Parties and has found it very useful.

To address problems arising from the growing workload, the Committee took the initiative of holding extraordinary sessions in August 2000 and August 2001. These sessions were financed from voluntary contributions under the aforementioned Plan of Action and helped to reduce the average delay in examining reports after submission by half, that is to between 12 and 18 months instead of the previous delay of 30 to 36 months. To address
further this issue, the Committee has recently considered the possibility of reducing the number of meetings dedicated to initial reports to three and, in the case of periodic reports, to two. In this way, the Committee hopes that it will be in the position to address six instead five reports per session. Finally, the Committee also decided to apply a flexible approach to the rigid five-year interval for periodic reports.

**Human Rights Committee** The Human Rights Committee was established in 1976 under the International Covenant on Civil and Political Rights. Its 18 members are elected by the States Parties and meet three times a year in Geneva for three-week sessions. Its mandate is laid down both in the Covenant itself and in the first Optional Protocol to the Covenant. It includes:

1. examination of periodical reports submitted by the States Parties on the measures adopted to give effect to the rights recognized by the Covenant and on the progress made in their enjoyment;
2. adoption of General Comments concerning the implementation of the Covenant;
3. consideration of state and individual communications concerning alleged violations of the commitments of the States Parties under the Covenant.

General Comments adopted by the Human Rights Committee are not only instrumental in the implementation of this Covenant, but also provide an essential input to the development of the concept of human rights in general. On average, the Committee has adopted more than one General Comment annually which is a considerable achievement during 26 years. The International Covenant on Civil and Political Rights is the only treaty which does not determine the periodicity of State Party reports, leaving decisions in this regard with the treaty body itself. In accordance with the new consolidated guidelines on States Parties’ reports, the initial report should be prepared on an article-by-article basis. Subsequent periodic reports should focus primarily on issues raised in the Committee’s concluding observations on the previous report. In addition, the State Party can be requested to inform the Committee within a specified period on measures taken to implement the Committee’s concluding observations. Such information is analysed by a group of Committee members who, accordingly, may propose to the Committee a definitive time limit for the submission of the next report.

In situations where a State Party has failed to provide any report despite reminders received, the Committee may inform the government concerned that on a date or at a session duly specified, it intends ‘... to examine in a private session the measures taken by the State Party to give effect to the rights recognized in the Covenant, and to proceed by adopting provisional concluding observations which will be submitted to the State Party’. The Committee can also examine a report submitted by a State Party if the representative of the latter did not attend a scheduled meeting on two or more successive occasions.
To improve the follow-up to the adopted views in the framework of the communication procedures, the Committee designates a Special Rapporteur who monitors the measures taken by states and make recommendations for further action by the Committee. The Committee gives information about follow-up activities in its annual report.107

The Committee resorts to the establishment of working groups to address issues requiring particular attention.108 Two regular working groups which meet before each of the Committee’s sessions deal with communications under the Optional Protocol and with the preparation of lists of issues to be presented to States Parties submitting their reports.

Another important development consists of the Committee’s advanced cooperation with the special procedures of the Commission on Human Rights, relevant agencies and programmes of the United Nations and NGOs. In its last report, the Committee noted that, in particular, the International Labour Organization, the United Nations High Commissioner for Refugees and the World Health Organization shared information with the Committee which was relevant to the consideration of reports submitted by States Parties. The regular working groups were also offered presentations by Amnesty International, Human Rights Watch, PEN International, the International Service for Human Rights, the International League for Human Rights, the Lawyers’ Committee for Human Rights and several national human rights NGOs.

On 30 October 2000, the Committee held its first meeting with representatives of States Parties to the Covenant.109 This meeting was attended by 55 representatives of States Parties and observers to discuss, inter alia, the following issues: difficulties related to the country reporting process; duplication in reporting to different treaty bodies; cross-cutting issues for the entire system of treaty bodies; difficulties with the communication procedure; resources for the work of the Committee; and dialogue between States Parties and the Committee. Both the Committee and States Parties found this dialogue important and decided to hold a similar consultation in October 2002, during the Committee’s 76th session.

The Human Rights Committee suffered in particular over the lack of sufficient resources and this led to delays in the consideration of reports and communications. The establishment of the Petitions Team within the Office of the High Commissioner for Human Rights has considerably accelerated the processing of individual communications. However, the Committee remains rightly concerned that these and other improvements are financed from voluntary contributions under the aforementioned Plan of Action, which may be insufficient to ensure a stable financial basis for support for its work.

The Committee on the Elimination of Racial Discrimination Created by the International Convention on the Elimination of All Forms of Racial Discrimination in 1969, the Committee on the Elimination of Racial Discrimination was the first ever human rights treaty-based body. It has 18
members elected by the States Parties who meet twice a year for three weeks in Geneva. Its mandate includes:

1 examination of periodical reports submitted by the States Parties;
2 adoption of General Recommendations based on the examination of the reports and information received from the States Parties;
3 consideration of State and individual communications concerning alleged violations of the commitments of the States Parties under the Convention.

'Racial discrimination' is interpreted rather broadly both by the Convention and the Committee's own jurisdiction. Pursuant to the Convention, 'racial discrimination' means: 'any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.' While examining country reports, the Committee is thus interested not only in racial discrimination in a narrow 'traditional' sense, but also in other dimensions of combating discrimination, including, for example, measures taken to protect national or ethnic minorities.

In 1991 the Committee established a special procedure which is applied if a state report is more than five years overdue. In such a case, a member of the Committee is requested to present information instead of the report, and the Committee reviews the state's compliance with the treaty obligations on this basis and other information available. The Committee has recently noted that the possibility of the application of this procedure has prompted many States Parties to submit a report or to reassure the Committee of their willingness to submit a report within a specific time. With a view to improving further its work despite the insufficient time at its disposal, the Committee has taken a more flexible approach to the periodicity of the reports (see the section, 'Reporting under human rights treaties'). It is also interesting that the Committee decided to continue adopting concluding observations in public meetings. The wish to maintain the transparency of its debates prevailed in this case.

The Committee is a precursor among the treaty-based bodies in that it developed a special preventive procedure to deter or stop the continuation of violations of the human rights standards enshrined in the Convention. At its 41st session, it already had decided to introduce the prevention of racial discrimination as one of its regular agenda items. At its next session, the Committee adopted a working paper that foresaw the following preventive modalities of action:

1 early-warning measures – 'aimed at addressing existing problems so as to prevent them from escalating into conflicts and [which] would also include confidence-building measures to identify and support structures to strengthen racial tolerance and solidify peace in order to prevent a relapse into conflict in situations where it has occurred';
2 urgent procedures – ‘aimed at responding to problems requiring immediate attention to prevent or limit the scale or number of serious violations of the Convention’.

The working paper also elaborates on criteria for the application of these measures. So far, on the basis of the working paper, the Committee has considered the situations in Algeria, Australia, Bosnia and Herzegovina, Burundi, Côte d'Ivoire, Croatia, Cyprus, Democratic Republic of the Congo, Israel, Liberia, Mexico, Papua New Guinea, Russian Federation, Rwanda, Sudan, the former Yugoslav Republic of Macedonia and Yugoslavia. It also adopted a statement on Africa and on the human rights of Kurdish people and declared its willingness to send its representatives to Liberia to enter into a dialogue with the government with a view to assisting it in fulfilling its obligations under the Convention.\(^{110}\)

The Committee often refers to General Recommendations (Comments) to explain its position on the content of the provisions of the Convention or on its implementation, including the functioning of mechanisms established under this treaty. The full list of General Recommendations adopted so far is presented in the notes section at the end of this chapter.\(^{111}\)

In August 2000, the Committee followed the practice of some other treaty bodies by holding its first thematic public discussion dedicated to discrimination affecting the Roma; this was attended by representatives of other human rights organs and bodies, United Nations agencies and international organizations, as well as NGOs. In the follow-up to this discussion, the Committee adopted a General Recommendation on Discrimination against Roma and declared its intention to continue to organize such thematic discussions in the future.

The Committee against Torture Established in 1987 by the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment of 1984, the Committee against Torture is composed of 10 members elected by the States Parties and meets twice a year for a two-week session in Geneva. The Convention describes in detail the obligations of States Parties regarding the prohibition of the relevant human rights violations, the punishment of perpetrators and the protection of potential and actual victims of torture. As in the case of other treaty-based bodies, the Committee’s principal tasks consist of the consideration of the periodical reports submitted by the States Parties, the elaboration of suggestions and general comments, and the consideration of communications related to alleged violations of the commitments resulting from the Convention.

The Committee against Torture has a particular competence which goes beyond the usual mandate of the treaty bodies.\(^{112}\) It can undertake urgent action if it receives reliable information that torture is systematically practised in the territory of a State Party.\(^{113}\) It means that this procedure can be applied neither to torture appearing incidentally nor to ‘other cruel, inhuman or degrading treatment or punishment’. When undertaking urgent action, the Committee invites the state concerned to cooperate in the exami-
nation of the allegations and provide comments. After having considered
the contribution submitted by the state and other available information, the
Committee may decide to launch an inquiry by one or more of its members
(including a visit to the country) who should urgently report back to it. The
Committee then forwards to the State Party the findings of the inquiry and
its related comments and suggestions. All stages of this procedure are con-
fidential but, with the consent of the State Party, a summary account of the
case may be included in the Committee’s annual report. From its 4th to 26th
session, the Committee dedicated 93 meetings to action under this regula-
tion. A recent case presented in the annual report was related to Peru and
included a country visit by two Committee members.114

Unlike the Committee on Economic, Social and Cultural Rights, the Hu-
man Rights Committee and the Committee on the Elimination of Racial
Discrimination, the Committee against Torture did not spend much time on
General Comments. The first General Comment was published in 1997 and
dealt with the implementation of Article 3 of the Convention (the prohibition
of expelling, returning (non-refoulement) or extraditing a person to a country
where there is substantial ground to believe that he/she would be in danger
of being subjected to torture). Yet, the Committee recently decided to make a
wider use of this possibility and established working groups to discuss the
drafting of General Comments on the definition of torture, the follow-up to
individual communications and overall procedures.

The World Conference on Human Rights, while reaffirming the need to
eradicate torture, stressed that efforts to that end should, first and foremost,
be concentrated on prevention, and called for ‘... the early adoption of an
optional protocol ... which is intended to establish a preventive system of
regular visits to places of detention’. This was a reference to an initiative of
the Delegation of Costa Rica in the early 1980s which, supported by a
number of other countries and some NGOs, proposed to the Commission
on Human Rights that it elaborate a new procedure of regular preventive
visits to places of detention. This proposal was motivated by the fact that,
in the case of torture, there was no possibility of restitution because the
damage caused to victims cannot be erased. In 1992, the Commission on
Human Rights established an inter-sessional Working Group which was
charged with drafting an Optional Protocol. The drafting process was not
easy, and it took the Commission until its 58th session (2002) to adopt it.
The General Assembly adopted the new instrument on 18 December 2002.
However, to come into force, the Optional Protocol needs to obtain 20
ratifications.

The Protocol provides for the establishment of a Subcommittee on Pre-
vention of Torture and Other Cruel, Inhuman or Degrading Treatment or
Punishment of the Committee against Torture, comprised of ten members
who would be entitled to visit places where persons deprived of liberty are
held. It is a particular and important feature of this instrument that it is
speaking in parallel about national preventive mechanisms to the establish-
ment of which State Parties to the Optional Protocol will have obligations.
The Protocol also lays down principles of cooperation between the Sub-
committee and national mechanisms. The States Parties commit themselves under the Protocol to guarantee to the Subcommittee and national mechanisms free access to all places of detention and to all relevant persons (including those deprived of liberty). The proceedings of the Subcommittee will remain confidential unless the State Party concerned wishes otherwise. If the State Party refuses to cooperate with the Subcommittee, or refuses to improve the situation in the light of the Subcommittee’s recommendations, the Committee against Torture would be able, at the request of the Subcommittee, to decide whether to make a public statement on the matter or publish the Subcommittee’s report.115

In the opinion of its members, the Committee does not have sufficient time and resources to perform its mandate appropriately. In this context, the Committee welcomed the strengthening of the capacities of the Secretariat through the Plan of Action mentioned above, in particular, the establishment of the Petition Team to handle individual communications (see the section, ‘Individual communications’). The Committee itself is in the process of examining its working methods with a view to releasing some capacities, but it has been stressed by its members that more basic changes are necessary.

The Committee on the Rights of the Child  The Committee on the Rights of the Child has been in place since 1991. Initially, it was composed of 10 experts, but an amendment to Article 43, para. 2 of the Convention adopted in 1995, which has recently come into force, increased this number to 18. The Committee meets twice a year in Geneva for a three-week session. It is the most universal treaty body, on the one hand, because the 1989 Convention on the Rights of the Child has the largest number of ratifications (191 by 2002). On the other hand, the Convention lays down the standards of the rights of the child related to all human rights: civil, cultural, economic, political, and social. In this way, the Committee is not limited to specific categories of rights as is the case with regard to the Committees dealing with the International Covenants.

The Committee’s mandate comprises both the consideration of the periodic reports of States Parties on the measures taken to implement the Convention and the progress made in this respect, and the adoption of suggestions and General Comments. The Convention, like the International Covenant on Economic, Social and Cultural Rights, does not introduce a specific communication procedure. The Committee on the Rights of the Child faces a backlog of state reports awaiting examination (approximately 50 reports – resulting in a delay of approximately two years before a report is reviewed). The Committee decided, therefore, to make an effort to increase the number of reports reviewed during a session to nine. Recently, it set up a working group to review its working methods, as well as its guidelines on the preparation of periodic reports, in order to further facilitate the preparation of the reports and reduce the related burden. The issue of the periodicity of the reports is also on the Committee’s agenda.
For a long time, the Committee was reluctant to develop its jurisprudence in the form of General Comments. The first and only General Comment so far adopted was in 2001 and addressed 'The aims of education'. Perhaps the Committee preferred first of all to consolidate its work and will now elaborate General Comments more often. Recently, it decided to begin, in consultation with partners, drafting two General Comments on:

1. the role of national human rights institutions with regard to the rights of the child; and
2. HIV/AIDS and the rights of the child.¹¹⁶

It is interesting that it called on outside resources to produce its first General Comment. In addition to debates within the Committee itself, the drafting was undertaken with the assistance of a consultant and through a meeting organized by a NGO with the participation of the Rapporteur of the Committee on Economic, Social and Cultural Rights and representatives of UNICEF and UNESCO.

The Committee also organizes one-day general discussions on fundamental issues attended by governmental delegations, United Nations agencies and programmes, NGOs and experts. The theme of the September 2000 debate was 'State violence against children'. In September 2001 it was followed by a discussion on 'Violence against children within the family and in schools'.

The Committee appears as a pro-active body, catalysing and stimulating system-wide United Nations activities in respect of the rights of the child. To enhance international cooperation, the Convention entitles the specialized agencies, UNICEF and other United Nations organs to be represented when the Committee considers the implementation of the rights falling within its competence and to be invited to provide expert advice on its implementation, as well as to submit relevant reports. Examples in this regard provide recent invitations to the Special Rapporteurs on Adequate Housing and on the Right to Food of the Commission on Human Rights. The Committee may also transmit to these bodies state reports along with its own observations and suggestions if the reports identify a request or a need for technical advice or assistance. The Committee has developed a particularly close working relationship with UNICEF. Finally, the Convention states that the Committee may recommend to the General Assembly that studies on issues relating to the rights of the child be undertaken by the Secretary-General. Experience so far confirms that the Committee has, indeed, taken advantage of these competences.

Committee on the Elimination of Discrimination against Women  The Committee on the Elimination of Discrimination against Women was established in 1982 on the basis of the Convention on the Elimination of All Forms of Discrimination against Women of 1979. Initially, it comprised 18 members but, since the ratification of the Convention by 35 states, this number has
increased to 23. It meets annually for one two-week session, alternately in Vienna and New York. United Nations specialized agencies can be represented during the consideration of matters relevant to them.

The Convention defines the term ‘discrimination against women’ as: ‘... any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field’. The Committee’s mandate includes the consideration of the periodic reports submitted by States Parties and the adoption of suggestions and general recommendations based on the analysis of the reports and other information submitted by the States Parties. The Committee is competent to consider individual communications concerning alleged non-compliance by States Parties with the obligations laid down in the Convention and carry out inquiries into alleged violations of the rights protected under the Convention.

The Committee has frequently benefitted from the possibility of articulating its position through General Recommendations that address different aspects of the human rights of women and factors having an impact on them, as well as the execution of its mandate. The average annual number of General Recommendations is comparable with that of the Human Rights Committee and exceeds one per year. Recently, the Committee on the Elimination of Discrimination against Women also started work on a general recommendation on Article 4, para. 1 of the Convention regarding temporary special measures aimed at accelerating de facto equality between men and women.

This Committee also suffers from the backlog of state reports to be reviewed. To deal with this problem, it has adopted a temporary measure giving the states concerned the opportunity to combine overdue and current reports. It also requested the General Assembly to authorize an additional session of 30 meetings in 2002 to review outstanding reports.

The World Conference on Human Rights called for the adoption of an Optional Protocol to the Convention, which would introduce a communications procedure. It recommended that: ‘The Commission on the Status of Women and the Committee on the Elimination of Discrimination against Women should quickly examine the possibility of introducing the right of petition through the preparation of an optional protocol to the Convention on the Elimination of All Forms of Discrimination against Women.’ The Optional Protocol entered into force on 22 December 2000. The procedure has been launched in 2002 after the 26th session of the Committee.

The Optional Protocol also introduced another important procedure to be undertaken by the Committee, namely, the inquiry into alleged grave or systematic violations by a State Party of the rights set forth in the Convention. The procedure follows closely the one established under Article 20 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment and Punishment. The Committee, on receiving reliable information on such violations, in this case as well, shall request the State Party to partici-
pate in its examination and submit observations. On this basis, the Commit-
tee is entitled to invest one or more of its members with the responsibility to
counsel an inquiry and report to it. With the consent of the State Party, the
designated members may visit the country and hold hearings. Findings and
recommendations resulting from the inquiry are shared with the State Party.
The Optional Protocol also establishes rules concerning the response of the
State Party and subsequent communications with the Committee, as well as
the protection of persons who communicated with the Committee against
related ill-treatment and intimidation. After having consulted the State Party,
the Committee includes summary information on the inquiry into its annual
report. Otherwise, all stages of the procedure are confidential. The
approval of the inquiry procedure automatically follows the ratification of the
Optional Protocol, unless the State Party has made a declaration that it does
not recognize this competence of the Committee.

Like other Committees, the Committee on the Elimination of Discrimina-
tion against Women and its members do not confine themselves to scrutiny
over the implementation of the Convention on the Elimination of All Forms
of Discrimination against Women. For example, the Committee participated
in the process of the Fourth World Conference on Women in Beijing, China,
in 1995, and now is actively involved in the follow-up to that summit. The
members of the Committee also declared their willingness to act in the frame-
work of expert group meetings preparing sessions of the Commission on the
Status of Women and as members of panels held during its sessions.

Non-conventional procedures: Special Rapporteurs and Working Groups

Status and mandates

The Commission on Human Rights has the competence to establish special
mechanisms (called 'special procedures') to deal with either selected substan-
tive human rights problems ('thematic procedures') or with the human rights
situation in a given country ('country-specific procedures'). This competence
originates from ECOSOC resolution 1235(XLII) that has empowered the Com-
mission on Human Rights in appropriate cases to 'make a thorough study of
situations which reveal a consistent pattern of violations of human rights'
(see also the section 'Communications Procedures' below). Started in 1967,
special procedures are widely appreciated as one of the main pillars of the
United Nations human rights programme. The Secretary-General, in a recent
report, underlined that: 'These procedures are vital instruments and, over the
years, have helped to advance the cause of human rights.' Special
Rapporteurs of the Commission, Special Representatives of the Secretary-
General, Independent Experts, or Working Groups may be established as a
special procedure. The Commission in its choice in this regard is guided by
the nature and requirements of the mandate.

In 1993, the World Conference on Human Rights underlined '... the im-
portance of preserving and strengthening the system of special procedures,
rapporteurs, representatives, experts and working groups of the Commission on Human Rights and the Sub-Commission on the Prevention of Discrimination and Protection of Minorities' and called on all states to cooperate fully with them. Indeed, the rapid development of special procedures, particularly during the 1990s, has become one of the most striking changes in the United Nations human rights programme. It is sufficient to recall that, since the 58th session of the Commission, its work is supported by 37 special procedures, among which 12 have country specific mandates.

The overall function of special procedures is to assist the Commission on Human Rights and the General Assembly in their activities, in particular through reporting on and reacting to serious human rights violations and exploring methods for an improved implementation of human rights. In spite of their originally auxiliary character, special procedures have developed into a system with a high degree of autonomy. The holders of the mandates have the status of independent experts who can freely decide on the content and mode of action, including views and assessments presented publicly. They should be guided only by the relevant norms of the United Nations and the, usually rather general, stipulations of the Commission's resolutions which establish a given mandate. The General Assembly has adopted Regulations Governing the Status, Basic Rights and Duties of Officials other than Secretariat Officials, and Experts on Mission, which could also be applicable to the holders of the discussed mandates.

The independence of mandate-holders is guaranteed, *inter alia*, by the applicability of Article VI of the 1946 Convention on the Privileges and Immunities of the United Nations. Under this Convention, while executing their mandates they act as experts on missions for the United Nations and thus enjoy privileges and immunities necessary for the purpose of the mission, including: immunity from personal arrest and detention and from seizure of their personal baggage; immunity from a legal process of any kind in respect of words spoken or written, and acts undertaken by them in the course of performing their mission; inviolability for all papers and documents; the right to use codes and to receive papers or correspondence by courier or in sealed bags; and immunities and facilities in respect of their personal baggage, as accorded to diplomatic envoys.

With regard to the main objective of their mandates, one can differentiate between the following functions of thematic special procedures:

- protective function – informing the Commission on the occurrence and practice of human rights violations. This function may also embrace assistance to victims, if this is possible;
- promotional function – reporting to the Commission (and to the General Assembly, if so decided) on the status of the realization of a given right and promoting its implementation;
- analytical function – analysing specific human rights issues and offering the findings and recommendations to the Commission (and to the General Assembly, if so decided).
The mandates of thematic procedures in the majority of cases embrace different functions and thus a typology of the mandates using the criterion of their functions is hardly possible.

The main task of the thematic procedures is to collect information concerning the worldwide implementation of a given human right. They identify typical patterns of violations of human rights, locate and analyse sources of such violations and the most suitable methods of countering them. The thematic procedures also make recommendations addressed to both the international community and national actors regarding improvements in the implementation of human rights. One can say that they act both in the area of diagnosis and of cure.

Initially thematic procedures were established exclusively in the area of civil and political rights. The first thematic procedure, the Working Group on Involuntary Disappearances, was established in 1980. Mandates dealing with economic, social and cultural rights or related areas are relatively new.

Country mandates are established with a view to providing the Commission on Human Rights and the General Assembly with a reliable assessment of the human rights situation in a given country. This happens when the Commission decides to keep the situation under scrutiny and to establish a Special Rapporteur or an Independent Expert under the advisory services programme. Country Rapporteurs and Experts, on the basis of available information and their visits to countries, if feasible, make recommendations to the Commission and other United Nations organs and bodies, and provide advice to the governments concerned. The nomination of a Special Rapporteur is interpreted as a stronger measure than the appointment of an Independent Expert. While the former is perceived more as a ‘scrutiny mechanism’, the latter is conceived rather as an ‘advisory mechanism’. Moving a country from the former mandate to the latter is also interpreted as easing the Commission’s attitude. Another group of country mandates embraces Special Rapporteurs established under the ‘1503 procedure’.

Establishment of the mandate and appointments Mandates of special procedures are created by the Commission on Human Rights, subject to approval by ECOSOC. Sometimes the idea of creating a mandate remains pending for some time in order to await conducive conditions for support from the Commission’s members. The timeframe is identified in the resolution establishing a given mandate and is usually set for one or three years with a possible renewal. The Working Group on Mechanisms, mentioned above, recommended that the Commission conduct periodically an objective and thorough review of all mandates to establish which should be continued in view of evolving needs. The Working Group also observed that:

The Commission clearly must be responsive to human rights imperatives; where human rights violations exist, mechanisms focus attention and have the potential to bring about important improvement. At the same time, the increasing number of mandates can create difficulties in terms of overlap and inadequate support services, as well as straining the capacity of States to absorb the output.
It proposed that decisions concerning creating or terminating mandates should take into consideration the following:

(i) Mandates should always offer a clear prospect of an increased level of human rights protection and promotion; (ii) The balance of thematic mandates should broadly reflect the accepted equal importance of civil and political rights and economic, social and cultural rights; (iii) Every effort should be made to avoid unnecessary duplication; (iv) In creating or reviewing mandates, efforts should be made to identify whether the structure of the mechanism (expert, rapporteur or working group) is the most effective in terms of increasing human rights protection; (v) Any consideration of merging mandates should have regard to the content and predominant functions of each mandate, as well as to the workload of individual mandate-holders.127

Special Rapporteurs and independent experts are appointed by the Chairperson of the Commission on Human Rights, who takes the decision after having formally consulted the Commission’s Bureau and the five regional groups on this matter. The opinions gathered in this way are, however, not binding for the Chairperson. In his/her selection, the Chairperson should be guided by the professional and personal qualities of the individual – expertise and experience in the area of the mandate, integrity, independence and impartiality are of paramount importance. Due regard should also be given to an overall geographical and gender balance among the mandate-holders, as well as to the representation of different legal systems. The OHCHR has been requested to maintain a list of possible candidates for the mandates of special procedures. The list should be updated continuously, contain candidates representing different regions and legal systems, and be gender-balanced. Proposals can be made by states and other sources, including NGOs having consultative status with ECOSOC and the Secretariat of the United Nations. The list can be visited on the website of the OHCHR. While appointing a mandate-holder, the Chairperson should essentially draw on this list, but exceptions are possible if the requirements of a particular post so justify. The Secretary-General appoints the Special Representatives if such mandates have been established by the Commission on Human Rights. The principle has been formulated that one person can hold only one mandate of no longer than two terms of three years.

Current mandates according to their subject In 2000 the Commission, following the recommendations of the Working Group on Mechanisms, took several steps regarding existing mandates. Although of an incidental nature, they seem to be an important indicator of the concepts which prevailed in the Commission’s approach to its special procedures. The Commission decided to:

- Merge the mandate of the independent expert on structural adjustment and the Special Rapporteur on Foreign Debt because of the synergies between the mandates. The new mandate is one of an independent expert on structural adjustment and foreign debt.
• Maintain the Working Group on Arbitrary Detention (as opposed to a proposal to transform it into a post of a Special Rapporteur on Arbitrary Detention) and the Working Group on Enforced and Involuntary Disappearances (as opposed to a proposal to transform it into a post of a Special Rapporteur on Disappearances). In these cases, the Commission recognised that the benefits of the present solutions were more important than savings by replacing a working group by an individual mandate holder.

Most of thematic mandates can be divided in two groups related to the categories of rights:

• In the area of economic, social and cultural rights: Special Rapporteur on the Right to Education; Special Rapporteur on the Right to Food; Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living; Independent Expert to examine the question of a draft Optional Protocol to the International Covenant on Economic, Social and Cultural Rights; Independent Expert on Human Rights and Extreme Poverty; Independent Expert on Structural Adjustment Policies and Foreign debt; Special Rapporteur on the Adverse Effects of the Illicit Movement and Dumping of Toxic and Dangerous Products and Wastes on the Enjoyment of Human Rights.

• In the area of civil and political rights: Working Group on Arbitrary Detention; Working Group on Enforced or Involuntary Disappearances; Special Rapporteur on Extra-Judicial, Summary or Arbitrary Executions; Special Rapporteur on the Question of Torture; Special Rapporteur on Violence against Women, Its Causes and Consequences; Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression; Special Rapporteur on Freedom of Religion or Belief; Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance; Special Rapporteur on the Use of Mercenaries as a Means of Impeding the Exercise of the Right of Peoples to Self-Determination; Independent Expert to Examine the Existing International Criminal and Human Rights Framework for the Protection of Persons from Enforced or Involuntary Disappearance.

Some of the mandates remain outside these groups, involving elements of different categories of human rights, namely: Independent Expert on the Right to Development; Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography; Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People; Special Rapporteur on the Human Rights of Migrants; Special Representative of the Secretary-General on Internally Displaced Persons; and Special Representative of the Secretary-General on the Situation of Human Rights Defenders.

As a result of the 58th session of the Commission on Human Rights, Special Rapporteurs monitor the human rights situation in the following...
countries: Afghanistan (since 1984); Bosnia and Herzegovina and the Federal Republic of Yugoslavia (a Special Rapporteur was nominated for the region in 1992); Burundi (since 1995); Cambodia (since 1993); Democratic Republic of the Congo – former Zaire (since 1994); Haiti (since 1995); Iraq (since 1991); Myanmar (since 1992); Palestinian territories occupied since 1967 (since 1993); Somalia (since 1993); and Sudan (since 1993).

Information gathering  In order to fulfil their mandates, Special Rapporteurs develop contacts with governments, United Nations agencies and bodies, especially those within the human rights machinery, and other actors. NGOs, other segments of civil society and individuals, including victims, their families and other persons close to them are a significant source of information. For obvious reasons, visits to countries undertaken by Special Rapporteurs play an essential role. Such a visit, however, requires an invitation from the government concerned or, at least, as is sometimes the case, the willingness of the government to tolerate the visit without actively helping in its realization. Frequently, therefore, the Commission in its resolutions calls on governments to invite Special Rapporteurs and offer them full cooperation. An important initiative has already been undertaken by more than 40 governments, which have extended a standing invitation to holders of thematic mandates. Such an invitation is not only evidence of the willingness of governments to cooperate with a crucial part of the United Nations human rights machinery, but also facilitates the implementation of mandates and paves the way towards a better coordination of work between mandate-holders. Most often, mandate-holders themselves enter into a dialogue with the government concerned to solicit an invitation. Unfortunately, sometimes governments refuse to invite Special Rapporteurs, whether they are country-specific or thematic, even if the Commission explicitly requests for it in a resolution. However, as stated earlier, such a refusal does not prevent Special Rapporteurs from reporting, which is the core of their mandates, but deprives the country concerned of the benefits of such a visit (see below). It also forces the Special Rapporteur to rely on other sources than first-hand observations.

Communications – urgent appeals  Action by special procedures frequently originates from numerous communications on human rights violations coming from victims or from persons or organizations acting on their behalf. Although interventions to governments by special procedures do not, of course, prejudge the outcome of the case, they can have an important protective impact. Simply the very fact that state authorities note the signal of international scrutiny can be helpful.

The Working Group on Mechanisms agreed on a crucial point, namely that ‘... the human rights machinery of the United Nations is particularly tested at a time when there are allegations of an urgent situation of serious human rights violations requiring immediate attention in any part of the world’. In four cases, namely, the Working Group on Enforced or Involuntary Disappearances, the Special Rapporteur on Summary and Arbitrary
Executions, the Special Rapporteur for Torture and the Special Rapporteur for Religious Intolerance, the Commission on Human Rights decided to empower the mandate-holders to take urgent action, if necessary. These particular regulations do not prevent other special procedures from taking such steps, but they do so on a much smaller scale. The most immediate tool for special procedures in response to communications indicating an emergency are 'urgent appeals' addressed to governments by thematic and country mandate-holders. In an urgent appeal, the Special Rapporteur draws the attention of the government to the information concerning alleged human rights violations, requests urgent measures to master the situation and restore respect for human rights and asks for comments and information from the government. To accelerate the process, an urgent appeal is sent directly to the Foreign Minister of the country concerned (other correspondence follows the usual diplomatic routes).

The average annual number of such appeals is large. It is necessary to ensure that they are dealt with expeditiously and that action taken by various Special Rapporteurs on the same case benefits from some form of coordination. Although each Special Rapporteur has an independent mandate, knowledge of action taken by other special procedures can help to achieve a more targeted, and thus effective, intervention. Sometimes Special Rapporteurs issue joint urgent appeals to demonstrate a coordinated interest in a case and thus strengthen the impact of their action. The responsibility for support for urgent appeals, including the adequate flow of information, rests with the Office of the High Commissioner for Human Rights which services the special procedures. To cope with this task, the Office has recently established an Urgent Appeal Desk. For its part, the Working Group on Mechanisms has stressed that the governments concerned should respond to urgent appeals as quickly as possible bearing in mind the importance of this tool. It was also stressed that, in the absence of a satisfactory response, the High Commissioner should facilitate the dialogue and cooperation between the government and the relevant special procedures.

No formal procedure has been established to deal with communications (petitions). To facilitate their submission, some of the special procedures have adopted 'Model questionnaires for communications/complaints'. However, the communication does not need to follow this model and is processed if it provides the following basic information: ‘... identification of the alleged victim(s); identification of the perpetrators of the violation; identification of the person(s) or organization(s) submitting the communication; a detailed description of the circumstances of the incident in which the alleged violation occurred.’ From these requirements, formulated by the Office of the High Commissioner on its website, a communication can be submitted on behalf of a victim (not necessarily by the victim personally). Nevertheless, anonymous communications are treated as inadmissible. Communications addressed to special procedures have also been released from the condition of the exhaustion of domestic remedies before submission, which is applicable in the case of other communication procedures. It must
also be stressed that communications can be considered by all special procedures, country-specific and thematic, not just the six mentioned in the aforementioned guidelines.

**Reports** The report to the Commission on Human Rights is the basic form of communication between the holder of a special procedure mandate and this body. In addition to annual reports to the Commission, some of the mandate-holders have been requested to report to the General Assembly. Missions to countries are usually reported separately. Reports are normally very detailed and include analyses, the presentation of specific cases and recommendations. The latter are addressed to the states concerned, the High Commissioner, including the field operations and the technical cooperation programme of the Office of the High Commissioner, and to other components of the United Nations system. In the past, the way in which the reports have been introduced to the Commission has been criticized for its rather formal character, being reduced to a short oral statement. In the framework of its reform, the Commission decided to give the consideration of the reports more significance and greater prominence. With a view to facilitating the preparation of delegations before the debate, the reports should have an executive summary and be made available in advance in an unedited version. Reports referring to specific countries should be made available to the governments concerned a minimum of six weeks before the presentation of the report at the Commission meeting. This should provide interested governments with ‘a reasonable opportunity’ to submit comments that can be distributed as an official document. The Working Group on Mechanisms also encouraged more interaction between the Special Rapporteurs and the participants in the meeting of the Commission. To that end, it recommended allocating time for the debate on the report immediately after its introduction. The Commission did follow this recommendation but this practice was, unfortunately, interrupted at its 58th session due to the financial and, subsequently, time constraints referred to in the previous section, ‘The Commission on Human Rights’.

**The need for reform** The Working Group on Mechanisms of the Commission on Human Rights agreed that the institution of special procedures was ‘... in need of rationalization and strengthening and that this requires a multi-pronged approach’. Demand for reforms has also been stressed frequently by the mandate-holders themselves. Underlying these views is the hope for a better utilization of the potential of special procedures.

Two tracks have been identified in the approach to a possible reform of the special procedures. The first was oriented towards a higher degree of geographical and professional balance in the composition of mandate-holders and to a system of rotation imposing limits on the number of years in office of an individual mandate-holder. Steps taken in this regard have already been addressed in this section. The second track was oriented towards strengthening support for special procedures. Already in 1998, that is, parallel to the intergovernmental discussions on the Commission's
mechanisms and, in support of this process, two mandate-holders of special procedures, Thomas Hammarberg and Mona Rishmawi, examined ways through which the Office of the High Commissioner could contribute to improving the effectiveness of the special procedures. As well as concluding that the system urgently required better support based on adequate resources, both experts proposed several organizational measures that could strengthen the system. These proposals included, among others, establishing an Urgent Appeal Desk and an emergency response team, developing analytical capacities available to the special procedures, and providing better general assistance to the mandate-holders. It should be noted that the Commission, in a resolution adopted at its 58th session, placed the reform of special procedures on its agenda for the next session.

As was the case concerning treaty bodies, it needs to be repeated here that the system of special procedures is generally under-resourced and this factor weighs substantially on the output. To refer to only one example – according to the aforementioned experts, supported by other mandate-holders – each Special Rapporteur should be assisted by at least one staff member of the Office of the High Commissioner. However, under the regular budget for the biennium 2002–2003, only 15 posts have been designated to service all 37 special procedures, including working groups with considerable workloads. Moreover, the Commission sometimes establishes new mandates without determining their financial implications and this further exacerbates an already uneasy situation. There is also a shortage of resources for special procedures missions and for necessary analytical support. Responding to this need, the High Commissioner decided to launch a project to support the special procedures from voluntary contributions. In the 2002 Annual Appeal of the Office of the High Commissioner, the chapter related to this project was budgeted at US$ 2,607,080, almost 5 per cent of the requested voluntary funding. This facilitated meeting some of the most urgent needs related to special procedures, including the maintenance of the Urgent Appeal Desk and other assistance for mandate-holders. The emergency task force proposed by the above-mentioned experts was established without additional funding.

In his programme for reform, the Secretary-General calls for two sets of measures related to the special procedures:

1. the improvement of the quality of the reports and analyses produced by the special procedures through setting clear criteria for the use of this institution, the selection of appointees and better guidelines for their operations and reporting functions;
2. the strengthening of the support for the special procedures, including the appointment of more senior professionals, as well as better administrative support.

Special mechanisms as a system The authority stemming from special procedures draws increasingly on their work as a system, in addition to the input by individual mandate-holders. Already in 1994 their first meeting called
for ‘... more efficient sharing of information and pursuing the possibilities of joint missions ... Holders of country and thematic mandates should enhance co-operation in the discharge of their mandates’. There are instances of Special Rapporteurs’ coordinated action, for example, in the form of joint urgent appeals, joint press releases drawing the attention of international public opinion to a certain problem, or joint country visits to address different aspects of a human rights situation in an orchestrated manner. Joint missions of Special Rapporteurs have already taken place, for example, in Colombia, East Timor, former Yugoslavia and Rwanda. On some occasions, the Commission on Human Rights appealed to different special procedures to address the same human rights situation. An intersectional approach, as such, could, indeed, provide an added value. For instance, in a conflict situation with the transfer of great numbers of people, a joint assessment of needs and recommendations from the perspective of the Special Rapporteur on Extra-Judicial, Summary or Arbitrary Executions, the Special Rapporteur on Torture, the Special Rapporteur on Violence against Women, the Special Rapporteur on the Right to Food, the Special Rapporteur on the Right to Health, and the Special Representatives of the United Nations Secretary-General on Children in Armed Conflicts and Internally Displaced Persons could produce unique material of great relevance to international decision-making bodies and thus contribute to dealing with the emergency situation. It can be assumed that the impact of such an action would be greater than that of steps taken in isolation. Yet, it is remarkable that some governments tend to be reluctant in extending such joint invitations.

The potential opportunities resulting from coordinated action were recognized by the World Conference on Human Rights which recommended convening annual meetings of the mandate-holders. Such meetings have been organized by the Office of the High Commissioner since 1994 and their agendas include basic substantive issues of importance for special procedures (for example, the gender perspective, internally displaced persons, corporate responsibility for human rights violations), coordination between mandate-holders and between them and other partners within and outside the United Nations, and questions of organization of work and support received. Particular attention is paid to the relationship with the Commission on Human Rights and cooperation with human rights treaty bodies, the Office of the High Commissioner and NGOs. To ensure a certain continuity of the work undertaken during the meetings, participants elect a chairperson and a rapporteur for a one-year term.

It is a view shared by both members of treaty bodies and holders of special procedures’ mandates that a considerable potential consists in closer cooperation between them. And, indeed, progress can be noted during recent years in respect of the flow of information and intensive direct contacts, in particular in cases of similar substantive mandates such as, for example, between the Special Rapporteur on Torture and the Committee against Torture; the Special Rapporteurs on the Right to Food and Adequate Housing and the Committee on Economic, Social and Cultural Rights; and the Special Rapporteur on Racism, Racial Discrimination and Xeno-
phobia and the Committee on the Elimination of Racial Discrimination. The already mentioned holding of parallel annual meetings of the chairpersons of treaty bodies and holders of special procedures mandates provides a suitable framework for further fostering of this process.

PROCEDURES

Reporting under Human Rights Treaties

Reporting by State Parties is widely assessed as an indispensable component of the overall strategy of the implementation of the human rights treaties and an important contribution to the promotion and protection of these rights at the national level. The consideration of the reports on legislative and other relevant measures by the treaty bodies is seen as the basic method of the independent international monitoring of the compliance by State Parties with their obligations. The role of the reporting system is enhanced through the public character of the examination. In this way, the law and practice of a State are scrutinized by the international community and the society involved.

Some commentators stress that governments may be predisposed to evaluate the situation in their own countries in a more positive light than it actually merits. However, the treaty bodies are not passive recipients of the governmental ‘products’ but, on the contrary, are active and inquiring examiners. In addition, the treaty bodies themselves have developed some practical solutions to counteract the potential misuse of the reporting system. In its General Comment No. 1 of 1989, the Committee on Economic, Social, and Cultural Rights pointed out that: ‘... it would be incorrect to assume that reporting is essentially only a procedural matter designed solely to satisfy each State Party’s formal obligation to report to the appropriate international monitoring body.’ The Committee identified the following seven objectives of the reporting system (also reflecting the purposes of the reporting under other human rights treaties):

- to ensure that a comprehensive review is undertaken [by the State Party] with respect to national legislation, administrative rules and procedures, and practices in an effort to ensure the fullest possible conformity with the Covenant;
- to ensure that the State Party monitors the actual situation with respect to each of the rights on a regular basis and is thus aware of the extent to which the various rights are, or are not, being enjoyed by all individuals within its territory or under its jurisdiction;
- to provide the basis for the elaboration of clearly stated and carefully targeted policies, including the establishment of priorities which reflect the provisions of the Covenant;
- to facilitate public scrutiny of government policies with respect to economic, social and cultural rights and to encourage the involve-
ment of the various economic, social and cultural sectors of society in the formulation, implementation and review of the relevant policies;

• to provide a basis on which the State Party itself, as well as the Committee, can effectively evaluate the extent to which progress has been made towards the realization of the obligations contained in the Covenant;

• to enable the State Party itself to develop a better understanding of the problems and shortcomings encountered in efforts to realize progressively the full range of economic, social and cultural rights;

• to enable the Committee, and the States Parties as a whole, to facilitate the exchange of information among states and to develop a better understanding of the common problems faced by states and a fuller appreciation of the type of measures which might be taken to promote effective realization of each of the rights contained in the Covenant. This part of the process also enables the Committee to identify the most appropriate means by which the international community might assist states, in accordance with Articles 22 and 23 of the Covenant.  

As it results from the presented goals of the reporting system, the Committees do not expect States Parties to report only about legal norms. The country report should provide conclusive information on both law and practice. For example, in its Guidelines for the preparation of reports by States Parties, the Committee on the Elimination of Discrimination against Women recommends: ‘... that the reports not be confined to mere lists of legal instruments adopted in the country concerned in recent years, but should also include information indicating how those legal instruments are reflected in the actual economic, political and social realities and general conditions existing in the country.

The reports are delivered and distributed among the members well in advance of the sessions of the Committees. To better prepare their sessions, the majority of treaty bodies develop a list of issues to be presented to the government before the public examination of the report. This list is approved by a pre-sessional Working Group or by the Committee itself. There is a tendency, however, to benefit from the first option and thus save time. The Working Group meetings also offer the opportunity to work more closely with other partners in the preparation of the review of a report by the Committee, since the timeframes of the sessions are very tight. Recently, the Committee against Torture has also decided to establish such a pre-sessional Working Group in the biennium 2002-2003.

The pre-sessional procedure to the examination of the reports gives the States Parties an opportunity to prepare responses to be presented either in writing before the Committee’s meeting or orally at the meeting. It is interesting that the Human Rights Committee indirectly discouraged States Parties to submit written answers to the list of issues in order to better facilitate a constructive discussion at the meeting.

The consideration of a report before a Committee often exceeds two days. Recently however, some Committees have attempted to cut the time dedi-
cated to one report with a view to reducing the backlog of reports awaiting review. At the beginning of the examination, the government representatives present the report and answer questions raised. Afterwards, members of the Committee ask additional questions which are subsequently answered by the governmental delegation. This stage often develops into a real discussion between the Committee and the government, going far beyond the formal presentation of positions and views. This should be stressed, because such a discussion makes the reporting system an instrument of assistance to states, whose representatives can draw on the expertise of the Committee members and also seek their advice. Equally, it also enables the Committee to understand better the problems faced by the country under review. The Human Rights Committee stressed that: ‘Central to the consideration of States Parties reports is the oral hearing, where the delegations of States Parties have the opportunity to answer specific questions from Committee members.’ While examining the report, the Committee takes advantage of information received from NGOs, United Nations organs and bodies, and from other sources. Questions raised by members of the Committee usually evidence a solid bank of knowledge related to the reporting country. As a consequence, governments send high-level and well-prepared delegations to present their reports.

Finally, the Committee holds a debate in private and formulates concluding observations which are presented to the government. However, the dialogue sometimes continues after the meetings dedicated to the consideration of the report. In some instances, governments provide further information on issues raised during the meeting or the Committee applies follow-up measures.

Conclusions reached by the Committees should be implemented by States Parties. Although the Committees do not have any executive power to ensure this, they establish their own mechanisms to monitor the follow-up on their recommendations and thus be able to continue their dialogue with State Parties.

The reporting process has, however, some weak points which, to a certain extent, are related to the inherent limits of such a system. The treaty bodies have already responded to several shortcomings. Some of the problems are presented below in more detail.

In view of the report by the Secretariat for the 13th Meeting of Chairpersons of the Human Rights Treaty Bodies in 2001, the accumulated backlogs of submitted reports awaiting examination by the treaty bodies and the delays in submitting reports by states are major issues. There are also States Parties which fail to deliver reports at all. In its last annual report, the Human Rights Committee warned that 28 initial reports had not yet been presented. As of 31 March 2001, the number of overdue reports reached a total of 1277, distributed among the different human rights treaties as shown in Table 1.5.

The treaty bodies take a more rigid approach in cases of great delays in reporting. For example, the Committee on the Elimination of Racial Discrimination: ‘... decided that it would continue to proceed with the review
Table 1.5 Overdue reports

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of the implementation of the provisions of the Convention by the States Parties whose reports were excessively overdue by five years or more. This review would draw on the previous reports submitted by the State Party. If the State Party failed, over a period of five years or more, to submit its initial report, the Committee would review the implementation of the provisions of the Convention on the basis of: ‘... all information submitted by the State Party to other organs of the United Nations or, in the absence of such material, reports and information prepared by organs of the United Nations.’ The Committee may also benefit in such a situation from information received from other sources, including NGOs. It should be noted that the Committee’s announcement of its decision to review the compliance by several named countries in the absence of their reports, prompted some governments to either submit the reports or to ask for the postponement of the discussion for the time necessary to prepare the report. Other treaty bodies apply similar measures to that effect. The Committee against Torture has decided to continue to present during the press conferences at the end of its session a list of States Parties whose reports are more than four years overdue.

As the Independent Expert of the Commission on Human Rights on enhancing the long-term effectiveness of the United Nations human rights treaty system pointed out, non-reporting had reached chronic proportions. In the case of the International Covenant on Economic, Social and Cultural Rights, the percentage of overdue initial reports concerned 40 per cent of the States Parties. On the other hand, he noted that the present reporting system only functioned because of the delays in delivery of the reports. If all the reports had been delivered on time, existing backlogs would be further exacerbated. To effectively tackle this and other problems faced by the treaty bodies, the independent expert called for consideration of both the reform of the system of treaty bodies and of specifically targeted measures. Among the former, he mentioned the preparation of ‘consolidated reports’ to be considered by all treaty bodies; individualizing the requirements for periodic reports for each state; and a reduction in the number of treaty bodies. Among the latter, he proposed that:

1 a new project of technical cooperation be designed to assist governments in their reporting obligations; and
2 all treaty bodies adopt a procedure which would enable them to review a state’s compliance with the treaty obligations in the case of persistent delinquency in delivering the report.
The idea of the replacement of separate reports to each of the treaty bodies by one overarching report on the implementation of human rights standards to be submitted by a government to all the Committees is apparently one meeting the greatest interest. On the basis of this report, the Committees would be in a position to formulate more specific questions relating to their spheres of interest. This would also reduce the reporting burden on governments and, at the same time, make comparable the information available to all the Committees.

In the report on the consultations conducted by the independent expert, the Secretary-General stated that:

While no clear consensus has yet been reached on the desirability of consolidating reports due under the various treaties, a number of treaty bodies have moved towards a more focused examination of States Parties' reports. This is most apparent in the lists of issues or questions formulated by most treaty bodies requesting clarification on specific parts of States Parties' reports or on specific rights. Practical difficulties, however, remain in reducing the reporting burden on States Parties at the point where it would be most useful, namely before the preparation of their reports. There is, therefore, a need for further reflection on ways to streamline the reporting process.151

In his report submitted to the 57th session of the General Assembly, the Secretary-General explicitly called on the treaty bodies to adopt a more coordinated approach to their activities and standardize their varied reporting requirements, as well as making it possible for states to provide a single report summarizing their adherence to the full range of the relevant international human rights treaties.152

Discussions concerning possible improvements in the reporting system currently focus on the periodicity of the reports. Countries which are parties to several human rights treaties frequently refer to serious difficulties in providing their reports in an appropriate, timely and qualitative manner. It must also be borne in mind in this context that various parts of the United Nations human rights machinery, especially the Commission and the Sub-Commission, the thematic and country Special Rapporteurs, and working groups also request information and comments from governments concerning specific issues. The above-mentioned report by the Secretary-General underlines that a better coordination of the timing of the reports to different Committees will significantly improve the working conditions of treaty bodies and, at the same time, reduce the burden on States Parties related to the preparation of the reports for various human rights organs and bodies.

A fundamental reform of the periodicity of the reports would require, however, coordinated amendments in different treaties, since they determine the timeframes for reports. Only the Human Rights Committee decides freely when the State Party should submit a periodic report and ECOSOC decides about this matter with regard to the Committee on Economic, Social and Cultural Rights. Meanwhile, the treaty bodies have adopted several amendments to their rules of procedures which, in fact, lead to adjustments of procedural treaty norms to present requirements through '... de facto
departures from the strict periodicities set out in many of the treaties'. For example, the Committee on the Elimination of Racial Discrimination decided that, if there is less than two years between the consideration of a periodic report and the scheduled date for the following one, the Committee can propose to the State Party to combine the two.\textsuperscript{153} Other treaty bodies also adopt a similar approach.\textsuperscript{154} It is now up to the treaty bodies to analyse to what extent further reforms, focusing in particular on the rationalization of the procedure from the perspective of the drafters of reports, could be undertaken through their coordinated action.\textsuperscript{155}

The concept of periodical reports creates a certain tension between the monitoring function of treaty bodies and their limited ability to respond to the evolving human rights situations, in particular in the case of emergencies. To address this problem, the Committees have decided to move beyond the normal procedure and, in emergencies, ask the government concerned for an ad hoc report to consider the situation as a matter of urgency. For instance, the Rules of Procedure of the CEDAW refer specifically to reports requested on an exceptional basis, the substantive scope of which should be limited to those areas mentioned in the Committee’s request.\textsuperscript{156} Such a practice responds to the widely shared demand that the human rights machinery should be able to take preventive or responsive action without unnecessary delay. However, the independent expert expressed some scepticism concerning the effectiveness of special reports and urgent procedures. In his view, it is important to maintain the division of labour between the treaty bodies and the special mechanisms.\textsuperscript{157}

For many years, the technical cooperation programme of the Office of the High Commissioner for Human Rights has been involved in the training of governmental officials responsible for reporting to treaty bodies. Regional workshops are organized, and sometimes specific projects are developed, for selected countries.\textsuperscript{158} In the framework of the ‘Hurist’ project of the United Nations Development Programme and the Office of the High Commissioner, one of the six windows is dedicated to assistance in the ratification of human rights treaties and reporting. Core information embracing fundamental data concerning individual states, including their legal systems and domestic human rights machinery, is being distributed to States Parties to give them the possibility of no longer including this type of information in each report. A \textit{Manual on Human Rights Reporting} has also been published by the Office and UNITAR. Some other publications by the Office also assist the human rights treaty system, namely: \textit{Recent Reporting History of States Parties under the Principal International Human Rights Instruments};\textsuperscript{159} \textit{Compilation of Guidelines on the Form and Content of Reports to be Submitted by States Parties to the International Human Rights Treaties};\textsuperscript{160} \textit{Compilation of Rules of Procedure adopted by Human Rights Treaty Bodies};\textsuperscript{161} and \textit{Compilation of General Comments and General Recommendations adopted by Human Rights Treaty Bodies}.\textsuperscript{162} All these documents are also available at the website of the OHCHR, alongside the basic documentation of the treaty bodies.

The impact of the reporting system does not only result from the scrutiny by the human rights treaty bodies. Moreover, it seems that the control
function, albeit crucial, is no longer dominant. In parallel, the dialogue between experts sitting on the Committees and the States Parties has gained importance. As it has already been said, the purpose of this dialogue is not only to take stock of the human rights record of a country, but to assist the country in improving its human rights performance. Consequently, in view of the growing number of governments, the Committees are not perceived so much as international supervisors, but as attractive partners who, given their own expertise and place in the human rights machinery, may provide valuable guidance in the fulfilment of national human rights obligations.

Procedures Related to Human Rights Violations

The evolution of the procedures in the framework of the Commission on Human Rights

The problem of how to react to human rights violations reported to the Commission was present in the debates of this organ from its very first session. A Sub-Committee on the Handling of Communications set up by the Commission in 1947 concluded its work by saying that ‘... the Commission has no power to take any action in regard to any complaints regarding human rights’. Nevertheless, the Commission agreed that the Rapporteur should draw the attention of ECOSOC to the situation resulting from this gap.

It is interesting to note that, at the same time, the Commission on the Status of Women, while examining its own competence, arrived at the opposite conclusion. A Sub-Committee created by this Commission found it possible to recommend a procedure for dealing with communications complaining about violations of women’s rights or demanding action; this was finally endorsed by the Commission. Despite the above-mentioned differences, ECOSOC refused to recognize that either the Commission on Human Rights or the Commission on the Status of Women had adequate power to take action on communications. Despite the early debate on communications in the Commission on Human Rights and several attempts to change the conclusions adopted in 1947, it took 12 years before, in 1959, ECOSOC adopted its first resolution – 728F (XXVIII) – establishing a procedure for handling communications. While reiterating once again its previous position concerning the missing competence of the Commission to take action on complaints concerning violations of human rights, ECOSOC requested the Secretary-General to distribute among the Commission’s members, before each session, a non-confidential list of communications dealing with the principles involved in the promotion of universal respect for, and observance of, human rights. At the same time, the Secretary-General was requested to distribute among the Commission’s members a confidential list of other communications concerning human rights. The lists contained only a summary of the communications, whereas the full text remained accessible to the Commis-
sion's members and was sent to the states concerned. In accordance with the wishes of states, their replies to communications were presented to the Commission in full or in summary form. An analogical procedure was adopted with regard to communications dealing with discrimination and minorities. The distribution of the non-confidential list was discontinued in 1977.

In 1967 this relatively weak procedure, which continued to prevent the Commission from considering specific cases of human rights violations, was supplemented, on the Commission's initiative, by ECOSOC resolution 1235 (XLII) which, in fact, departed from the rigorous position taken in 1947 and empowered the Commission and the Sub-Commission to '... examine ... information relevant to gross violations of human rights and fundamental freedoms'. Pursuant to this resolution, the Commission could also: '... make a thorough study of situations which reveal a consistent pattern of violations of human rights [situations affecting a large number of people over a protracted period of time] and report, with recommendations thereon, to the Economic and Social Council.'

In 1970, in its resolution 1503 (XLVIII), ECOSOC acting on the basis of the draft submitted by the Commission on Human Rights166 established a 'Procedure for dealing with communications relating to violations of human rights and fundamental freedoms'. Widely known as the '1503 procedure', it applies to situations '... which appear to reveal a consistent pattern of gross and reliably attested violations of human rights and fundamental freedoms'.

Examination of the human rights situation in a country under ECOSOC resolution 1235 (XLII)

In the 1970s, the Commission commenced to place on its agenda an item, 'Human rights situations ...', which, since then, has for many years evoked strong emotions and tensions. Under this agenda item (at present number 9), participants in the debate can comment on human rights situations in all countries. In practice, some delegations review the situation in several countries, whereas others focus on one or two country situations or remain silent in the debate. Subsequently, members of the Commission, who can be supported by states observers, may table draft resolutions proposing that the human rights situation in a given country remain under consideration by the Commission. The Commission can also decide to terminate the consideration on a specific case under the '1503 procedure', and continue its examination in public under ECOSOC resolution 1235. This usually happened when, in the Commission's view, the situation had not improved and/or the government was not willing to cooperate with the Commission to its satisfaction.

In country-related resolutions, the Commission identifies its matters of concern and recommends appropriate steps to be taken to the government in question, with a view to stopping human rights violations. The Commission may also establish a special mechanism to follow the situation, which could be a Special Rapporteur, Special Representative or Independent Ex-
pert – depending on the nature of the situation – while the appointment of a Special Rapporteur is perceived as the strongest measure. Such a mechanism reports to the Commission and, in some cases, to the General Assembly. The Commission always invites the government to cooperate closely with the special mechanisms.

Having expressed its concern about a country situation, the Commission usually keeps it on the agenda until the situation improves sufficiently. Sometimes, countries remain under the direct scrutiny of the Commission for many years. Member states pay close attention to the government’s willingness to cooperate with the Commission and its special mechanisms since, as experience has taught, this cooperation may significantly facilitate the resolution of human rights problems.

The public character of the procedure under ECOSOC resolution 1235 often prompts the governments concerned to seek a solution in direct consultations between interested delegations, leading to a compromise on the final position taken by the Commission. This compromise can lead to an agreed text of the resolution or to the concluding of the issue by a statement of the Commission’s Chairperson, which is construed to be softer than a resolution. Occasionally, a delegation aiming to interrupt the debate on the human rights situation in its country, submits a so-called ‘no action motion’ which, if adopted, stops the proceeding. This approach, although formally in accordance with the Rules of Procedure, has been criticized for being inappropriate in the case of alleged human rights violations. Critics maintain that doubts in such a case require examination.

The consideration of a situation under resolution 1235 is discontinued if the Commission so decides in view of improvements in the country’s human rights record. A situation can also be dropped from the agenda if the majority/minority balance in the Commission changes. Quite often country resolutions have been adopted by a tiny majority and it can happen that, at the next session, this majority diminishes. Unfortunately, the results of voting do not always reflect the real human rights situation in a country, but sometimes bear witness to the political preferences of the Commission’s members. In some cases, the Commission decides to move the consideration of the human rights record of a country from the agenda item concerning situations of gross human rights violations to the item dealing with technical cooperation in the field of human rights. This happens when the Commission continues to show its particular interest in the human rights developments in the country, but estimates that the situation has improved and therefore no longer justifies scrutiny under the previous agenda item. In such a situation, the Commission recommends a programme of technical cooperation and requests the High Commissioner or a Special Rapporteur to report on its implementation.

Communications procedures

General Communications procedures enable states and individuals to bring violations of and/or other forms of states’ non-compliance with human
rights standards to the attention of the competent organs or bodies. The
notion of ‘communications’ has been carefully selected. It indicates that
lodging such a motion does not initiate a judicial proceeding but opens an
examination of a case with a view to stating facts as to whether the viola-
tion or another form of non-compliance has taken place. There are a variety
of communications procedures within the United Nations machinery and
all of them play an important role in the protection of human rights, both in
a preventive and reactive sense. They can be differentiated according to one
of the following criteria:

- The legal basis of the procedure – one category comprises procedures
  based on the human rights treaties; the other includes those based on
  ECOSOC resolutions.
- Legal foundations of communications – in the case of procedures
  based on a treaty, human rights standards laid down therein provide
  the legal foundation for a communication; in the case of the proce-
  dures based on ECOSOC resolutions, human rights standards, as
  referred to by the Charter of the United Nations and proclaimed in
  the Universal Declaration of Human Rights, provide the terms of
  reference for a communication.
- The organ competent to consider communications – a treaty-based
  body is competent to consider communications submitted in the frame-
  work of the respective treaty; the Commission on Human Rights and
  its Sub-Commission are organs competent within the procedures based
  on ECOSOC resolutions.
- The subject submitting communication – it can be a state, which
  claims that another state has violated human rights or in another way
  did not comply with its human rights obligations (so-called state
  communications), or an individual/group of individuals (so-called
  individual communications).

Treaty-based communication procedures have been established by the In-
ternational Covenant on Civil and Political Rights, the Convention on the
Elimination of All Forms of Racial Discrimination, the Convention against
Torture and Other Cruel, Inhuman or Degrading Treatment and Punish-
ment, and the Convention on the Elimination of All Forms of Discrimination
against Women. Two other human rights treaties, which have their own
monitoring mechanisms, do not allow for the consideration of communica-
tions: the International Covenant on Economic, Social and Cultural Rights
and the Convention on the Rights of the Child. Yet, the Commission on
Human Rights is already engaged in the examination of the communication
procedure under the Covenant (see the section, ‘Committee on Economic,
Social and Cultural Rights,’ above).

To facilitate the lodging of communications and further proceedings, the
Human Rights Committee and some of the special procedures have adopted
model questionnaires. However, the authors of such submissions need to
be aware that, while they may wish to benefit from these questionnaires, it
is not obligatory to do so and communications that do not follow a questionnaire will be processed provided that they meet relevant substantive criteria. All communications need to be sent to the OHCHR, either directly or through other United Nations offices.

The '1503 procedure' The '1503 procedure' is a channel for individuals and groups to bring their concerns about alleged human rights violations directly to the attention of the Commission on Human Rights. It has been exposed to some serious criticism from two opposite directions. On the one hand, the Commission’s slow pace due to a complicated procedure and large number of communications, as well as its cycle of work, has prompted some critics to express doubts as to whether this procedure was an adequate response to communications alleging serious human rights violations. It is to be noted here that the ‘1503 procedure’ processed 98,799 communications in 2000; 29,726 in 2001; and 18,492 in 2002.169

On the other hand, for some governments, this procedure interfered too much with states’ claims to be protected against external scrutiny in the area of human rights perceived as a domestic affair. Nevertheless, the Working Group on Mechanisms reinforced the value of the ‘1503 procedure’ and reaffirmed its basic principles, that is: objectivity, impartiality and confidentiality.170 The Working Group decided, however, to propose several changes to eliminate existing shortcomings. These should simplify the preparatory process and make the Commission’s examination of the communication, including its decision-making process, more effective. The following presentation of the procedure reflects these changes, as adopted in ECOSOC resolution 2000/3 which contains a revised ‘Procedure for dealing with communications concerning human rights’.171

Communications can be declared admissible if there are reasonable grounds to believe that they may ‘... reveal a consistent pattern of gross and reliably attested violations of human rights and fundamental freedoms within the terms of reference of the Sub-Commission’.172 It is of fundamental importance for its admissibility that a communication be based on credible information. It cannot refer, for example, to the mass media as an exclusive source of information. Replies from the governments concerned are taken into account when the admissibility of communications is under consideration. The aim of the communication must not be inconsistent with the principles of the Charter of the United Nations or the Universal Declaration of Human Rights. Furthermore, the communication can be declared inadmissible if it is submitted for political motives alone. The Secretariat has been empowered to screen manifestly ill-founded communications, but its findings require the approval of the Chairperson of the Working Group on Communications (established by the Sub-Commission).

Communications may be submitted by: individuals and groups who claim to be victims, and individuals and groups who have direct, reliable knowledge of violations. The relevant rules provide that a communication coming from a NGO may be declared admissible if this organization ‘... acts in
good faith and in accordance with recognized principles of human rights, not resorting to politically motivated stands contrary to the provisions of the Charter’. The approval of actio popularis was an important decision that has made the procedure not only a remedy in the hands of victims, but also a tool which may be used by human rights advocates. However, anonymous communications are inadmissible.

A communication must reveal relevant facts, determine its purpose and identify human rights that have allegedly been violated. Abusive language, in particular insulting references to the state concerned, by the author may be grounds for declaring a communication inadmissible. As in many other international complaints procedures, the ‘1503 procedure’ is based on the rule that, before an effective submission of the communication, domestic remedies must be exhausted. The lack of effectiveness of these remedies may, however, justify an exception to this principle. As a rule, a communication is declared inadmissible if it has already been subject to the same, or another, international procedure.

Communications should be sent to the Commission on Human Rights, addressed to the Office of the High Commissioner. On receipt of an admissible communication, the Office sends it to the government concerned for comments which, together with the communication, are considered by the Working Group on Communications. All members of the Working Group receive monthly confidential summaries of communications.

The following organs and bodies are currently involved in the consideration of the communications under the ‘1503 procedure’: the Working Group on Communications; the Working Group on Situations; the Commission on Human Rights; and ECOSOC. The Working Group on Communications is elected by the Sub-Commission on the Protection and Promotion of Human Rights from among its members and represents all the regional groups. It meets for one week immediately after the session of the Sub-Commission and examines communications received and any government’s responses thereto. In its report, it recommends communications which should be referred to the Working Group on Situations.

The Working Group on Situations comprises five members nominated from among the members of the Commission on Human Rights by the regional groups, with due attention to rotation in membership. The Working Group meets at least one month prior to the Commission. On the basis of the report of the Working Group on Communications, the Working Group on Situations decides which situations under consideration should be referred to the Commission. It can recommend to the Commission one of the following options:

(i) To discontinue consideration of the matter when further consideration or action is not warranted; (ii) To keep the situation under review in the light of any further information received from the government concerned and any further information which may reach the Commission under the ‘1503 procedure’; (iii) To keep the situation under review and to appoint an independent expert who reports to the next session of the Commission; (iv) To discontinue consideration
of the matter under the confidential procedure governed by Council resolution 1503 (XLVIII) in order to take up consideration of the same matter under the public procedure governed by Council resolution 1235 (XLII).\textsuperscript{174}

ECOSOC resolution 1503 also empowered the Commission to appoint, with the consent of the state concerned, an ad hoc committee to investigate the situation. This type of action has never been applied and is not included in the revised 'Procedure for dealing with communications concerning human rights'.

Like all the communications procedures, the '1503 procedure' is also based on the principle of a dialogue with the government concerned. The Working Group on Situations informs the government about its recommendations and, subsequently, the government's representatives are invited to attend the Commission's meetings during which the human rights situation in their country is examined. Usually, governments send high-level delegations who participate actively in the meeting.

The Commission holds two separate closed meetings to consider a human rights situation placed before it by the Working Group on Situations, as well as the situations still under review. At the first meeting, the consideration of a human rights situation in a country includes the presentation of comments by the government concerned if it so wishes, and a discussion between members of the Commission and the government's delegation. This is based on confidential files on the case and the report of the Working Group on Situations. During the second session, the Commission takes action on draft resolutions or decisions. The time between the two sessions can be used by the members of the Commission for submitting alternative proposals or amendments to the proposal of action made by the Working Group on Situations. On completion of the procedure, the Chairperson of the Commission announces at a public session which countries have been examined under the '1503 procedure', as well as the names of countries with regard to which the Commission decided to conclude its proceedings under this procedure.\textsuperscript{175}

An important rule of the '1503 procedure' is the principle of confidentiality which covers the entire proceeding, including the meetings of both Working Groups and of the Commission; all relevant correspondence and dossiers; and the appointment and work of independent experts established under this procedure. There are two exceptions to the rule of confidentiality: First, if the government concerned wishes to waive this principle; second, when ECOSOC so decides, whether acting on its own or on the Commission's initiative. It should be noted that the second exceptional ruling, which is, in a way, a sanction, has been applied on several occasions.\textsuperscript{176}

Communications procedures under the human rights treaties The communications procedures under the human rights treaties are optional, that is, they are applicable only to those states which have approved them by accession or ratification. The only exception to this rule is the procedure of state
communications under the Convention on the Elimination of All Forms of Racial Discrimination, which is applicable to all States Parties to the treaty.\textsuperscript{177} The approval of an optional communication procedure may take place either at the time of ratification or at any time thereafter.

The treaty-based communications procedures embrace two categories of communications: those lodged by states and those submitted by private individuals. The relevant rules are similar in the case of all treaties. Since the procedures established under the International Covenant on Civil and Political Rights have been approved by the largest number of States Parties by far, they will be presented here as examples. It should be stressed that no state has so far submitted a communication claiming that another State Party does not comply with its treaty obligations.

\textit{State communications} If a State Party claims that another State Party to the International Covenant on Civil and Political Rights does not comply with its obligations under this treaty, it could lodge a communication with the Human Rights Committee. This procedure is applicable exclusively when both states have recognized the competence of the Committee to consider such communications.\textsuperscript{178} The procedure comprises the following steps:

- A written communication is brought to the attention of the state concerned that should provide its response within three months; if the matter is not settled between the two states within six months from the time of submission of the communication, either state may refer the matter to the Committee.
- The Committee offers its good offices to the States Parties involved based on human rights and fundamental freedoms laid down in the International Covenant.
- The Committee may request the States Parties to supply any relevant additional information.
- The States Parties concerned are entitled to be represented and make oral or written submissions during the Committee's meetings when the matter is under consideration.
- Not later than 12 months after the submission of the matter to the Committee, it should adopt a report containing a brief statement of the facts and, if possible, the solution reached. If the matter continues to be a subject of dispute, the report should include written and oral submissions made by the States Parties concerned.

With the exception of the Committee's report, the proceedings are confidential.

In case of the Convention on the Elimination of All Forms of Racial Discrimination, when the matter has not been resolved to the satisfaction of both parties within the six months following the submission of the communication, the Committee on the Elimination of Racial Discrimination forms a Conciliation Commission which continues to deal with the matter.
Individual communications  Through the direct or indirect access of those who claim to be victims of human rights violations to the communications procedures, the international protection of human rights laid down by various human rights treaties has ceased to be an instrument at the disposal of states alone, and has also become a tool in the hands of individuals. A situation in which the subject of human rights and the state are put on equal footing before an independent international organ has been a breakthrough in the traditional approach of international law to the relationship between the individual and the state. In the view of many, this has been either the most, or one of the most, significant changes in international law since 1945. It is also fascinating to see how rapidly a significant number of countries have recognized that this is an appropriate step towards granting recourse to the international protection to those who complain that their rights have been infringed upon. Before this happened at the international level, individuals could acquire access to regional human rights commissions and courts in the framework of the European and Inter-American systems for the promotion and protection of human rights. The present status of accession to the four existing procedures of individual communications as of April 2002 is shown in Table 1.6.

Table 1.6  Accessions to the procedures of individual communications

<table>
<thead>
<tr>
<th></th>
<th>ICCPR</th>
<th>CERD</th>
<th>CAT</th>
<th>CEDAW</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>103</td>
<td>38</td>
<td>45</td>
<td>35</td>
</tr>
</tbody>
</table>

A communication received by the Human Rights Committee is forwarded to the State Party concerned for a written reply within six months, both on the admissibility and the merits of the communication. Within two months, the State Party may, however, apply for the communication to be recognized as inadmissible for the reasons set out in its reply. The Committee may also request additional comments from the state concerned and from the author of the communication. While the final consideration of the case is in the hands of the entire Committee, its preparatory stage, including the examination of the admissibility of the communication, is handled by the Committee’s Working Group on Communications. A communication may be declared admissible under the following conditions:

- the author, being subject to the jurisdiction of a State Party to the Protocol, is the victim of a violation of any of the rights set forth in the Covenant. The communication could also be submitted by a victim’s representative. The communication may also be accepted if submitted on behalf of the victim when a submission of the communication by the victim personally is impossible.
• The communication does not constitute an abuse of the right of submission.
• The communication is compatible with the provisions of the Covenant.
• The matter is not under consideration by another international procedure of international investigation or settlement.
• Domestic remedies have been exhausted.

The Working Group declares a communication admissible by consensus. If unanimity has not been achieved or the Working Group believes that it would be appropriate for the Committee to decide upon admissibility, the case is referred to the Committee.

A set of procedural rules have been developed which govern the conduct of affairs in the Committee when considering the communications. Among them, the following are of fundamental importance to the overall concept of communications procedure:

• the procedure is based on a dialogue with parties placed on an equal footing
• the parties present their views to the Committee in writing; there is no hearing before the Committee
• the Committee is not mandated to carry out fact-finding
• the burden of proof cannot rest on the author of the communication alone
• the procedure is confidential, although the Committee’s opinions are announced publicly.

The Committee adopts its Views on Communications (the final position in the case) after having given the state concerned and its author the opportunity to comment on the communication and on the government’s views. The decision is limited to the statement whether, in the view of the Committee, the state concerned complied with its obligations under the International Covenant or not. The Committee also makes explanatory comments. Individual opinions may be attached to express the specific observations of the Committee members about the case. The Views are communicated to the parties and their summary is published in the Committee’s report.

While considering individual communications, the treaty-based bodies have developed a unique jurisprudence. Besides the impact on an individual case, the Views on Communications influence more generally the law and practice of states, not only those of the parties to the given proceeding. Moreover, through commenting on the content of international standards and evaluating the domestic law and practice from this perspective, the treaty bodies contribute to the development of the body of the international human rights law in general.

Although an evident achievement of the international community, the communication procedures suffer because of their length. While this is
certainly not a weak point of international procedures alone, in the case of the Human Rights Committee, it took in the past three to five years for the Committee to conclude the consideration of a communication. Through the recent merger of the admissibility and merits stages, it has been possible to cut this time to two to three years. This is still a long period that not only tests the patience of victims, but also frustrates those who expect the international community to offer timely and effective protection as a matter of principle. However, the Committee can request the State Party to take interim measures (without prejudice to the final decision), if, otherwise, irreparable damage might be done to the rights or fundamental freedoms of the interested person. For instance, the Committee may recommend that the state refrain from deporting a person seeking asylum, examine the state of health of an alleged victim or postpone the execution of a penalty. However, in light of the Committee's present workload, its sessional mode of work whereby its meets annually for only nine weeks, and the increasing number of communications, a radical acceleration of the procedure seems impossible unless the time at the Committee’s disposal is extended and support from the Secretariat is strengthened. In 2002, the Human Rights Committee has 1153 registered cases and some 245 pending.182

With a view to ensuring more expeditious and highly professional handling of communications, the Office of the High Commissioner created a ‘Petition Team’ in 2000. The responsibilities of this new team cover screening and evaluating incoming correspondence, registering cases, assisting treaty bodies in preparing draft decisions on admissibility and on the merits of individual cases, providing uniform legal advice to the treaty bodies regarding communications procedures and assisting in the follow-up to Committees’ recommendations.183 As stressed before, however, this solution is based on a fragile basis of voluntary funding.

Comparison of the ‘1503 procedure’ and the treaty-based communications procedures The existence of various communications procedures before the various human rights organs and bodies sometimes leads to confusion. Clarity in this regard is, however, important, particularly in the context of specific human rights violations. There is a general rule of conduct according to which a person who feels that his/her rights have been infringed upon is well advised to choose only the remedy which promises the best results. It is important that a case pending in the framework of one international procedure should not, as a matter of principle, be taken up in the framework of another. In this context, the choice between the international and, if available, regional procedures should also be taken into consideration. In practical terms, at the international level, most important is the distinction between the ‘1503 procedure’ and the individual communications procedures under the human rights treaties. Taking the Optional Protocol to the International Covenant on Civil and Political Rights as an example, one can draw the following comparisons:
### The '1503 Procedure' vs. The Procedure under the Optional Protocol to the International Covenant on Civil and Political Rights

<table>
<thead>
<tr>
<th>The '1503 procedure'</th>
<th>The procedure under the Optional Protocol to the International Covenant on Civil and Political Rights</th>
</tr>
</thead>
<tbody>
<tr>
<td>The procedure is established by an ECOSOC resolution</td>
<td>The procedure is established by an international treaty. The obligations deriving therefrom are legally binding</td>
</tr>
<tr>
<td>The procedure is applicable to all states</td>
<td>The procedure is applicable only to States Parties</td>
</tr>
<tr>
<td>The procedure covers situations of consistent patterns of gross human rights violations</td>
<td>The procedure can be applied only to cases of human rights violations affecting a specified person or persons</td>
</tr>
<tr>
<td>The procedure can be applied to all categories of human rights</td>
<td>The procedure covers only rights protected by the International Covenant</td>
</tr>
<tr>
<td>The communication can be submitted by a victim/group of victims of human rights violations, or in the framework of actio popularis</td>
<td>The communication can be lodged only by victims or a person acting on behalf of a victim</td>
</tr>
<tr>
<td>The authors of communications do not take part in the procedure. They are not informed about the course of action unless the Commission makes a public announcement. The authors are only informed about the mode of procedure applied in such cases.</td>
<td>The authors of communications participate in the procedure in the form of written statements.</td>
</tr>
</tbody>
</table>

### Non-governmental Organizations' Contribution to the Work of the United Nations Human Rights Mechanisms

NGOs are not part of the UN human rights machinery. Yet, they play a very important role in its work, often acting as the voice of victims and wider civil society. However, articulating human rights concerns, although essential, is not the only contribution by NGOs. They also offer to the international community capacities in the area of monitoring, fact-finding, inquiries into human rights violations, analysis, research and training. More specifically, the contribution of NGOs is significant, in particular, in the following areas:
1 The work of the Commission on Human Rights and the Sub-Commission – representatives of NGOs participate in the discussions of these organs, presenting their views, assessments and postulates. Equally important is the NGOs’ lobbying. Disseminating information and analysis, NGOs often successfully attempt to influence negotiations. Finally, they take an active part in the proceedings of working groups established to negotiate draft treaties or declarations.

2 The work of treaty bodies – NGOs are an important source of information, next to governments and UN agencies and programmes.

3 The work of special procedures – this is also largely based on information coming from NGOs. For example, a large part of urgent appeals sent by special procedures to governments follows information made available by NGOs.

4 Human rights work in the field – NGOs are involved in human rights monitoring and investigations and provide the United Nations and the wider International Community with materials resulting therefrom. NGOs are also increasingly involved in the programme of technical cooperation carried out by the OHCHR as implementing partner.

5 The work of international conferences – the mode of NGOs’ participation in such conferences often generated disputes about applicable and workable solutions. While the concept of world summits as essentially governmental meetings prevailed, NGOs held their own parallel meetings and provided input to the governmental level.

Among NGOs, those with consultative status with the ECOSOC enjoy a privileged position. For example, they are entitled to designate United Nations representatives, to make proposals regarding the agenda of the Commission on Human Rights and the Sub-Commission, attend meetings of these bodies and present written and oral statements, be commissioned with the preparation of studies, participate in international conferences organized by the United Nations and in the preparatory processes to such conferences, and have facilitated access to the documentation system and support from the secretariat. In view of the particular empowerment of NGOs with consultative status, the principles ruling this status are also important for the work of the UN human rights machinery.

The participation of NGOs in the work of the United Nations human rights programme continues to give rise sometimes to controversies between the advocates of a very broad presence of NGOs and those who are inclined rather to narrow it. While repeating, once again, that the participation of NGOs in the work of the United Nations human rights machinery is vital, there is also a space for NGOs to make the role of their advocates easier. To that end, NGOs could try to better coordinate their active presence in different United Nations through, for example, broader use of joint statements and other presentations. This would probably further strengthen their impact. On the other hand, one can be afraid that the attempts of administrative restrictions to limit the contribution by NGOs to the United Nations human rights machinery would negatively influence its work and thus be counterproductive.
NOTES

* This contribution presents the views of the author, who is a staff member of the United Nations, and does not necessarily reflect those of the Organization.
1 Compare Articles 1, para. 3, 55, 56 and Articles 13, para. 1, 62, para. 2, 68 of the Charter of the United Nations.
2 See section on ‘Communication procedures’.
4 GA resolution 55/2, paras. 24 and 25.
5 Part II, para. 17.
6 Part I, paras 1 and 5 respectively of the Vienna Declaration and Programme of Action. The quoted para. 5 should be interpreted in light of Articles 1, para 3, 55 and 56 of the Charter of the United Nations. This means that states have the duty to promote and protect human rights both at the national and international level.
7 Part I, para. 4, of the Vienna Declaration and Programme of Action lays down, inter alia: ‘The promotion and protection of all human rights and fundamental freedoms must be considered as a priority objective of the United Nations in accordance with its purposes and principles, in particular the purpose of international co-operation. In the framework of these purposes and principles, the promotion and protection of all human rights is a legitimate concern of the international community.’ This was the first time in history that the principle of ‘legitimate concern’ was recognized unanimously in this context.
8 The Vienna Declaration and Programme of Action refers in several places to international cooperation, including cooperation with the United Nations human rights machinery. It is important to recall that in Article 56 of the Charter of the United Nations, member states pledged themselves to take joint and separate action in cooperation with the Organization for the achievement of the purposes set forth in Article 55 which include, inter alia, the promotion of universal respect for, and observance of, human rights and fundamental freedoms for all.
9 Part I, para. 5, of the Vienna Declaration and Programme of Action.
10 Ibid., para. 8.
11 Exceptions in favour of an exclusive competence of the Security Council are mentioned in Article 12 of the Charter.
12 This is the so-called regular budget which in 2001 reached US$22 million (approx. 1.7 per cent of the overall budget of the United Nations), whereas the budget of voluntary contributions for human rights activities made mainly by member states reached US$46 million.
15 ECOSOC is composed of 54 member states of the United Nations, elected by the General Assembly in accordance with the principle of regional balance – see Article 61 of the Charter and General Assembly resolution 2847 (XXVI) of 20 December 1971. Observer states, United Nations specialized agencies and programmes, and non-governmental organizations may participate in the work of ECOSOC without a right to vote. ECOSOC holds one regular session a year (special sessions may also be convened).
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16 UN doc. E/2001/100.
17 See ECOSOC resolution 1998/2 concerning the coordinated follow-up to the Vienna Declaration and Programme of Action.
18 ECOSOC resolution 5(1).
20 ECOSOC resolution 9(II) 1946 and 1979/36.
22 Initially adopted ECOSOC resolution 100 (V) of 12 August 1947. For an updated version consult <www.unhchr.ch>.
23 Vienna Declaration and Programme of Action, Article II, para. 17.
25 Initially lasting for three weeks, the regular sessions have been extended to six weeks.
27 The Commission considered the following items: election of officers; adoption of the agenda; organization of the work of the session; rationalization of the work of the Commission; draft provisional agenda for the next session and report to ECOSOC on the 57th session of the Commission.
29 The Commission considered the following items: the right of peoples to self-determination; racism, racial discrimination, xenophobia and all forms of discrimination; the right to development; economic, social and cultural rights; civil and political rights, including the questions of: torture and detention, disappearances and summary executions, freedom of expression, independence of the judiciary, administration of justice, impunity, religious intolerance, states of emergency, conscientious objection to military service; integration of the human rights of women and the gender perspective; rights of the child; specific groups and individuals, including: migrant workers, minorities, mass exoduses and displaced persons, other vulnerable groups and individuals; indigenous issues.
30 Two themes divided the members of the Commission: 'the human rights of disabled people' and 'human rights and terrorism'.
31 Decision 2002/113.
32 See <www.unhchr.ch/huricane/huricane.nsf/newsroom>.
34 See '1503 procedure' in the section, 'Procedures related to human rights violations'.
36 This group encompassed 69 speakers at the 57th session and 78 at the 58th session. On the other hand, how encouraging and welcome it might be, the considerable time allocated to ‘dignitaries’ also gives rise to concern. Thus proposals have been made to concentrate such statements in the framework of a high-level segment of the Commission. Today, scattered throughout the session, they generate organizational problems in handling the tight agenda of the Commission.

37 250 non-governmental organizations were accredited at the 57th session and 247 at the 58th session. They produced 192 and 205 official documents respectively.

38 Report of the Secretary-General: ‘Strengthening of the United Nations: an agenda for further change’, UN doc. A/57/387, para. 46. Discussing this issue in her aforementioned statement to the 58th session of the Commission, the High Commissioner quoted one of the principal drafters of the Universal Declaration of Human Rights, Rene Cassin, who stated: ‘Finally, I would draw the Working Parties’ attention to the advisability of gradually increasing the means of implementation – by urging the importance of preventive measures which depend largely on the collaboration of States with the United Nations and the vigilance of public opinion, and means of redress, or even punishment, of the violations committed.’ The topicality of these words is indeed self-evident when one looks at the work of the Commission and the challenges it faces today.


40 Subsequent re-elections are possible. Half of the members and alternates are elected every two years.


43 Ibid., para. 51.

44 Ibid., para. 58.

45 Ibid., paras 45 and 46.

46 Sub-Commission resolution 1999/114, annex.

47 ECOSOC resolution 16 (VI).

48 ECOSOC resolution 1982/34.

49 ECOSOC resolution 11(II).

50 ECOSOC resolution 1989/45.

51 ECOSOC resolution 1987/22.

52 ECOSOC resolution 1983/27. See also the section on reporting in the International Labour Organization and UNESCO in this book.

53 The Commission is presented in a detailed manner elsewhere in this volume. Since it plays a central role in the promotion and protection of the human rights of women, it is necessary to make the comments above.

54 See: Amnesty International, World Conference on Human Rights. Facing Up to the Failures: Proposals for Improving the Protection of Human Rights by the United Nations, 1992, AI Index: IOR 41/16/92. During the four decades since the first formal submission of a proposal, negotiations were sometimes quite advanced, in particular in the 1970s, but not enough to make the final breakthrough.

55 Vienna Declaration and Programme of Action, Part II, para. 18.

56 Thereafter referred to as resolution 48/141; compare also 'New United Nations High Commissioner will champion rights worldwide', United Nations Chronicle, March 1994, Vol. XXXI, No. 1, p.84.
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57 UN doc. 48/141 para 2 (a).
58 Para. 4 (b) of resolution 48/141.
59 Para. 4 of resolution 48/141.
60 Para. 4 (b) of resolution 48/141.
61 Para. 5 of resolution 48/141.
62 All reports of the High Commissioner are available on the website: <www.unhchr.ch>.
65 Para. 4 (f) of resolution 48/141.
66 Para. 4 (g) of resolution 48/141.
67 The Paris Principles were adopted as the conclusions of a workshop, held in Paris in October 1991. These conclusions were transmitted by the Commission on Human Rights, in resolution 1992/54, as the ‘Principles relating to the status of national institutions’, to the General Assembly. The General Assembly attached the Principles in 1993 as the Annex to resolution 48/134. The Paris Principles affirmed inter alia that national human rights institutions should be vested with as broad a mandate as possible set forth clearly in a constitutional or legislative text, and accorded competence sufficient to protect and promote human rights effectively.
72 See the United Nations Millennium Declaration, UN doc. A/55/2; Report of the Secretary-General 'Road map towards the implementation of the United Nations Millennium Declaration', UN doc. A/56/326.
73 See the section, 'Reports under human rights treaties’.
74 Some participants in the 2001 meeting of the Chairpersons referred to this problem, see 'Report of the Chairpersons of the human rights treaty bodies on their 13th meeting': 16/07/2001. A/57/... – advance unedited text, see: OHCHR website <www.unhchr.ch/tbs/doc.nsf/(Symbol)/A.57...> and: the report of the Secretary-General on the consultations conducted in respect of the aforementioned report, UN doc. E/CN.4/2000/98. For the time being, such quotas have been established exclusively for the election of members of the CESCR.
75 Usually the rules of procedures of the treaty bodies lay down that the adoption of concluding observations after the examination of the report takes place in a private meeting. An exception provides here that the CERD, after having recently reexamined this issue, recognized that the adoption of concluding observations in public meetings serves the interest of transparency and decided to continue its present practice in this regard, Report of the Committee on the Elimination of Racial Discrimination, 58th and 59th sessions, UN doc. A/56/18, p.119.

76 Para. 37 of the Report on the 22nd, 23rd and 24th sessions of the Committee on Economic, Social and Cultural Rights, UN doc. E/C.12/2000/21. See also the section on 'Reports under human rights treaties'.

77 Para. 50 of the CESC Report (note 76).

78 See Committee on the Rights of the Child: the Report on the 28th session (24 September–2 October 2001), UN doc. CRC/C/111, pp.227–53. The previous general discussions focused on children in armed conflict; economic exploitation of children; the role of the family in the promotion of the rights of the child; the girl child; the administration of juvenile justice. See also Rule 55 of the Rules of Procedure of the Committee on the Elimination of Discrimination against Women, UN doc. A/56/38.


81 See below comments on CESC, HRC and CEDAW.


83 CERD decision 2 (VI) ‘Co-operation with the International Labour Organization (ILO) and the United Nations Educational, Scientific and Cultural Organization (UNESCO)’, adopted by the Committee on 21 August 1972.

84 CERD Report, p.13 (note 75).

85 Paras 34 and 35 of the Rules of Procedure of the CESC.


87 Para. 52 (note 38).

88 See the reports of the independent expert, Philip Alston, on enhancing the long-term effectiveness of the United Nations human rights treaty system (note 70). See also A. Bayefsky, ‘Report – the United Nations Human Rights Treaty System: Universality at the Crossroads’, April 2001, comprehensive report from a study conducted under the direction of the author, which included, inter alia, an in-depth analysis of 20 countries.

89 See section on ‘Reports under human rights treaties’.

91 Report of the Chairpersons of the human rights treaty bodies on their 13th meeting, 16/07/2001 (advance unedited text) – see: <www.unhchr.ch/tbs/doc.nsf/(Symbol)/A.57...>.

92 The Human Rights Committee has recently stressed that it '... continues to find value in the meeting of persons chairing the human rights treaty bodies as a forum for the exchange of ideas and information on procedures and logistical problems, particularly the need for sufficient services to enable the various treaty bodies to carry out their respective mandates', The HRC Report (Vol. I), p. 56 (note 82).


95 1. Reporting to States Parties on 24/02/89
2. International technical assistance measures (Article 22) on 2/02/1990
3. The nature of obligations of States Parties on 14/12/1990
4. The right to adequate housing on 13/12/1991
5. Persons with disabilities on 9/12/1994
6. The economic, social and cultural rights of older persons on 08/12/1995
7. The right to adequate housing (Article 11, para. 1; forced evictions) on 20/5/1997
8. The relationship between economic sanctions and respect for human rights on 12/12/1997
9. The domestic application of the Covenant on 8/12/1998
10. The role of national human rights institutions in the protection of human rights on 14/12/1998
11. Plans of action for primary education (Article 14) on 10/5/1999
12. The right to adequate food (Article 11) on 12/5/1999
13. The right to education (Article 13) on 8/12/1999
14. The right to the highest attainable standard of health on 11/08/2000

Texts of the General Comments can be found in the compilation UN doc. HRI/GEN/1/Rev.5 and on the Office of the High Commissioner for Human Rights website.

96 Vienna Declaration and Programme of Action, Part II, para. 75.


98 Commission on Human Rights resolution 2002/24, para. 9 (c) and (f).


100 E/1994/23, para. 354. At its 24th session, the Committee updated the procedure for the participation of non-governmental organizations in the Committee’s activities, UN doc. E/C.12/2000/6. See also paras 651–52 of the CESCR Report (note 76) and the general part of the section on ‘Treaty monitoring bodies’ for criteria for information provided by non-governmental organizations.

101 See para. 43 of the CESCR Report (note 76).

102 1. Reporting obligation on 27/7/1981
2. Reporting guidelines on 28/07/1981
3. Implementation at the national level (Article 2) on 29/07/1981
4. Equality between the sexes (Article 3) on 30/7/1981
5. Derogation of rights (Article 4) on 31/7/1981
6. The right to life (Article 6) on 30/4/1982
7. Torture or cruel, inhuman or degrading treatment or punishment (Article 7) on 30/5/1982
8. Right to liberty and security of persons (Article 9) on 30/6/1982
9. Humane treatment of persons deprived of liberty (Article 10) on 30/7/1982
11. Prohibition of propaganda for war and inciting national, racial or religious hatred (Article 20) on 29/7/1983
12. The right to self-determination of peoples (Article 1) on 13/3/1984
13. Equality before the courts and the right to a fair and public hearing by an independent court established by law (Article 14) on 13/4/1984
14. Nuclear weapons and the right to life (Article 6) on 9/11/1984
15. The position of aliens under the Covenant on 11/4/1986
16. The right to respect of privacy, family, home and correspondence, and protection of honour and reputation (Article 17) on 8/4/1988
17. Rights of the child (Article 24) on 7/4/1989
19. Protection of the family, the right to marriage and equality of the spouses (Article 23) on 27/7/1990
20. Replaces General Comment concerning the prohibition of torture and cruel treatment or punishment (Article 7) on 10/3/1992
22. The right to freedom of thought, conscience and religion (Article 18) on 30/7/1993
23. The rights of minorities (Article 27) on 8/4/1994
24. Issues relating to reservations made upon ratification or accession to the Covenant or the Optional Protocols thereto, or in relation to declarations under Article 41 of the Covenant on 4/11/1994
25. The right to participate in public affairs, voting rights and the right of equal access to public service (Article 25) on 12/7/1996
26. Continuity of obligations on 8/12/1997
27. Freedom of movement (Article 12) on 2/11/1999

Texts of these General Comments can be found in a compilation – UN doc. HRI/GEN/1/Rev.5 – and on the OHCHR website.

104 See para. 53 of the HRC Report (note 82); Rule 70A of the Rules of Procedure. It is interesting that the Committee has been adopting concluding observations since its decision of 24 March 1992. Sometimes, states send comments on concluding observations that are published in a separate document, see para. 55 of the Report.
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85

106 See para. 53 of the HRC Report (Note 82); para. 68.
107 Ibid., para. 95. See also the section on 'Non-conventional procedures' on the practice of the follow-up procedure. The Committee stresses that:

‘... follow-up information has been systematically requested in respect of all Views with a finding of a violation of the Covenant. At the conclusion of the Committee’s 72nd session, follow-up information had been received in respect of 198 Views. No information had been received in respect of 75 Views. In 10 cases, the deadline for receipt of follow-up information had not yet expired. In many instances, the Secretariat has also received information from authors of communications to the effect that the Committee’s Views had not been implemented. Conversely, in rare instances, the author of a communication has informed the Committee that the State Party had given effect to the Committee’s recommendations, although the State Party had not itself provided that information ... Roughly 30% of the replies received could be considered satisfactory in that they display the State Party’s willingness to implement the Committee’s Views or to offer the applicant an appropriate remedy. Other replies cannot be considered satisfactory because they either do not address the Committee’s recommendations at all or merely relate to one aspect of them. Certain replies simply indicate that the victim has failed to file a claim for compensation within statutory deadlines and that no compensation can therefore be paid to the victim ...’

The remainder of the replies either explicitly challenge the Committee’s findings, on either factual or legal grounds, constitute much-belated submissions on the merits of the case, promise an investigation of the matter considered by the Committee or indicate that the State Party will not, for one reason or another, give effect to the Committee’s recommendations, paras. 176–79.

109 Para. 25 of the HRC Report (note 82).
110 See the CERD Report, pp.15–16 (note 75).
111 1. States Parties’ obligations (Article 4) on 25/2/1972
2. States Parties’ obligations (Article 9) on 26/8/1972
3. Apartheid (Article 3) on 24/8/1973
4. Demographic composition of the population (Article 9) on 25/8/1973
5. Demographic composition of the population (Article 9) on 14/4/1977
6. Overdue reports (Article 9) on 19/3/1982
7. Legislation to eradicate racial discrimination (Article 4) on 23/8/1985
8. Identification with a particular racial or ethnic group (Article 1, paras 1 and 4) on 22/8/1990
11. Non-citizens (Article 1) on 19/3/1993
12. Successor States on 20/3/1993
13. Training of law enforcement officials in the protection of human rights on 21/3/1993
14. Definition of discrimination (Article 1, para. 1) on 22/3/1993
15. Organized violence based on ethnic origins (Article 4) on 23/3/1993
16. References to situations existing in other states (Article 9) on 24/3/1993
17. Establishment of national institutions to facilitate the implementation of the Convention on 25/3/1993
18. Establishment of national institutions to facilitate the implementation of the Convention on 18/3/1994
20. Non-discriminatory implementation of rights and freedoms (Article 5) on 15/3/1996
22. Article 5 and refugees and displaced persons on 24/8/1996
24. Reporting of persons belonging to different races, national/ethnic groups, or indigenous peoples (Article 1) on 27/8/1999
25. Gender-related dimensions of racial discrimination on 20/3/2000

Texts of the General Recommendations can be found in a compilation – UN doc. HRI/GEN/1/Rev.5 and on the OHCHR website.

A similar competence has also been given to the Committee on the Elimination of Discrimination against Women by virtue of the Optional Protocol to the Convention on the Elimination of Discrimination against Women (see below).

Article 20 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

See the Report of the Committee against Torture, 25th and 26th sessions, UN doc. A/56/44, pp.72 and subseq.

Commission on Human Rights resolution 2002/33.


2. Reporting by States Parties on 10/4/87
3. Education and public information campaigns on 11/4/1987
5. Temporary special measures on 4/3/1988
10. 10th anniversary of the adoption of the Convention on the Elimination of All Forms of Discrimination against Women on 4/3/1989
11. Technical advisory services for reporting obligations on 5/3/1989
14. Female circumcision on 2/2/1990
16. Unpaid women workers in rural and urban family enterprises on 2/1/1991
18. Disabled women on 4/1/1991
19. Violence against women on 29/1/1992
20. Reservations to the Convention on 30/1/1992
23. Political and public life on 13/1/1997
Texts of the General Comments can be found in a compilation – UN doc. HRI/GEN/1/Rev.5 and on the website of the Office of the High Commissioner for Human Rights.

Decision 25/1. See also the Report of the Committee on the Elimination of Discrimination against Women, 24th and 25th sessions, United Nations doc. A/56/38, para. 23. A request for an additional session has been formulated since 2000.

The Protocol was adopted by General Assembly resolution A/54/4 on 6 October 1999 and opened for signature on 10 December 1999, Human Rights Day.

Articles 8 to 12 of the Protocol. See also the chapter ‘Proceedings under the inquiry procedure of the Optional Protocol’ (Rules 76–91) of the revised Rules of Procedure adopted by the Committee on the Elimination of Discrimination against Women.

Decision 24/III ‘Links with the Commission on the Status of Women’.

The first special procedure was established in 1967 – the Ad-hoc Working Group of Experts on Human Rights in southern Africa – to investigate the charges of torture and ill treatment of prisoners, detainees or persons in police custody in South Africa. The first thematic special procedure was the Working Group on Enforced or Involuntary Disappearances created in 1980.

‘Strengthening of the United Nations: an agenda for further change’ (note 38), para. 55.


The applicability of privileges and immunities to the mandate-holders to ensure the independent exercise of their functions has been confirmed in two advisory opinions by the International Court of Justice in 1989 in the case of Mr. D. Mazilu, Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of the Minorities, and in 1999 in the case of Mr. D. P. Cumaraswamy, the Special Rapporteur on Independence of Judges and Lawyers.

See the section on ‘1503 procedure’.


The Working Group on Arbitrary Detention; the Working Group on Enforced or Involuntary Disappearances; the Special Rapporteur on Extra-Judicial, Summary or Arbitrary Executions; the Special Rapporteur on Violence against Women; the Special Representative on the Situation of Human Rights Defenders; the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression. See <www.unhchr.ch>.

The Working Group on Arbitrary Detention is also formulating its views on individual cases being shared with the governments concerned and being part of the reports.

Decision 2000/109, para. 30.

See Decision 2000/19, para. 5.

These recommendations were discussed at the meeting of special procedures in 1999, UN doc. E/CN.4/2000/5, paras. 32–46.

‘Strengthening of the United Nations: an agenda for further change’ (note 38), paras 56 and 57.

See para. 26 of the Report on the meeting of Special Rapporteurs/representa-

136 Compare, for example, the agenda of the meeting of special procedures in 1999 in UN doc. E/CN.4/2000/5.


138 See the note 137 for the source, para. 5.

139 For instance, Rule 4 of the Rule of Procedure of the Committee on the Elimination of Discrimination against Women states that ‘The pre-sessional working group shall formulate a list of issues and questions on substantive issues arising from reports submitted by States Parties in accordance with Article 18 of the Convention and submit that list of issues and questions to the States Parties concerned’, see UN doc. A/56/38.

140 See the CAT Report, p.12 (note 114).

141 See para para. 50 of the HRC Report (note 82).

142 Ibid.

143 See the section on ‘Treaty monitoring bodies’.


145 See para. 67 of the HRC Report (note 82).

146 See the CERD Report, p.119 (note 75).

147 See, for example, paras 47–49 of the CESCR Report (note 76).

148 See the CAT Report, p.19 (note 114).

149 See reports by the independent expert (note 70).


152 Para. 54 (note 38).


154 See, for example, the decision taken by the Committee on Economic, Social and Cultural Rights to apply a flexible approach to the rigid five-year interval for periodic reports, in view of which the Committee may reduce this period on the basis of the following criteria and taking into account all relevant circumstances:

(a) The timeliness of the State Party’s submission of its reports in relation to the implementation of the Covenant;

(b) The quality of all the information, such as reports and replies to lists of issues, submitted by the State Party;

(c) The quality of the constructive dialogue between the Committee and the State Party;

(d) The adequacy of the State Party’s response to the Committee’s concluding observations;

(e) The State Party’s actual record, in practice, regarding implementation of the Covenant in relation to all individuals and groups within its jurisdiction.
Paras. 636-7 of the CESCR Report (note 76); see also para. 65 of the HRC Report (note 82).

155 See UN doc. HRI/MC/2001/2, paras 27-36.
156 See Rule 48, UN doc. A/56/38.
158 See also Report of the Secretary-General ‘Advisory services and technical cooperation in the field of human rights’, UN doc. E/CN.4/2001/104. It should be pointed out that the independent expert criticized the effectiveness of regional and sub-regional training courses on reporting. He postulated designing a special programme in this regard, see: UN doc. E/CN.4/1997/74, paras 72-77 and 118.
159 UN doc. HRI/GEN/4/Rev.1.
160 UN doc. HRI/GEN/2/Rev.1.
161 UN doc. HRI/GEN/3.
162 UN doc. HRI/GEN/1/Rev.5.
163 E/CN.4/14/Rev.2, para 3.
164 ECOSOC resolutions 75(V) and 76(V).
165 The authors’ names remained secret unless otherwise agreed by them.
166 This draft was based on the concept worked out by the Sub-Commission.
168 See also ‘Treaty monitoring bodies’ and ‘Non-conventional procedures’.
169 The strong fluctuation of the numbers of communications results, among others, from so-called mass campaigns when hundreds of communications concern one gross violation of human rights.
171 See also OHCHR Fact Sheet No.7/Rev.1, Complaint Procedures, Part II, 2000 (in print and on the OHCHR website <www.unhchr.ch>.
172 The Sub-Commission on the Promotion and Protection of Human Rights has established criteria for the admissibility of communications, Sub-Commission resolution 1 (XXIV), 13 August 1971.
173 Previously it was the Sub-Commission that decided about forwarding a communication to the Commission on the basis of the Report of the Working Group on Communications which met one week before the session of the Sub-Commission. This was recognized as an unnecessary complication of the ‘1503 procedure’.
174 ECOSOC resolution 2000/3, para. 7 (d).
175 It was late 1978 when the Chairperson of the Commission publicly named the countries under examination, differentiating between pending human rights situations and those dropped from the agenda.
176 This happened with regard to Argentina and Uruguay in 1985, the Philippines in 1986, Haiti in 1987.
177 Article 11 of the Convention.
178 See Article 41 of the International Covenant on Civil and Political Rights.
180 Ibid., rules 78 to 98.
181 In this context, the Committee has considered that the author of the communication can have difficulties in obtaining access to evidence.
182 For comparison: in the case of the CAT complaints procedure, 227 cases were registered as of 30 January 2003 and 57 pending; of the CERD procedure: 27 registered cases, 9 pending.

184 See ECOSOC resolution 1996/31 ‘Consultative relationship between the United Nations and Non-Governmental Organizations.’ Visit also <www.un.org> where, under ECOSOC, precise information on the consultative status of non-governmental organizations is provided.

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