UNITED
NATIONS

A

General Assembly

Distr.
GENERAL

A/44/668
8 November 1989

ORIGINAL: ENGLISH

Forty-fourth session
Agenda item 109

EFFECTIVE IMPLEMENTATION OF INTERNATIONAL INSTRUMENTS ON HUMAN RIGHTS, INCLUDING REPORTING OBLIGATIONS UNDER INTERNATIONAL INSTRUMENTS ON HUMAN RIGHTS

Note by the Secretary-General

1. In paragraph 15 (a) of resolution 43/115 of 8 December 1988, the General Assembly requested the Secretary-General "to consider entrusting, within existing resources, an independent expert with the task of preparing a study on possible long-term approaches to the supervision of new instruments on human rights, taking into account the conclusions and recommendations of the meeting of persons chairing the treaty bodies, the deliberations of the Commission on Human Rights and other relevant materials, to be submitted to the General Assembly at its forty-fourth session".

2. Pursuant to that resolution, the Commission on Human Rights adopted resolution 1989/47, paragraph 5 of which requested the Secretary-General "to entrust an independent expert with the task of preparing a study, within existing resources, on possible long-term approaches to enhancing the effective operation of existing and prospective bodies established under United Nations human rights instruments taking into account the conclusions and recommendations of the meeting of persons chairing the human rights treaty bodies", and requested that the report be placed before the General Assembly at its forty-fourth session and the Commission on Human Rights at its forty-sixth session.

3. In accordance with the foregoing resolutions, the Secretary-General appointed Mr. Philip Alston, Professor of International Law and Director of the Centre for Advanced Legal Studies at the Australian National University, and Rapporteur of the Committee on Economic, Social and Cultural Rights, to carry out the study in question, which is transmitted herewith to the General Assembly at its forty-fourth session and will be made available to the Commission on Human Rights at its forty-sixth session.

ANNEX

CONTENTS

		Paragraphs	Page
SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS			4
I.	INTRODUCTION	1 - 8	9
	A. Mandate	1 - 2	9
	B. Approach adopted	3 - 8	9
II.	OVERVIEW OF THE RAPIDLY CHANGING ENVIRONMENT WITHIN WHICH THE TREATY BODIES ARE FUNCTIONING	9 - 30	11
	A. The evolution of the human rights treaty system over time	10 - 20	11
	B. Implications for the treaty system of the general expansion of multilateral human rights activities	21 - 25	15
	C. The treaty system as the cornerstone of the United Nations human rights programme	26 - 30	17
III.	REPORTING BY STATES PARTIES	31 - 53	18
	A. The importance and functions of reporting procedures	31 - 33	18
	B. Current problems of reporting procedures	34 - 35	20
	C. The burden of coexisting reporting systems	36 - 42	21
	D. Reducing overlapping reporting requirements	43 - 53	23
IV.	FUNCTIONING OF TREATY BODIES: FINANCIAL AND ADMINISTRATIVE ISSUES	54 - 109	26
	A. Financial arrangements for both existing and prospective treaty bodies	54 - 99	26
	B. Length and frequency of Committee sessions	100 - 105	41
	C. Conditions of service for experts	106	42
	D. Secretariat servicing	107 - 109	43

CONTENTS (continued)

		Paragraphs	Page
V.	FUNCTIONING OF TREATY BODIES: SUBSTANTIVE ISSUES	110 - 136	44
	A. Towards more effective monitoring of compliance	110 - 125	44
	B. Promoting normative consistency	126 - 131	49
	C. Public information	132 - 136	52
VI.	A LONG-TERM PERSPECTIVE ON STANDARD-SETTING	137 - 174	53
	A. Defining the issues	137 - 138	53
	B. Is there getting to be an excess of standards?	139 - 149	54
	C. Means by which to accord priority to the implementation of existing instruments	150 - 160	59
	D. Towards more effective standard-setting procedures	161 - 174	62
VII.	OTHER SELECTED LONG-TERM ISSUES	175 - 197	67
	A. A long-term consolidation of the existing network of treaty bodies	179 - 183	68
	B. Entrusting new functions to existing treaty bodies by means of new treaties	184 - 189	70
	C. Entrusting new functions to existing treaty bodies by means of additional protocols	190 - 192	72
	D. Amending the treaties	193 - 197	73

SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS

1. This study deals with a wide range of issues relating to the effective operation of both existing and prospective United Nations human rights treaty bodies. In general terms, it is based on the following premises:

(a) The adoption and widespread (ideally, universal) ratification of a range of treaty instruments is an essential component of United Nations action in the field of human rights.

(b) The implementation provisions contained in the relevant treaties must be respected by States parties to them and the latter's compliance must be monitored effectively and efficiently by the appropriate international bodies.

(c) The treaty régime (along with the Universal Declaration of Human Rights) constitutes the cornerstone of international human rights endeavours. Thus the individual treaty bodies should not be viewed in isolation either from one another or from a wide variety of other United Nations bodies concerned with human rights as broadly defined (paras. 26-30).

(d) The overall environment has changed dramatically in the two decades since the first of the major treaty bodies was established. These changes have been both quantitative (in the sense of a major expansion in the number of treaty and other United Nations and regional bodies involved and the scope of the activities being pursued) and qualitative (in the sense of the increasing sophistication and complexity of those activities and the extent of their ramifications) (paras. 10-25).

(e) As a result of such changes a major and continuing effort is required to ensure and promote the integrity of the existing treaty system and to accommodate new standards and a limited number of new monitoring arrangements (paras. 7 and 8).

2. Reporting procedures are of central importance to the international human rights régime. Reporting should be viewed as a multi-faceted undertaking that serves a variety of objectives both domestically and internationally (paras. 31-33).

3. In seeking to reduce the overall burden of reporting by States, the policy-making organs should bear in mind the desirability of reducing or rationalizing the number and scope of non-treaty-based requests for reporting (para. 38).

4. The policy of extending reporting periodicity has already resulted in a better co-ordinated and less burdensome system, the advantages of which will begin to be felt in the near future. In drafting future treaties consideration should be given to vesting a degree of discretion in the treaty body as to the periodicity of reporting (paras. 39 and 40).

5. The consolidation of reporting guidelines with respect to a country profile is a valuable initiative but serves to address only a part of the much larger problem of overlapping reporting requirements (para. 43).

6. As a result of extensive (and potentially increasing) overlapping in the competences of different treaty bodies, States may be required to report on virtually the same issue to several different bodies. In an effort to reduce such duplication each State party should be encouraged to identify for its own purposes the instances in which cross-referencing can be used effectively and appropriately in preparing its reports. If necessary, and if resources are available, interested States should be assisted in that task through the Advisory Services Programme. Each of the treaty bodies might also consider providing some guidance to States parties in this respect (paras. 43-52).

7. Consideration should be given to requesting the International Labour Organisation (ILO) to consider updating and expanding for informational purposes the analysis it prepared in 1969, which compares the provisions of relevant ILO Conventions with the standards contained in the United Nations human rights treaties (para. 53).

8. In terms of the principle involved, a variety of reasons would seem to argue strongly against State party financing arrangements for human rights treaties. They include, inter alia: (a) the international community as a whole is the principal beneficiary for an effective treaty régime (paras. 66 and 67); (b) the treaty régime is an important and even indispensable means of promoting the human rights-related objectives of the Charter of the United Nations (para. 68); (c) the treaty bodies are performing a function in respect of reporting that was previously funded entirely from the regular budget (para. 69); (d) the goal of enhancing universal ratification is undermined by providing a financial disincentive to ratification (para. 70); and (e) human rights treaty bodies should not be able to be rendered inoperative by the non-performance of financial obligations on the part of a limited number of States parties (paras. 71 and 72).

9. Voluntary funding of treaty bodies is, both in principle and in practice, undesirable as a general rule (para. 77).

10. If State party financing is applied to treaty bodies to be established in the future, there is every reason to assume that the problems currently facing certain existing bodies will be replicated before long (para. 80).

11. In seeking solutions to the immediate problems affecting the Committee on the Elimination of Racial Discrimination and potentially the Committee against Torture, every effort must be made to balance two considerations. Treaty obligations must be upheld and respected and the effective functioning of the treaty bodies must be assured (paras. 82-85). In the long-term, treaty amendment should be contemplated (para. 84). In the short term, voluntary funding is unlikely to be effective unless coupled with other initiatives (paras. 86-88 and 97).

12. Consideration of proposals to suspend the voting and/or nominating privileges of States parties that are substantially in default on their assessed contributions should be based not on an analogy with Article 19 of the Charter but on general principles of treaty law as reflected in the Vienna Convention on the Law of Treaties (paras. 89 and 90). While such an option should be contemplated, it would require unanimous agreement (paras. 91 and 92).

13. The provision in article 11 of the Vienna Convention for inter-State communications could probably be invoked against defaulting States parties but its ultimate effectiveness is unclear (para. 93). The same applies to proposals to refer the matter to the International Court of Justice. Reservations in that regard by a considerable number of States parties would pose an additional problem (paras. 94-96).

14. The most appropriate short-term solution would seem to be the authorization of temporary regular budget funding to be provided while other short-term and long-term options are vigorously pursued (paras. 98 and 99).

15. The meeting time available to some of the treaty bodies is clearly inadequate and in the longer term appropriate solutions will need to be explored (paras. 100-103). Other measures are also appropriate in the short-term especially in the case of the Committee on the Elimination of Discrimination against Women (paras. 104 and 105).

16. In the longer term, adequate honoraria for committee members should be considered (para. 106). Secretariat staffing levels are also clearly inadequate to the tasks at hand. In the short-term the Secretary-General should promote initiatives with limited financial implications (paras. 107-109).

17. The practice of providing the representative of a State party in advance with a list of principal issues of concern to the Committee has significant advantages for both the treaty body and the State party and should be encouraged (paras. 110-113).

18. The treaty bodies should continue to explore all available avenues for enhancing their access to reliable sources of information including, where appropriate, information from other human rights bodies, the specialized agencies, individual experts and non-governmental organizations (paras. 114-122).

19. Within the framework of a constructive dialogue, the committees should consider encouraging the recording of more clearly focused concluding observations by individual experts, particularly in situations where the responses provided are seen to be less than satisfactory. Each treaty body should consider whether its procedures for the consideration of supplementary information are adequate (paras. 123-125).

20. Every effort should be made to maximize normative consistency. As standards proliferate and new treaty bodies are created the risks of inconsistency will continue to grow. Confusion and diminished credibility could result. In the longer term the implications of creating additional treaty bodies need to be very carefully weighed. In the short term, the desirability of seeking normative consistency should be reiterated and every effort made to ensure that any potential inconsistency is brought to the attention of the body concerned by the secretariat (paras. 126-129).

21. The Secretary-General might consider revising or supplementing United Nations Action in the Field of Human Rights so as to provide a more accessible record of

the jurisprudence emerging under the various bodies. The development of more specialized expertise within the secretariat should also be considered (paras. 130 and 131).

22. The key to better public information on the work of the treaty bodies is to make the annual reports more accessible. Their existing format and presentation should be reviewed. An effort should also be made to produce readable syntheses of their work from time to time. Public information activities should be encouraged at the national and local levels (paras. 132-136).

23. The overall number of human rights standards being set and the manner in which they are drafted are issues of major relevance to the treaty bodies. The suggestion that too many international standards are being drawn up is not confined to the human rights area, although there is currently much activity in that area (paras. 137-145).

24. An active pace of standard-setting, whatever its merits, may also impose heavy costs on the secretariat, on diplomatic representatives, on the domestic bureaucracy and on a State's judicial and administrative machinery. In the United Nations context more resources devoted to standard-setting might also mean less resources available for other activities, including implementation. These factors should be part of the overall equation when new exercises are being considered (paras. 146-149).

25. Various proposals have been made to ensure that priority will in future be given to implementation rather than standard-setting activities, in accordance with General Assembly resolution 41/120 of 4 December 1986. A moratorium on new standards is undesirable and unworkable. The establishment of a specialist standard-setting body also seems inappropriate. Setting priorities may be good in theory but seems not to work in practice (paras. 150-159).

26. An inventory of all international human rights standard-setting activities should be prepared and updated regularly in order to facilitate better informed decision-making (para. 160).

27. While recognizing that standard-setting procedures must remain flexible, consideration should be given to procedural reforms that could enhance their effectiveness. Those proposing new standards should take full account of the factors enumerated in resolution 41/120. A pre-initiation or feasibility study should generally be undertaken before any formal decision to initiate the drafting process is made. Responsibility for that decision could perhaps be vested in the Commission on Human Rights. A comprehensive analytical compilation of all relevant existing standards should always be made available to standard-setting bodies (paras. 161-167).

28. Whenever possible and appropriate, preference should be given to the drafting of non-binding standards rather than new treaties. Care should be taken in adopting new instruments not to make undue use of the terms "universal declaration" and "declaration" (paras. 168-170).

29. A technical review should be undertaken as a matter of course before the finalization of new instruments. The vital role of non-governmental organizations in standard-setting should be formally acknowledged. Travaux préparatoires should be prepared with special care and annotated guides encouraged where possible (paras. 171-175).

30. Discussions should begin as soon as possible on long-term means by which to rationalize the treaty régime. The eventual need for such a rationalization would seem to be an inevitable result of the relatively ad hoc fashion in which the régime has evolved. A moratorium on the creation of new treaty bodies is neither desirable nor feasible. A long-term consolidation of the treaty bodies into one or two bodies is an option that may deserve consideration but would also seem to have many potential drawbacks (paras. 174-182).

31. In principle it may be possible for existing treaty bodies to be entrusted with new functions under new treaties but amendments to existing treaties would be required. The exception in this regard is the Committee on Economic, Social and Cultural Rights, which could be given authorization by the Economic and Social Council to assume additional functions (paras. 183-188).

32. There are strong arguments in favour of adopting protocols to existing treaties wherever appropriate. Certain drawbacks should however be noted (paras. 189-192).

33. Amending some of the existing treaties may be necessary. The procedures to be followed are not unduly onerous but the process is inevitably time-consuming (paras. 193-197).

I. INTRODUCTION

A. Mandate

1. The focus of the present study is on long-term approaches to enhancing the effective operation of existing and prospective bodies established under United Nations human rights instruments. Its preparation was entrusted by the Secretary-General to an independent expert in accordance with paragraph 15 (a) of General Assembly resolution 43/115 of 8 December 1988, which requested a study on possible long-term approaches to the supervision of new instruments on human rights, and paragraph 5 of Commission on Human Rights resolution 1989/47, which requested a study on possible long-term approaches to enhancing the effective operation of existing and prospective bodies established under United Nations human rights instruments. In accordance with those resolutions, the present study is being submitted to the General Assembly at its forty-fourth session and the Commission on Human Rights at its forty-sixth session.

2. The immediate impetus for the study was a recommendation made to the General Assembly by the meeting of persons chairing the human rights treaty bodies, which took place at Geneva from 10 to 14 October 1988 (A/44/98, para. 84). In preparing the study the expert was requested to take into account the conclusions and recommendations of that meeting. In addition account has been taken of recent discussions held under relevant agenda items in the General Assembly, the Economic and Social Council, the Commission on Human Rights and the Sub-Commission on Prevention of Discrimination and Protection of Minorities. Extensive reference has also been made to the reports of the various United Nations human rights treaty bodies and to a range of other relevant literature.

B. Approach adopted

3. It may reasonably be assumed that the present study has been entrusted to an independent expert in order to facilitate the task of addressing some of the more difficult and far-reaching issues raised by the problems currently facing the human rights treaty bodies as well as some of those which may reasonably be expected to arise over the next decade or so. Moreover, the quest for enhanced effectiveness inevitably requires consideration of issues on which no consensus may immediately be discernible. An expert study is thus a useful means by which to shed further light on issues that require continuing reflection and debate. It may also be an appropriate mechanism for dealing with issues relating to the functioning of a diverse and somewhat disparate range of bodies that are not subject to the overall authority of any one body and that do not fit easily into any particular organizational structure or hierarchy.

4. The present study deals with a variety of issues raised in discussions within the relevant United Nations organs and in the deliberations of the treaty bodies themselves. It does not, however, purport to be comprehensive or to deal with each of the issues exhaustively.

5. In preparing the study, the author kept two rather different objectives in mind. The first was to place the issues in their wider context and to stimulate reflection on approaches that, in the short term, may seem impracticable or even unnecessary but, in the long term, may be unavoidable. Given the centrality of the treaty bodies within the global human rights régime and the speed at which the environment in which they are operating is changing, it is essential to undertake such long-term analysis at some point and it is clear that the General Assembly and the Commission on Human Rights are the bodies best situated to do so. Thus, while some of the issues raised here may not be of immediate and pressing concern, they must nevertheless be factored into any overall analysis today if the human rights régime is to be made both more effective and more efficient tomorrow.

6. The second objective of the study is to present an overview and analysis of a number of issues that are of very immediate concern and have a direct bearing on the effective functioning of the existing treaty bodies. An indication of those issues emerges very clearly from recent resolutions adopted by the General Assembly and the Commission on Human Rights as well as from the problems identified by the 1988 meeting of persons chairing the human rights treaty bodies (see A/44/98). They include the following.

(a) The inconsistence of financial arrangements that do not guarantee that treaty bodies can meet regularly and as scheduled;

(b) The growing burden imposed on many States by the expansion and overlapping of reporting obligations;

(c) Excessive delays by some States parties in the submission of their reports;

(d) The difficulties confronted by the treaty bodies in seeking to induce the relevant States to submit their overdue reports;

(e) The problem of inadequate reports;

(f) Insufficient resources to enable the treaty bodies to function effectively;

(g) The inability of the secretariat, for reasons of inadequate staffing levels, to provide the treaty bodies with the administrative and technical support they require;

(h) The need for more innovative procedures if the less well endowed treaty bodies in particular are to function effectively;

(i) Concern that the creation of additional treaty bodies will exacerbate existing problems.

7. It has been suggested that all of this adds up to a crisis situation and that there is an "impending deadlock affecting international procedures for monitoring compliance with United Nations human rights conventions" (A/C.3/43/5, p. 6). Other

commentators have conceded that United Nations "bodies dealing with human rights ... need to be reorganized on the basis of ... new thinking". 1/ Similarly, a member of the Human Rights Committee has recently warned that "there comes a critical moment in the life of successful international institutions, a moment at which they can go forward or begin to disintegrate. And among all the generous words [praising the achievements of the Human Rights Committee] I see dangers for the International Covenant on Civil and Political Rights". 2/

8. Whatever terms may be used to characterize the present situation, however, it is generally agreed that the United Nations human rights treaty monitoring system has reached a critical crossroads. Its successful future evolution demands that the gravity of existing problems be recognized, that the vital importance of the treaty régime as a whole be reaffirmed and that the quest for creative and effective solutions be pursued with energy and commitment. By the same token, that quest must not be embarked upon without acknowledging the very considerable achievements to date and the importance of proceeding with sensitivity and sophistication in order to ensure that the fundamental integrity of the system, and particularly its ability to safeguard human rights, are not sacrificed to illusory notions of streamlining and efficiency. In other words, a time of crisis or challenge should also be seen as a time of opportunity for constructive reform and improvement.

II. OVERVIEW OF THE RAPIDLY CHANGING ENVIRONMENT WITHIN WHICH THE TREATY BODIES ARE FUNCTIONING

9. One of the enduring paradoxes of the United Nations human rights treaty system is that while each treaty régime must be considered on its own merits and in the light of its own specific norms and procedures, for some purposes the various régimes cannot realistically be viewed in isolation either from one another or from the broader human rights programme of which they are but a part. Indeed, one of the problems with some of the analyses that have been undertaken in the past is a tendency to compartmentalize each of the treaty bodies as though they existed solely within entirely self-contained régimes. Thus, in order to identify potentially effective, acceptable and enduring solutions to some of the challenges currently facing the treaty system, it is necessary to consider (briefly) the evolution of that system over time and to situate it in relation to the development of the human rights programme as a whole.

A. The evolution of the human rights treaty system over time

10. By most standards, the existing human rights treaty system is a remarkably recent creation. A mere 20 years ago not a single treaty body was functioning. Since that time the system has mushroomed and its rapid growth has brought with it a range of problems that could perhaps have been foreseen without great difficulty. The process of evolution and growth is perhaps best illustrated by comparing the broad contours of today's situation with that which prevailed one and two decades ago.

1. The treaty system in 1970

11. In 1970, less than two decades ago, there was only one United Nations human rights treaty body in existence, the Committee on the Elimination of Racial Discrimination. It met for the first time in January 1970. The Committee's first annual report to the General Assembly was less than 40 pages in length and related largely to procedural matters. 3/ The Convention under which the Committee had been established, the International Convention on the Elimination of All Forms of Racial Discrimination, adopted by the General Assembly in resolution 2106 A (XX) of 21 December 1965, had attracted only 41 States parties and the optional petition system that it established would not receive sufficient declarations to enter into force for another 13 years (on 3 December 1982). There were, at the time, no other treaty-based communications procedures in the human rights field. The International Covenants on Human Rights had been adopted by the General Assembly in its resolution 2200 A (XXI) of 16 December 1966 but would not enter into force until a decade later.

2. The treaty system in 1979

12. Less than a decade later, four different treaty bodies were in existence. They were, in addition to the Committee on the Elimination of Racial Discrimination: the Group of Three established under the Convention on the Suppression and Punishment of the Crime of Apartheid (resolution 3068 (XXVIII), annex); the Sessional Working Group on the Implementation of the International Covenant on Economic, Social and Cultural Rights; and the Human Rights Committee. The Committee on the Elimination of Racial Discrimination produced a 135 page report 4/ relating to a Convention that by then had 104 States parties. The Group of Three was concerned with a Convention that had 49 States parties but only five reports were before it at its 1979 session. It submitted a six-page report to the Commission on Human Rights (E/CN.4/1328). The Sessional Working Group, which was assisting the Economic and Social Council to monitor a Covenant that then had 56 States parties, met for the first time in 1979 and presented the Council with a six-page report (E/1979/64).

13. In 1979, the Human Rights Committee was barely three years old and was monitoring a Covenant that then had 58 States parties, almost a quarter of which had only ratified the Covenant in the preceding two years. Only 21 of them had ratified the Optional Protocol and 10 had made the declaration under article 41 (concerning inter-State communications). The latter procedure had only just entered into force (in March 1979), and the Committee had only registered a total of 53 communications (relating to 9 States) under the Optional Protocol. More than four fifths (a total of 43) of those communications related to only 2 States. By the end of 1979 the Committee had adopted only one set of final views under article 5 (4) of the Optional Protocol. The adoption of General Comments (under article 40 (4)), an activity which is now regular and of major importance, had not yet begun and there was not even any agreement as to the method that might be followed in doing so. The report of the Committee for 1979 was 130 pages in length. 5/

14. Thus by 1979 the General Assembly was receiving annual reports directly from only two treaty bodies (the two Committees), although it was also taking note in its resolutions of the work of the other two bodies (the Group of Three and the Sessional Working Group). It thus had a total of 276 pages of reports to consider. Those reports contained no General Comments (adopted by the Human Rights Committee), no decisions or general recommendations on matters other than procedural ones (adopted by the Committee on the Elimination of Racial Discrimination), and only one set of final views in response to communications by individuals. There were a total of 267 States parties to the 4 treaties, making an average of 67 per instrument.

3. The treaty system in 1989

15. By 1989 the human rights treaty system had undergone a major transformation in comparison with the situation a decade ago. Since all of the relevant documentation of current interest is before the General Assembly and the Commission on Human Rights at the same time as the present study, it is unnecessary to describe the situation in detail. Briefly stated, there are now six treaty bodies (with the addition, since 1979, of the Committee on the Elimination of Discrimination against Women (1982) and the Committee against Torture (1988), as well as the replacement of the Sessional Working Group by the Committee on Economic, Social and Cultural Rights (1987). There are a total of 533 States parties to the 6 instruments (at an average of almost 90 per treaty). The Optional Protocol has been ratified by double the number of States that had accepted it a decade earlier. In so far as delegates to the General Assembly or the Commission endeavour to read the annual reports of all 6 treaty bodies they will be confronted (on the basis of 1988 figures) with a total of 614 pages.

16. Thus, in quantitative terms, the General Assembly at its forty-fourth session is, by comparison with its work-load a decade earlier, expected to consider the reports of 50 per cent more treaty bodies (from 4 to 6), to deal with instruments that have double the number of States parties (from 267 to 533) and to read well over double the amount of documentation (from 276 to 614 pages).

17. It is in the qualitative rather than the quantitative realm, however, that the greatest change has taken place. By comparison with a decade ago the annual reports are generally less procedurally oriented and contain far more information of substantive relevance beyond the confines of the treaty régime itself. In 1979 none of the treaty bodies had adopted any general comments. A decade later, the Human Rights Committee has adopted 17 such comments, the Economic, Social and Cultural Rights Committee has adopted one and foreshadowed others, the Committee against Torture is empowered by the relevant Convention to adopt General Comments, the Committee on the Elimination of Discrimination against Women has adopted 13 general recommendations and 2 suggestions, and the Committee on the Elimination of Racial Discrimination has adopted 7 general recommendations and a significant number of decisions. It is not so much the overall number of these types of statements nor their length that are most significant. Their true relevance lies in the importance that the respective committees attach to them and the extent to which they assume that States parties and other interested observers will take

account of their content and implications in interpreting or applying the relevant treaty provisions. They are therefore of cumulative relevance, in the sense that a full appreciation of the work of a particular Committee in 1989 might require an understanding of a range of General Comments it has adopted in previous years but which are not reprinted in its current annual report.

18. In addition to General Comments and other similar statements, the bulk of the treaty bodies annual reports are taken up by summaries of the consideration of individual State party reports. As the transition has been made from the consideration of initial reports to that of periodic reports and as the Committees have become more specific and more sophisticated in their requests for detailed information, these summaries have also become more complex. In addition, their relevance is increasingly perceived not to be restricted solely to the State party concerned. They too must thus be taken into account by observers wishing to obtain a full understanding of the Committees' approach in matters of both normative (substantive) and procedural import.

19. Finally, the situation in 1989 differs dramatically from that of a decade ago in terms firstly of the sheer volume of individual communications being received by the Human Rights Committee in particular and secondly of the jurisprudential significance and complexity of many of the relevant decisions. In its 1988 report, the Committee noted that there had been "an exponential growth in the number of communications submitted to it" and observed that while it had had 33 pending cases before it at the end of 1986, the figures for the following two years were 49 and 116 respectively. 6/ Moreover, in its early years, many of the Committee's decisions on the merits dealt with cases of physical and psychological abuse where the facts rather than the law were principally in dispute. Procedural rather than substantive matters were also often the major focus. In recent years, the range of issues dealt with has increased considerably and the jurisprudential interpretations adopted by the Committee have sometimes had a significance ranging far beyond the immediate case in hand. In the Committee's 1988 report, for example, important decisions in response to communications dealt with matters such as the rights of aliens (or non-citizens), the double jeopardy rule, equality before the law and the principle of non-discrimination, protection of the family and of children at the dissolution of marriage and the protection of persons belonging to minorities. Each of these decisions is therefore of direct importance to specific activities currently being undertaken in other United Nations human rights forums.

4. The treaty system in 1994: a glimpse into the future

20. A few bare facts must suffice to provide an indication of the likely shape of the treaty system five years from now. In the first place, current proposals for the creation of at least two more treaty bodies (dealing with the rights of the child and of migrant workers, respectively) are likely to have reached fruition by that time, bringing the total to eight. Secondly, the number of States parties is likely to have grown at a steady pace and the extent of reporting obligations will have been extended by the entry into force of the two new treaties. The number of communications being processed will probably have risen dramatically as the Human

Rights Committee's work becomes even better known, as the procedure of the Committee on the Elimination of Racial Discrimination outlined in article 14 of the relevant Convention moves well beyond its current rather embryonic stage and as the Committee against Torture begins to attract a sizeable number of communications. There is also good reason to expect that the rate of acceptance by States of the special procedures relating to communications will accelerate in the years ahead compared to the rate achieved over the past decade. Finally, it seems highly likely that the various treaty bodies will be making increasing use of the technique of adopting General Comments and similar statements. If all of these trends are confirmed, it seems reasonable to predict that the total volume of the 8 annual reports could easily reach 1,000 pages at some point during the 1990s.

B. Implications for the treaty system of the general expansion of multilateral human rights activities

21. The past two decades have witnessed a major expansion not only in the human rights treaty system but also in the United Nations human rights programme as a whole. A similar expansion has also occurred within the framework of other multilateral groupings. While those developments are clearly to be welcomed, it is also necessary to acknowledge that they have helped to render the challenges facing the treaty bodies considerably more complex than they might otherwise have been. In the present context it must suffice to note four areas in which particular expansion has taken place.

22. The first area is human rights standard-setting, which is generally recognized as one of the most impressive achievements of the United Nations human rights programme. This activity has yielded not only the treaties on the basis of which the various treaty supervisory bodies have been established but also a wide range of other international standards. Thus for example the United Nations Compilation of International Instruments 7/ contains the texts of 65 different instruments adopted between 1948 and 1986 (as well as 2 others adopted in 1926 and 1930, respectively). While the average rate of adoption of new standards has remained relatively constant over this period, the result of 40 years of consistent activity is an extensive accumulation of standards, which are, in most cases, of direct relevance to the work of one or more of the treaty bodies. Although the treaty bodies are not called upon to apply, and much less to interpret, any standards other than those contained in their respective constitutive instruments, a familiarity on the part of members of the Committees with all relevant international standards is clearly desirable in order to avoid potential inconsistency and confusion. As the total number of instruments continues to grow, the difficulty of mastering the relevant body of international legal provisions also increases.

23. The second area of expansion of direct relevance to the work of the treaty bodies concerns the range of activities undertaken by the principal Charter-based organs and in particular the Commission on Human Rights and the Sub-Commission on Prevention of Discrimination and Protection of Minorities. Over the past decade, there has been a major expansion in the work of these bodies, particularly in the context of thematic procedures (dealing with summary or arbitrary executions,

torture, disappearances and religious intolerance), country-specific procedures, advisory service activities and studies and standard-setting activities of general relevance. In monitoring States parties' compliance with their treaty obligations it is clearly desirable that each Committee be adequately informed of relevant developments in these other contexts. This entails, however, the continuing review of an increasingly voluminous documentation. In addition, there is a growing tendency for the Commission, the Sub-Commission and the Commission on the Status of Women, as well as various other bodies (in addition, of course, to the General Assembly and the Economic and Social Council), to address the activities of the treaty bodies directly in their respective resolutions. Whatever the formal status of such resolutions vis-à-vis the individual treaty bodies, the more or less explicit policy suggestions they contain clearly need to be taken into account.

24. The third area of expansion concerns the broad range of United Nations activities about which the treaty bodies should be reasonably well informed if they are to be fully effective in their own work. Obvious examples include the desirability of an awareness on the part of the members of the treaty bodies of the current position in relation to the drafting of new treaties in the field of human rights, such as those dealing with the rights of children and migrant workers. The less obvious examples include the relevance to the work of the Committee on the Elimination of Discrimination against Women, for instance, of the activities of a vast array of United Nations bodies dealing with women's issues. Thus, a recent "cross-organizational programme analysis of the activities of the United Nations system for the advancement of women" prepared by the Secretary-General identified over 500 "legislative instruments" (resolutions and decisions, etc.) adopted primarily during the period 1975 to 1988 (E/1989/19, para. 17). While Committee members clearly do not require a detailed knowledge of all of these instruments (or of the programmes to which they have given rise) in order to carry out the tasks entrusted to them by the Convention, a certain level of awareness is obviously desirable.

25. The final area of expansion concerns human rights activities being undertaken in other multilateral contexts, and particularly by the principal regional organizations. The General Assembly has consistently emphasized the importance that it attaches to regional human rights initiatives as a complement to United Nations activities, and the Commission on Human Rights has regularly received information from, and heard interventions by, representatives of the Council of Europe, the Organization of African Unity (OAU) and the Organization of American States (OAS). Over the past decade, in particular, both the Inter-American Commission and Court of Human Rights and the European Commission and Court of Human Rights have built up an impressive human rights jurisprudence in interpreting instruments that contain many provisions similar to those contained in United Nations human rights treaties. The recent establishment of the African Commission on Human and Peoples' Rights will contribute further to building up this body of jurisprudence. While it must be emphasized that it would be entirely inappropriate to assume that the approach adopted by a regional organ on the basis of a regional treaty could simply be transposed automatically to the international level (or vice versa), it is nevertheless appropriate and useful for the different bodies to be kept reasonably well informed of one another's activities. In addition to the principal regional bodies, reference can also be made to the relevance of the work

of the committees of experts of the International Labour Organisation (ILO) and the United Nations Educational, Scientific and Cultural Organization (UNESCO) that are responsible for monitoring States parties' compliance with a range of relevant human rights-related treaty obligations.

C. The treaty system as the cornerstone of the United Nations human rights programme

26. As noted earlier, it is true in a strict legal sense that the output of each treaty body is of direct applicability only in connection with the performance of the specific tasks accorded to it in the relevant treaty. Thus, it can be argued that the approaches that it adopts and the jurisprudence that emerges from its various activities are of direct relevance only to those States which have ratified the treaty and then only in situations in which the treaty régime is clearly applicable. However, such a narrow, legalistic characterization of the role of the treaty bodies is artificial at best, and misleading at worst. Taken to its logical extreme it could, for example, be used to justify the conclusion that the effective functioning of a given treaty body is of no particular concern to the policy-making organs or that the interpretation accorded to a particular norm by the appropriate treaty body should not necessarily affect, in any way, the approach to an identical or very similar norm by another body (whether a policy-making organ or another treaty body). However, propositions such as these have been consistently contradicted by the policy and practice of virtually all of the relevant bodies.

27. Several examples are sufficient to demonstrate the extent to which the treaty bodies have come to be seen as an indispensable cornerstone for the activities of the United Nations human rights programme as a whole. In the case of the Human Rights Committee, the Secretary-General noted in his 1986 address to the General Assembly on the occasion of the twentieth anniversary of the adoption of the Covenants that the Committee had contributed significantly to the further elaboration of international human rights law in key areas (A/41/PV.54, p. 5). Similarly, the Committee itself has defined the prospective audience of its decisions under the Optional Protocol broadly by noting that their ready availability had been of great value to government departments, researchers and the general public. 8/ The assumption that the work of the Committee is of major and direct relevance to the United Nations programme as a whole is perhaps most clearly expressed in Economic and Social Council resolution 1987/4, in which, inter alia, it welcomed the continuing efforts of the Human Rights Committee to strive for uniform standards in the implementation of the Covenant and appealed to other bodies dealing with similar questions of human rights to respect those uniform standards, as expressed in the General Comments of the Human Rights Committee. Given the Council's specific co-ordination mandate in the field of human rights, such an expression of policy is of particular significance.

28. The work of the Committee on the Elimination of Discrimination against Women has also assumed major significance far beyond the immediate confines of the relevant treaty régime, in the context of a broad range of international activities touching on the issue of non-discrimination against women. As the Director of the Division for the Advancement of Women noted at the opening of the Committee's

eighth session, the Committee's work has come to have an extremely important multiplier effect in the definition of global policies. 9/ Similarly, the important relationship between the work of the Committee and that of other relevant bodies has been noted by the Commission on the Status of Women, which has indicated in its resolution 33/3 that it shares the concern expressed by the Committee that its recommendations be consistent with recommendations adopted by intergovernmental bodies dealing with the advancement of women or human rights issues.

29. Two final examples of interaction between the treaty and policy-making organs may be noted. The first concerns the overlap between the activities of the Committee on Economic, Social and Cultural Rights and the study on the right to adequate food as a human right prepared by Mr. Asbjorn Eide, Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities (E/CN.4/Sub.2/1987/23). That study was specifically drawn to the attention of the Committee by the Economic and Social Council, which in its resolution 1988/33 invited the Committee to submit its observations thereon to the Council. In order to respond to the Council's request, the Committee invited the Special Rapporteur to make a presentation and to engage in a dialogue with it on the study 10/. Similarly the Committee decided at its third session to invite the Sub-Commission's Special Rapporteur on the realization of economic, social and cultural rights to address the Committee at an appropriate time. 11/ The second example concerns the overlap between the activities of the Committee against Torture and those of the Special Rapporteur of the Commission on Human Rights on questions relating to torture, Mr. Kooijmans. At its second session, the Committee held an exchange of views with Mr. Kooijmans during which it was noted that their respective functions and mandates were different, but complementary in some respects. Members of the Committee concluded that it was important to maintain contact in order to find the best means of achieving co-ordination and complementarity. 12/

30. The conclusion to be drawn from this review of current practice is that the work of the treaty bodies is inevitably becoming increasingly intertwined with the overall human rights programme of the United Nations. This fact is also clearly acknowledged in the report of the second meeting of persons chairing the treaty bodies (A/44/98). This phenomenon has a number of important consequences which are considered in the remainder of the present study.

III. REPORTING BY STATES PARTIES

A. The importance and functions of reporting procedures

31. The development of reporting systems lies at the very heart of the international system for the promotion and protection of respect for human rights. The establishment of such a system, related to the provisions of the Universal Declaration of Human Rights, was proposed within the United Nations as early as 1951 (see E/CN.4/517, p. 2). A comprehensive periodic reporting system was subsequently established within the framework of the Commission on Human Rights in 1956 by its resolution 1 (XII). The objectives sought to be achieved by this system were not narrowly conceived. On the contrary, they included, in addition to establishing an embryonic form of accountability by States in connection with their

responsibilities under Articles 55 and 56 of the Charter of the United Nations the goals of providing an incentive to Governments' efforts; constituting a source of information for United Nations human rights activities in general; helping States to identify areas in which they might benefit from the provision of advisory services by the Secretary-General; and facilitating an exchange of information and ideas in the human rights area.

32. Nevertheless despite the widespread support in principle for the ad hoc reporting system, it did not function especially well in practice. As a consequence, the former Director of the United Nations Division of Human Rights concluded with deep regret in the early 1970s that the reporting system had "been allowed to wither away without having been given a fair chance". 13/ In effect, however, that system has subsequently been replaced by the various reporting procedures established within the context of the treaties that have entered into force beginning in the late 1960s. The central importance of the new procedures has frequently been affirmed by the General Assembly including most recently in its resolution 43/115, in the preamble of which it recognized that:

> "The effective implementation of instruments on human rights, involving periodic reporting by States parties to the relevant treaty bodies and the efficient functioning of the treaty bodies themselves, not only enhances international accountability in relation to the protection and promotion of human rights but also provides States parties with a valuable opportunity to review policies and programmes affecting the protection and promotion of human rights and to make any appropriate adjustments".

It is noteworthy that even States parties that have experienced difficulties in complying with their reporting obligations have acknowledged the value of the procedure. Thus, as one such Government told the Human Rights Committee in 1988, the system has the merit of encouraging the carrying out of "a kind of examination of conscience demanded by the international community". 14/

33. In an attempt to shed additional light on the various functions performed by reporting systems, the first General Comment adopted by the Committee on Economic, Social and Cultural Rights sets out a variety of objectives, which, in the view of the Committee, should be served by reporting. 15/ To a large extent these objectives would seem to be applicable to all of the reporting systems covered by the present study. The following excerpts from the General Comment provide an indication of its content:

> "2. A first objective, which is of particular relevance to the initial report required to be submitted within two years of the Covenant's entry into force for the State party concerned, is to ensure that a comprehensive review undertaken with respect to national legislation, administrative rules and procedures, and practices in an effort to ensure the fullest possible conformity with the Convenant ...
>
> "3. A second objective is 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 ...

"4. While monitoring is designed to give a detailed overview of the existing situation, the principal value of such an overview is 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. Therefore, a third objective of the reporting process is to enable the Government to demonstrate that such principled policy-making has in fact been undertaken ...

"5. A fourth objective of the reporting process is to facilitate public scrutiny of government policies with respect to economic, social and cultural rights and to encourage the involvement of the various economic, social and cultural sectors of society in the formulation, implementation and review of the relevant policies ...

"6. A fifth objective is 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 ...

"8. A sixth objective is 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 ...

"9. A seventh objective is 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 ..."

B. Current problems of reporting procedures

34. As noted in the introduction to the present study, a variety of problems have been encountered in recent years in the operation of the various reporting procedures. Since these have been described in some detail in the report of the second meeting of the persons chairing the human rights treaty bodies and in the reports of each of the relevant Committees, it is unnecessary to cover the same ground here. It must suffice to note that the principal manifestations of the problems are inadequate or unsatisfactory reports and the non-submission of reports. While the former problem has been the subject of frequent comments in the various committees, its magnitude cannot readily be measured. The latter problem, however, can be quantified. Thus, as at 1 June 1988, when 146 States were parties to one or more of 6 treaties covered by the present study, the number of overdue reports totalled 626 (leaving aside the Convention against Torture, under which reports were not yet due as at that date). This compared to a total of 460 overdue reports 2 years earlier (when only 3 less States were involved). 16/ As at September 1989, there were 195 reports overdue from 87 States parties to the International Convention on the Elimination of All Forms of Racial Discrimination.

At the same time, 44 reports were overdue from 37 States parties to the International Covenant on Civil and Political Rights.

35. In the following review of some of the dimensions of the current problems it would seem appropriate to bear in mind two factors. The first is that the reporting system, for all its shortcomings or weaknesses, has developed very rapidly in less than two decades and that it has, in a number of respects, surpassed the expectations that might reasonably have been held out for it originally. Thus, the principles underlying the system remain valid. What is required is not a sweeping overhaul but a systematic endeavour to respond to changing circumstances. The second factor is that there is evidence to support the existence of a positive correlation between the efficiency and effectiveness of reporting systems and the extent to which States parties take their reporting obligations seriously. The most important implications of this proposition are that the treaty bodies themselves can play an important part in resolving some of the existing problems and that one of the best ways of doing so is to demonstrate that the results achieved by the process justify the efforts made by States parties to comply fully with their obligations. Seen from a different angle, this also implies that any measures designed to make the system more effective by being less demanding may well be counterproductive.

C. The burden of coexisting reporting systems

36. It has been suggested with increasing frequency in recent years that one of the most significant problems facing States parties is the cumulative impact of the demands placed upon them for reporting on human rights matters. While the focus of the present study is limited in scope, it should be noted that such problems of proliferation are by no means limited to the human rights field. 17/

37. The problem of proliferating requests for human rights reports is a multifaceted one. Viewed from the perspective of a specific State, requests may emanate from any or all of the following sources: (a) United Nations treaty bodies; (b) United Nations policy-making organs and most notably the Commission on Human Rights and the Sub-Commission on Prevention of Discrimination and Protection of Minorities and their respective subsidiary bodies; (c) specialized agencies and in particular ILO and UNESCO; (d) regional human rights treaty bodies; and (e) regional human rights policy-making organs. A variety of other, less formally institutionalized sources of requests for information could also be cited. Some of the non-treaty-based procedures are in effect quite formal. An example is the procedures for the effective implementation of the Standard Minimum Rules for the Treatment of Prisoners, adopted by the Economic and Social Council in its resolution 1984/47 and endorsed by the General Assembly in resolution 39/118 of 14 December 1984. Under those procedures, Governments are requested, inter alia, to respond to the Secretary-General's periodic inquiries on the implementation of the Rules and on difficulties encountered. In addition, new proposals for similar procedures relating to non-binding standards continue to be made in various contexts. An example is the drafting of a declaration on the rights of indigenous populations in connection with which the need for an effective implementation

mechanism has frequently been stressed in the Working Group on Indigenous Populations.

38. The cumulative burden of these various procedures (each of which is no doubt easily justifiable in its own right) is also greatly exacerbated by the fact that States which have ratified the International Covenants on Human Rights also tend to have a significantly higher rate of adherence to human rights treaties generally than do those which have not. In the present context, it need hardly be said that there is a fundamental difference between reporting obligations undertaken by virtue of treaty ratification (or accession) and requests for reports that emanate from other sources. Nevertheless, this difference might not always be uppermost in the minds of those national officials who are inundated with requests for information. Thus, one means by which to reduce the overall pressure placed upon the responsible authorities at the national level would to be seek to reduce or rationalize the number of ad hoc requests for information generated by the policy-making organs. In that regard, it may be that greater use should be made by the latter of information provided to the treaty bodies (assuming, of course, that States which are not parties to the relevant treaties would still be asked to provide the information required).

39. In general terms, three measures have been identified with a view to reducing the considerable reporting burden already borne by many States. The first is to extend the periodicity of reporting. This has been done directly by the Committee on Economic, Social and Cultural Rights, which has moved from a three-year to a five-year cycle (although the five-yearly reports are to be comprehensive, whereas each of the three-yearly reports dealt only with one third of the substantive articles in Part III of the Covenant). In addition, the Committee on the Elimination of Racial Discrimination has also eased the burden on States parties by introducing, in August 1988, a revised system providing for the submission of comprehensive reports every four years (instead of two years) with brief update reports to be submitted in the interval. Furthermore, at its forty-fifth session, the Commission on Human Rights approved a recommendation made by the Group of Three requesting the States parties to the Convention against Apartheid to submit their periodic reports at four-year intervals, on the understanding that they may submit additional information to the Group at any time in the intervening period. As a result of these changes the periodicity under all of the instruments has become closely co-ordinated. Reporting under the two Covenants is now required at five-year intervals and under each of the other four conventions at four-year intervals.

40. In time, considerable advantages may be expected to flow from this less demanding and more closely co-ordinated periodicity. In drafting future treaties, however, consideration should be given to vesting a degree of discretion in the treaty body as to the periodicity of reporting. 18/ This would ensure that the system has a built-in element of flexibility while at the same time not simply permitting the meetings of States parties to determine for themselves how frequently (or infrequently) they might wish to report.

41. The second measure designed to reduce the burden on States, or at least to spread it more evenly over time, is to seek to ensure that the due date for a given

State party's reports under the different treaties is staggered as far as possible. Once the treaty system has begun to make effective use of computerization it should be relatively easy to work out a co-ordinated schedule for each State.

42. The third measure is to seek to reduce the extent of overlapping reporting requirements, an issue to which we now turn.

D. Reducing overlapping reporting requirements

43. Perhaps the most important, but also the most difficult, way of reducing the overall reporting burden on States is to encourage the respective treaty bodies as well as the States parties themselves to adopt measures designed to reduce the overlapping of existing reporting demands. The easiest way of doing this is through the harmonization and consolidation of the reporting guidelines. This is only feasible, however, with respect to what may be termed the "country profile" or the initial part of each State party's report. That approach has been endorsed in principle by the two meetings of the persons chairing the treaty bodies (see A/39/484, para. 29, and A/44/98, para. 79) and has been considered in detail by each of the Committees during the course of 1989. The adoption of such an approach can be expected to save time for the reporting State and to ensure that each Committee is presented with a reasonably comprehensive general profile of the State party. It does not go very far, however, in tackling the larger problem of duplication.

44. The problem of overlapping competences among the various treaty bodies is an inevitable consequence of the approach adopted by the United Nations compared to that of, for example, the Council of Europe. While the latter started with a single core treaty (the European Convention on Human Rights) and has subsequently expanded its scope by adding concentric circles around the core, the United Nations chose instead to supplement its two principal Covenants with a series of independent and increasingly narrowly focused instruments dealing in more detail, or with greater specificity, with issues that, to a significant extent, are also dealt with in the Covenants. Moreover, since each instrument is designed so that a State could become a party to it without necessarily being a party to any of the other treaties and since each treaty body is entirely separate from the others, overlapping competences are effectively ensured.

45. The nature and extent of the problem are best illustrated by taking an example. Many different rights could be used for the purpose but the right to freedom of association is probably as good as any. The right is recognized in five of the six treaties covered by the present study. It is also contained in each of the draft conventions dealing with the rights of the child and of migrant workers respectively. Moreover, the two principal ILO Conventions dealing with that right have (as at 1 January 1989) been ratified by 99 States (in the case of Convention No. 87 of 1948 on Freedom of Association and Protection of the Right to Organize) and 115 States (in the case of Convention No. 98 of 1949 on the Right to Organize and Collective Bargaining). 19/ Thus any State that is a party to all or most of these treaties is obligated to submit periodic reports under each and every one of

them detailing the situation with respect to, inter alia, the right to freedom of association.

46. The principle of non-discrimination is dealt with by an even larger number of treaties and gives rise to even more complex questions relating to the overlapping competences of different treaty bodies. Some indication of the overall extent of overlapping among the six United Nations treaty bodies is provided by an analysis undertaken by the Secretary-General (E/C.12/1989/3) in response to a request by the Committee on Economic, Social and Cultural Rights, endorsed by the Economic and Social Council in its resolution 1988/4, that a report be prepared "showing clearly the extent and nature of any overlapping of issues dealt with in the principal human rights treaties, with a view to reducing, as appropriate, duplication in the different supervisory bodies of issues raised with respect to any given State party".

47. Tackling the problem of overlapping competences is however far more difficult than ascertaining its extent. The principal difficulty is that, in formal terms, each treaty constitutes a separate legal régime with its own precise obligations, its own specific normative formulations, its own set of States parties and its own monitoring body. Thus, for example, in response to a suggestion that it should not be necessary to provide information to the Human Rights Committee on matters on which a report will be made to another treaty body, a member of the Committee has recently written:

> "How can it be right, as a matter of law or otherwise, that States enter into an obligation to provide information and submit to examination under Treaty A, but declare that unnecessary in part because of new arrangements entered into with certain other States under Treaty B? Even were the monitoring and compliance provisions in the later treaty equally effective (which is not generally the case) the suggestion is unacceptable. States will find a rather firm response from the Committee on Human Rights to this proposal as to how future reporting should be handled: the integrity of the Covenant implementing procedures would seem to be at stake." 20/

48. Yet this response would seem to be based upon a misunderstanding of the proposals that have been made and that do, in fact, appear to offer the best medium-term solution to the problem. The proposal is not that States parties should be exempted from their reporting obligations under one treaty because they have already reported under a different treaty. Rather it is that where a State has already provided information in a report to one treaty body that it believes should also be taken into account by another treaty body, the relevant information need not be submitted and reproduced twice (or even several times). Instead a reference to the other report should suffice. Such a procedure in no way challenges or undermines the authority of a treaty body to request whatever additional information it requires and nor does the consideration of the information by one treaty body in any way prejudice the approach that another treaty body might adopt towards the same information. It is thus fully compatible with the preservation of the autonomy of each treaty body. 21/

49. A comparable cross-referencing procedure is even expressly provided for in article 17 (3) of the International Covenant on Economic, Social and Cultural Rights (see General Assembly resolution 2200 (XXI), annex), which states that:

> "Where relevant information has previously been furnished to the United Nations or to any specialized agency by any State Party to the present Covenant, it will not be necessary to reproduce that information, but a precise reference to the information so furnished will suffice."

The appropriateness of moving towards a more concerted cross-referencing system may be illustrated by the case of children's rights. Once the draft convention on the rights of the child (E/CN.4/1989/29) has been adopted and has entered into force, States parties to that convention which are also parties to the two Covenants will be expected to report to three different treaty bodies on very similar issues. Indeed, the Human Rights Committee's recently adopted General Comment No. 17 (35) on article 24 of the International Covenant on Civil and Political Rights raises many of the same issues that are specifically addressed in the draft convention (see CCPR/C/21/Add.7). Under the circumstances, it would seem unnecessary, having first required a State to report in great detail to the proposed committee on the rights of the child, to then require that it reproduce much the same information in a different report to the Human Rights Committee. Moreover, similar information could also be requested by the Committee on Economic, Social and Cultural Rights under article 10 of the International Covenant on Economic, Social and Cultural Rights.

50. The same issue of duplication also arises in connection with some of the human rights treaties adopted under the auspices of ILO. A good example is the recent general recommendation No. 13 (eighth session 1989) by the Committee on the Elimination of Discrimination against Women, in which it recommended in paragraph 1 that:

> "In order to implement fully the Convention on the Elimination of All Forms of Discrimination against Women, those States parties that have not yet ratified ILO Convention No. 100 should be encouraged to do so". 22/

Having thus encouraged ratification of ILO Convention No. 100 (which concerns Equal Remuneration for Men and Women Workers for Work of Equal Value), the Committee could reasonably be expected to consider permitting States parties that have ratified both Conventions to refer to the information already provided to ILO in those parts of their reports to the Committee on the Elimination of Discrimination against Women that deal with equal remuneration for work of equal value. A similar approach might also be considered by the Committee on Economic, Social and Cultural Rights in connection with ILO Conventions that are of direct relevance to the rights contained in articles 6 to 9 of the Covenant (dealing with the rights to work, to just and reasonable conditions of work and to social security, as well as with trade union rights).

51. The difficult part of this proposal to encourage cross-referencing is how best to facilitate its implementation. Appropriate efforts can be made at three different levels. Probably the most important level is that of the States parties

themselves. Each State should, on the basis of the instruments that it has ratified or proposes to ratify in the near future, seek to identify the instances in which cross-referencing can be used effectively and appropriately and draw up its reports accordingly. 23/ While some States have already begun to do this it is inevitably going to be difficult to achieve for those States which have very limited resources available to devote to reporting. This might therefore be an area in which advisory services provided by the Centre for Human Rights could be of particular relevance. In broad terms the principle that "the specific takes priority over the general" (A/C.3/43/5, annex, p. 12) is an appropriate rule of thumb to guide efforts to reduce duplication. Care must nevertheless be taken to avoid elevating such a rule of thumb to the status of a hard and fast rule. Moreover, as noted above, the use of cross-referencing must not be interpreted as eliminating the need (i.e. the obligation) to report to a particular body but simply as providing a less burdensome means of doing so.

52. The second level at which action may be taken is that of the treaty bodies. Each Committee could be asked to consider providing some guidance to States parties with respect to appropriate instances of cross-referencing that might be taken into account. In this respect the possible computerization of the work of the treaty bodies would obviously greatly facilitate any efforts in this direction.

53. The third level is that of the specialized agencies and, in particular, ILO. In 1969 the International Labour Office undertook a detailed and precise "Comparative Analysis of the International Covenants on Human Rights and International Labour Conventions and Recommendations". 24/ That analysis could be of great assistance in guiding the approach adopted by each of the treaty bodies to the use of ILO standards and information provided by States parties thereto. The Office should therefore be encouraged to consider the preparation of an updated and expanded analysis that would take account of all of the six United Nations treaties covered by the present study. Other relevant agencies could undertake similar analyses to the extent that it is felt that duplication in reporting could ultimately be reduced as a result.

IV. FUNCTIONING OF TREATY BODIES: FINANCIAL AND ADMINISTRATIVE ISSUES

A. Financial arrangements for both existing and prospective treaty bodies

1. A typology of arrangements

54. The methods applied under different human rights instruments for financing the activities of the relevant treaty bodies have been described in detail in a note by the Secretary-General to the Economic and Social Council (E/1989/85). In essence, three different types of arrangements have been adopted:

(a) Funding entirely from the regular budget of the United Nations. This is the case for the Human Rights Committee (with a very minor exception), 25/ the Economic, Social and Cultural Rights Committee, the Committee on the Elimination of Discrimination against Women, and the Group of Three. 26/

(b) Funding partly from the regular budget and partly from States parties. This is the case for the Committee on the Elimination of Racial Discrimination, although States parties are required to cover only the travel and subsistence expenses of Committee members, which amount to roughly 10 per cent of the total costs.

(c) Funding entirely from States parties. This is the case for the Committee against Torture and is also one of the two options that remain in square brackets in both of the draft conventions dealing respectively with the rights of the child and of migrant workers. Also in this category is the Commission against Apartheid in Sports, which will soon be established pursuant to article 11 of the International Convention against Apartheid in Sports (resolution 40/64 G, annex, of 10 December 1985), which entered into force on 3 April 1988. That future treaty body was not included in the terms of reference for the present study and is thus not specifically dealt with herein.

2. Problems encountered in recent years

55. Three separate factors have contributed to the finance-related problems experienced by the treaty bodies in recent years. The first is the general financial crisis of the United Nations, which has led to a major reduction in the level of available funding and has necessitated cuts affecting, inter alia, the treaty bodies. The second is the failure of some States parties to pay their assessed contributions due in accordance with the relevant treaty obligations. The third factor, which is closely related to the other two, concerns the expanding needs of the treaty bodies to enable them to deal with an ever-growing work-load. As a result of these factors most of the treaty bodies have been significantly affected in one way or another.

56. Thus, the Human Rights Committee had its scheduled autumn session cancelled in 1986 and was only able to convene one of its two pre-sessional working groups prior to its twenty-ninth, thirtieth and thirty-first sessions. It noted in its 1988 report that "one working group could not cope adequately with the large volume of pre-sessional preparatory work". 27/

57. The Economic, Social and Cultural Rights Committee has not suffered any cutbacks but its requests for a longer session or an additional extraordinary session have not been endorsed, because of financial constraints. Similarly, the Committee on the Elimination of Discrimination against Women has been unable to meet for as long as it would have wished. Thus, for example, no action was taken in response to its request for eight additional meetings (four days) for its 1989 session. Its problems with staffing also led it at its eighth session to give strong support to the proposal that financial arrangements be made that would enable it to operate effectively. The Group of Three has not been directly affected by the financial crisis.

58. The Committee against Torture was prevented from holding a second session in 1988 and its first session was of only one week's duration. As a result, reports submitted by States parties in June 1988 could not be considered by the Committee

until April 1989. The Chairman of the Committee has already observed that, without the co-operation of States parties "in faithfully discharging their financial obligations the long-term viability of all the activities envisaged under the Convention, including its reporting procedures, could not be guaranteed" (A/44/98, para. 45). Given the severe and persistent difficulties experienced by the Committee on the Elimination of Racial Discrimination in this regard, it would be surprising if such problems did not arise within the foreseeable future.

59. The Committee on the Elimination of Racial Discrimination has long suffered from financial uncertainties caused by the non-payment of contributions by States parties, but problems were avoided until the end of 1985 through the practice of funds being advanced from the United Nations General Fund pending receipt of outstanding contributions. The financial crisis put an end to that practice and, as a result, the Committee's 1986 summer session had to be cancelled. It was therefore unable to report to the General Assembly on its activities for the year, as required under the Convention. Urgent appeals launched by the meeting of States parties to the Convention as well as by the General Assembly succeeded in reducing the arrears from $262,611 (as at 16 June 1986) to $159,319 (as at 31 July 1987). Despite that reduction, the Secretary-General announced that, as at the end of June 1987, the funds available fell drastically short of the funds required to convene the Committee's next session. Nevertheless, following consultations and in view of some promises of early payment, the Secretary-General authorized a reduced session of one week in August 1987 to enable the Committee to adopt its 1986-1987 report. 28/

60. At that session, the Committee also adopted a decision in which it expressed grave concern at the fact that, "in spite of all the urgent appeals made by the General Assembly, the meetings of States parties, the Secretary-General and the Committee itself for payment of assessed contributions under the Convention, the situation impeding the proper functioning of the Committee continues to deteriorate". 29/ It accordingly recommended to the General Assembly that, "pending a fully satisfactory solution to the present difficulties, it consider authorizing the Secretary-General to continue advancing the expenses of the members of the Committee, as was done in the past". 29/ The Assembly did not endorse that recommendation and, as at 1 September 1988, outstanding assessments stood at $149,328. During that year, the Committee was able to hold only one reduced session of two weeks' duration. The Secretary-General informed it at the time that thereafter the actual convening and duration of the sessions scheduled for the future "would depend on the receipt and availability of sufficient contributions from States parties". 30/ In its 1988 report the Committee reiterated its appeal to the General Assembly to authorize the Secretary-General to ensure its financing on a temporary basis until a more permanent solution could be found. 31/ Subsequently, the twelfth meeting of States parties to the Convention decided that, as an exceptional measure, the Committee should if possible hold one extended session in 1989. 32/ This approach was reiterated by the General Assembly in paragraph 8 of its resolution 43/96 of 8 December 1988. Accordingly, a four-week session was held despite the fact that, as at 14 August 1989, total arrears had increased beyond the level of the previous year to $172,560.

61. The Committee on the Elimination of Racial Discrimination has thus been hit harder than any of the other treaty bodies, as a result of the financing system established by the Convention and the failure of a sizeable number of States parties to pay their assessed contributions. The consequences have not been insignificant. The entire supervisory system provided for in the Convention has been placed in a limbo of uncertainty with neither States parties nor Committee members knowing exactly whether scheduled sessions would actually take place, and if so, for how long. By the end of 1988 the Committee had accumulated a backlog of 84 reports (from 54 States parties) and the representatives of many States had to postpone the presentation of reports before the Committee. In addition, the Committee was forced to devote considerable time to matters of financing at the expense of substantive discussions, and the consideration of its report by the General Assembly was dominated by the same issue.

62. It seems clear after several successive years in which appeals have been launched, both directly and through various intermediaries, without success, that the existing system is unlikely to be workable in the years ahead. The reasons for non-payment by the States parties concerned are unclear although various theories have been put forward. The suggestion that there is a significant correlation between the States parties that have not paid their assessed contributions and those which have failed to submit reports is only partially borne out by a careful comparison of the relevant lists. There is, however, a clear preponderance of developing countries on the financial arrears list and this might suggest that general international financial conditions, including the debt crisis, are an important factor. But that explanation is also only partly satisfactory given the very small amounts (well under a few hundred dollars annually) involved in the vast majority of cases. Whatever combination of reasons may be identified, however, the fact remains that existing avenues of recourse have failed and the Committee remains in an extremely precarious situation.

63. The most constructive approach therefore would seem to be to explore alternative legal and administrative measures, as the General Assembly acknowledged in paragraph 10 of its resolution 43/96. But such an exploration will only be useful if undertaken as part of an overall set of solutions to the closely interrelated problems confronting the treaty monitoring system as a whole.

64. Before examining the various options that might be available in that regard, it is appropriate to complete the broader picture by noting that the General Assembly is already being asked at its forty-fourth session to determine whether a new treaty body (the committee on the rights of the child) should be created and, if so, on the basis of what financial arrangements. The two alternatives contained in the draft convention reflect respectively the model of the Human Rights Committee (entire regular budget funding) or that of the Committee against Torture (entire State party funding). Moreover, the same alternatives seem likely to emerge from the drafting of the international convention on the protection of the rights of all migrant workers and their families, the final version of which could perhaps be before the General Assembly at its forty-fifth session. Any solution to the financial problems of the existing treaty bodies would thus need to take these factors into account as well.

3. Regular budget versus State party funding: some issues of principle

65. Leaving aside for the moment the specific characteristics of the present situation, it would seem useful to review some of the main arguments that have been put forward in favour of the two principal alternative approaches to financing. In general terms, at least three types of reason have been adduced in favour of State party funding. They are: (a) that, as a matter of principle, only the beneficiaries of a treaty régime (i.e. the parties) should pay for its implementation; (b) that goals of cost-cutting and efficiency are better served by State party rather than regular budget funding; and (c) that regular budget funding constitutes an open-ended budgetary commitment and sets a precedent that ensures that each and every future treaty body will be financed by the United Nations.

(a) The user pays principle

66. The first of these arguments is, at least in part, an unsurprising reflection of the view increasingly widely shared among economists that the user should pay the cost of any given service or activity in order to ensure that appropriate incentives to efficiency are not undermined. In the human rights treaty area the assumption is that those States which voluntarily become parties to a particular treaty should automatically expect to assume the burden involved in financing the costs of the relevant treaty body. It must be observed, however, that any attempt to draw direct analogies between the field of human rights and fields such as pollution, communications, trade, agriculture and so on is fraught with danger. The political dynamics are very different, for reasons that require no elaboration, and the element of individual self-interest on the part of any given State is dramatically less important.

67. Nevertheless, provided that the principle is stated sufficiently broadly, it is indeed applicable in the human rights field. The indispensable element, however, is to recognize that the principal beneficiaries of a human rights treaty régime are, first and foremost, the international community as a whole and secondly those individuals and groups whose human rights are promoted and protected as a result. It is therefore the principal beneficiary - the international community - that should bear the cost involved. This proposition may be substantiated by reference to several lines of reasoning. The first is that, as noted above, the principal treaties and the treaty bodies are, when taken together, the cornerstone of the international human rights system. The work of the treaty bodies is of direct and continuous benefit to the policy-making organs of the United Nations and to every State that is seriously striving to ensure respect for human rights (whether or not it has opted to ratify, or accede to, the relevant instruments).

68. The second, and equally important, line of reasoning is that the Charter of the United Nations (and especially Articles 1, 55 and 56) mandates the development of an effective and comprehensive approach to human rights as one of the principal purposes of the Organization. The Charter itself (Article 13) makes clear that the progressive development of international law and its codification are among the most appropriate means by which to pursue that goal. 33/ Thus specific treaties (along with appropriate institutional arrangements, such as treaty bodies, to

promote compliance with them) should be considered to be an integral and inseparable part of the overall United Nations human rights system. This expectation was frequently expressed at San Francisco in 1945 when the Charter was approved and in Paris three years later when the Universal Declaration of Human Rights was adopted. Since that time a comparable vision has repeatedly and consistently been reiterated by the relevant United Nations policy-making organs.

69. In addition, as the 1988 meeting of persons chairing human rights treaty bodies underlined, the General Assembly bears a very special responsibility for the proper functioning of those bodies because they were established to monitor the implementation of instruments adopted by the Assembly itself (see A/44/98, paras. 70 and 83). It could also be argued that the treaty bodies are performing one important function that was previously undertaken by the Commission on Human Rights and the Economic and Social Council, which, for almost a quarter of a century, reviewed periodic reports submitted by Member States on human rights matters. 34/ This arrangement was eventually discontinued not long after the Covenants had entered into force and the relevant bodies had begun to receive reports from States parties to them. While it was in operation, the full cost of the examination of the periodic reports by the Commission was borne by the regular budget. Although the system was considered by the Economic and Social Council in its resolution 1074 C (XXXIX) to have provided both an important "source of information" and "a valuable incentive to Governments' efforts to protect human rights and fundamental freedoms", it eventually became clear that expert treaty bodies could perform the same, as well as additional, functions much more effectively and systematically than could the Commission. 35/ In that respect, the establishment of the treaty bodies can be seen to have ensured the carrying out of tasks that the Council and the Commission considered to be very important, and to have resulted in savings for the regular budget of the amount previously spent on the implementation of the pre-existing periodic reporting system.

70. Another important line of reasoning favouring regular budget funding is that any arrangement that imposes significant costs on States that become parties to a human rights treaty results in the creation of a disincentive to ratification and thus conflicts directly with the oft-stated goal of achieving universal ratification of the principal treaties. The incongruous results of State party funding arrangements are that those States which strengthen the overall system by ratifying are penalized financially while those States which do not participate are in effect rewarded. Moreover, the latter can use the cost argument in support of non-ratification. There is also a "free-rider" element involved since the nationals of non-ratifying States can, at no cost to their own State, enjoy the protection offered by the various treaties whenever they are present in the territory of a State that is a party. Given the importance that the General Assembly and the Commission on Human Rights have consistently attached to the goal of universal ratification it would seem entirely inconsistent to establish financial arrangements for new and existing treaty bodies that will clearly not contribute to that goal and may in fact directly undermine its realization.

71. A final point in this context is that the acceptance of regular budget funding for some treaty bodies combined with an insistence upon State party funding for others has the presumably unintended consequence of establishing invidious

distinctions among the different bodies and thus implicitly reflecting a priority for certain issues at the expense of others. For example, it is difficult to understand, in terms of the principles involved, why the general budget should be used so as to enable the Committee on Economic, Social and Cultural Rights to meet regularly and function effectively but not to contribute in any way to the efforts of the Committee against Torture or the Committee on the Elimination of Racial Discrimination. It might in theory be possible to conceive of treaties that deal with issues of patently secondary importance and are drawn up essentially for the benefit of a limited number of States that can reasonably be expected to foot the resulting bill. But it is clear that torture and racial discrimination could not be fitted into such a category. The vulnerability of a few specific treaty bodies to the non-performance of their financial obligations by a limited number of States parties is thus extremely difficult to defend as a matter of principle, particularly at a time when the General Assembly continues to attach major importance to the functions they serve in the context of the overall United Nations human rights programme.

(b) The efficiency argument

72. The second argument that is often used is that State party funding is preferable in the interests of efficiency and as part of the overall cost-cutting effort. The argument appears to be premised on the assumptions that: (a) permitting the natural laws of supply and demand to operate is the most effective means by which to ensure efficiency; and (b) that the States parties to a treaty are better equipped than the General Assembly to ensure that the relevant treaty body operates efficiently. The first of these assumptions rests on the belief that if States parties value the product in question (the treaty body) they will pay for its functioning. If they do not pay, then the product must be defective in some way. But this reasoning is disingenuous because it not only overlooks the many reasons why a given State party might be unable to pay or might fail to pay in error but, more importantly, it ignores the reality that a de facto veto is vested in a small group of States parties that might have a strong perceived self-interest in preventing the operation (or at least the effective operation) of the relevant treaty body. In short, the laws of supply and demand tend to operate inversely (or even perversely) in the case of human rights treaty bodies. If the supply side is strong (i.e. if the Committee is performing effectively) the demand may well be weak (i.e. some States parties might not be appreciative of the Committee's efforts). Conversely, if the demand by States is strong, there is at least a chance that it is because the Committee is perceived to be innocuous and ineffectual. The important point, however, is simply that a body responsible for monitoring States' compliance with human rights obligations cannot maintain its independence and impartiality if it is subject to direct, immediate and exclusive financial control by those States whose compliance it seeks to monitor. (Indeed, even the present degree of dependence of the treaty bodies upon funding decisions by the General Assembly has in the past been challenged by the Committees on the grounds that the arrangement is not readily compatible with their independent status.)

73. The second assumption in support of the efficiency argument is that the States parties are better placed than the General Assembly to promote efficiency. The

experience of recent years does not bear out this assumption, however. On the one hand, the States parties have only an extremely blunt weapon at their disposal in the form of non-payment or withholding of assessed dues. Apart from the fact that that weapon can only be used as a result of non-compliance with the treaty-based obligation to pay, it does not enable States to promote or encourage specific procedural innovations designed to ensure the most efficient use of the available resources. On the other hand, the Committees themselves, partly at the urging of the General Assembly and the Economic and Social Council have, in recent years, already introduced a wide range of measures designed to promote efficiency while at the same time maintaining or even increasing effectiveness. In this regard, it may be noted that if the meeting of persons chairing the treaty bodies is to become a regular event, it can become an important vehicle for sustained reflection and the promotion of appropriate measures and innovations.

74. In situations where there appears to be no alternative to the imposition of budgetary restrictions, the General Assembly is the organ that is best placed to ensure that the measures taken are principled and of general applicability. The alternative, which is to leave the fate of each treaty body to chance, is arguably the least efficient means of promoting independence, predictability and even value for money.

(c) Concern about an open-ended commitment

75. A recurring argument used against regular budget funding for human rights treaty bodies is that such a policy implies an open-ended commitment by the General Assembly to fund an unlimited number of new bodies in the future. While this fear can easily be exaggerated, it would nevertheless seem to have some validity. The expense of providing regular budget funding for what could, in around five years' time, be as many as eight separate treaty bodies constitutes a considerable budgetary burden. Moreover, unless the assumptions that have tended to operate up until now are substantially modified, there is every reason to expect that various new treaty bodies will be proposed (and perhaps created) over the next decade or two. Concern about overall expenses thus serves to reinforce the suggestions put forward elsewhere in the present study to the effect that considerations of efficiency, consistency, manageability and transparency all militate in favour of seeking to encourage restraint in the creation of new treaty bodies. Given that the total United Nations human rights budget is limited, the addition of new bodies is almost certain to diminish the financial and staff resources available to all of the Committees, including the existing ones.

76. If the validity of this line of reasoning is accepted, it might be appropriate for the General Assembly to begin to consider means by which restraints, or perhaps more accurately, inhibitions can be placed upon the creation of new bodies, apart from those which are already in the pipeline. The present study suggests some means by which that objective could be achieved without limiting the effectiveness of the existing system. What is required is an approach that would both assure the effective functioning of the existing bodies (as well as those dealing with the rights of the child and of migrant workers) and encourage restraint in the creation of new treaty bodies for which regular budget funding would be sought. Such an approach offers the potential both to control the overall amount of resources

expended and to address existing problems more directly and openly. The existing approach, in contrast, by permitting continuing uncertainty to shroud the activities of some of the Committees, by allowing others to operate at levels that make effective functioning difficult and by creating new committees whose financial foundations are inherently unstable, does nothing to resolve the fundamental underlying problems. A comprehensive solution is therefore required in order to ensure the evolution of an enduring, stable, independent and effective human rights monitoring system, in accordance with the United Nations long-standing and frequently affirmed commitment.

4. Voluntary contributions

77. It has sometimes been suggested that a third alternative to either State party or regular budget funding should be explored. It would consist essentially of voluntary contributions either by States (whether parties or not to the treaty in question) or by international agencies with a special interest in an issue (such as the United Nations Children's Fund (UNICEF) in the case of the proposed committee on the rights of the child, or even ILO in the case of the committee proposed to be established under the draft convention dealing with migrant workers). But this solution does not stand up to serious scrutiny and has little to recommend it. In the first place, the money required is highly unlikely to be forthcoming, for a variety of reasons that require no elaboration here. Secondly, such an approach would leave the Committee(s) concerned entirely vulnerable to the vagaries of domestic political and budgetary considerations in the donor State(s) or agencies. Thirdly, such dependence on the generosity of individual States or agencies would be patently incompatible with the notion of an independent and impartial treaty body that transcends specific national interests. In essence, then, the voluntary contribution option would amount to a negation of the basic principles underlying the creation of expert monitoring bodies and would amount to an abdication of its responsibilities on the part of the General Assembly (as the body responsible for drafting the arrangements contained in the relevant treaty).

5. The practical implications of securing regular budget funding

78. The General Assembly has, on a number of occasions, expressed its concern over the precarious and unsatisfactory nature of the financial situation of some of the treaty bodies. The analysis contained in the preceding section has suggested that regular budget funding for all of the treaty bodies is, as a matter of principle, the most desirable means by which to avoid or resolve such problems in the future. In practice, however, the situation is somewhat more complicated and any analysis requires that account be taken of the different status of the various treaty bodies. For this purpose, three categories can be identified: (a) existing treaty bodies funded wholly from the regular budget; (b) existing treaty bodies funded at least in part by States parties; and (c) new treaty bodies.

79. The first category presents no problems of principle with respect to funding, at least as long as the General Assembly continues to ensure that adequate funding is available. This category includes the Human Rights Committee, the Committee on

Economic, Social and Cultural Rights, the Committee on the Elimination of Discrimination against Women and the Group of Three under the Apartheid Convention.

80. The third category also presents no problems of a legal nature at this point in time. If the General Assembly wishes to endorse the principle of regular budget funding when it considers the draft conventions dealing with the rights of the child and of migrant workers, there is no obstacle in its way. The subsequent challenge, which will be to secure the necessary funds from within the confines of an already tight budget is beyond the scope of the present study. It may also be observed that if the State party financing method is chosen for these new instruments the chances would appear to be very high that, within a few years, the General Assembly will again be confronted with financing problems such as those which have already featured prominently on its agenda for the past several years.

81. With respect to the second category, there are already significant problems implicit in any suggestion that regular budget funding should, in principle, be provided. Two treaty bodies belong in this category. They are the Committee against Torture and the Committee on the Elimination of Racial Discrimination. While the problems of the former have not yet manifested themselves in any acute form, those of the latter are immediate and urgent. Thus, in paragraph 10 of its resolution 43/96, the General Assembly expressly acknowledged the need to explore "possible administrative and legal measures for improving the situation facing the Committee".

82. If one can accept in general terms the conclusions reached in the preceding part of the present study, which point to the strong desirability of regular budget funding for the principal treaty bodies, then these two Committees should clearly be supported by such arrangements. Each deals with an issue (torture and racial discrimination, respectively) that is classified by virtually all authorities as a rule of general international law binding upon all States. 36/ Indeed most authorities go even further and characterize the prohibitions against both torture and racial discrimination as peremptory norms (jus cogens) from which no derogation is permissible. In addition, in a frequently quoted opinion, the International Court of Justice in the Barcelona Traction Case (Second Phase) characterized certain human rights obligations as being of such fundamental importance that "all States can be held to have a legal interest in their protection; they are obligations erga omnes". 37/ While the Court referred specifically to racial discrimination and slavery there is little if any doubt that torture would today be placed in the same category. Thus the generally recognized international legal interest that all States have in prohibiting torture and racial discrimination leads to a very strong argument in favour of the proposition that all States also have an interest in ensuring the effective functioning of the respective treaty bodies.

83. However, the funding provisions contained in the respective treaties constitute a major obstacle to the implementation of such a policy. The basic international legal principle of pacta sunt servanda, 38/ which is reflected in the formulation contained in article 26 of the Vienna Convention on the Law of Treaties to the effect that "every treaty in force is binding upon the parties to it and must be performed by them in good faith", is of equal applicability to the

implementation provisions of a treaty as it is to the substantive or normative provisions. States can therefore not be absolved of their financial obligations under the relevant treaties either through unilateral action or through action by the General Assembly.

84. The long-term solution would therefore seem to be to invoke the amendment provisions contained in the two treaties in order to provide that responsibility for funding be vested in the United Nations. The steps required to propose and adopt such amendments are dealt with in the final section of the present study.

85. Any appropriate short-term solution to the present problems would need to balance two equally important considerations. The first, to which we shall return later, is to ensure the effective functioning of the relevant treaty bodies. The second is to ensure that every effort is made to promote respect for the principle of pacta sunt servanda by insisting that States parties honour all of their existing treaty obligations, including those relating to financing. The General Assembly and other relevant bodies (including the meetings of States parties to the various treaties) should continue to emphasize the importance of prompt payment of assessed dues and should note that failure to do so constitutes non-compliance with the relevant treaty obligations. However, in view of the very limited success of the specific measures of this nature that have so far been taken to encourage payment, it may be necessary to explore additional avenues.

86. One positive measure that has been suggested is to solicit voluntary contributions to make up for the outstanding assessed contributions. This would probably be financially feasible in the case of the International Convention on the Elimination of All Forms of Racial Discrimination because the cost involved in eliminating all of the current arrears would be less than $200,000. It would be considerably less feasible in the case of the Convention against Torture if a significant number of defaulting States were to be involved. Thus, for example, the proposed programme budget for the biennium 1990-1991 estimates that $3,500,000 will be required to fund the activities of the Committee against Torture for the two-year period. 39/

87. The most obvious objection to voluntary contributions in this context is that they would not constitute payment of the arrears owed by the defaulting States parties themselves. But this legal formality could readily be overcome by donor States providing earmarked funds to the defaulting States on the condition that the funds be used specifically to pay the relevant arrears to the United Nations. Another objection is that the principle of voluntary contributions is, as argued above, not readily compatible with the independence and impartiality of the relevant treaty body. Even this objection could be partly overcome if the funds were contributed by a significant number of States (thereby diminishing the risk that the Committee might be seen to be indebted to a particular State) and if the exercise were undertaken on a once only basis so that no quid pro quo could possibly be implied.

88. There remain two compelling objections, however. In the first place such an action would set an unfortunate precedent by which defaulting States would in effect be financially rewarded and it would probably create the expectation that

the exercise could easily be repeated whenever necessary. Secondly, and of the greatest practical importance, is the fact that such an approach would be no more than a temporary palliative, which would fall very far short of providing any long-term solution. There would be nothing whatsoever to prevent the defaulting States from behaving in an identical fashion the very next year, thus creating exactly the same dilemma within a year or two.

89. It is probably for these reasons that various negative measures have also been suggested. The most important of these is the proposal that the meeting of States parties to the International Convention on the Elimination of All Forms of Racial Discrimination should consider suspending the voting privileges of those States which have failed to pay their outstanding arrears. In this connection, an analogy is sometimes drawn with the provision in Article 19 of the Charter of the United Nations, which states that:

> "A Member of the United Nations which is in arrears in the payment of its financial contributions to the Organization shall have no vote in the General Assembly if the amount of its arrears equals or exceeds the amount of the contributions due from it for the preceding two full years. The General Assembly may, nevertheless, permit such a Member to vote if it is satisfied that the failure to pay is due to conditions beyond the control of the Member."

On the face of it, however, such an analogy would appear to be less than entirely convincing. Thus, for example, it is questionable whether a specifically focused human rights treaty with a limited range of objectives can be readily analogized to a treaty of such fundamental and enduring importance as the Charter, one of the main purposes of which is to create an international organization. But, be that as it may, the principal problem is that whereas the suspension of voting privileges under the Charter is based directly on an explicit provision of that treaty, no such provision exists in the case of the Convention. The invocation of such a sanction would thus have to be based on the law of treaties rather than on a simple analogy with the Charter.

90. Although a full-fledged legal analysis of this issue is beyond the scope of the present study, a preliminary assessment may be appropriate. In general terms, the Vienna Convention on the Law of Treaties of 1969, 40/ can be used as a reference point although, as a matter of law, it is not formally applicable to the International Convention on the Elimination of All Forms of Racial Discrimination, which was adopted well before the Vienna Convention entered into force on 27 January 1980. 41/ Nevertheless, it is today widely regarded as a reflection of customary international law rules that can be considered to be applicable to the treaties in question. 42/

91. In essence, the claim to be made against the non-paying or defaulting States parties that have accumulated substantial arrears would be that a material breach of the relevant treaty has occurred. In other words, in the case of the International Convention on the Elimination of All Forms of Racial Discrimination, article 8 (6), which provides that "States parties shall be responsible for the expenses of the members of the Committee while they are in performance of Committee duties", has been breached. In such a case, the provisions of article 60 of the

Vienna Convention would appear to be applicable. 43/ The relevant part of paragraph 2 (a) of article 60 provides that:

"2. A material breach of a multilateral treaty by one of the parties entitles:

"(a) the other parties by unanimous agreement to suspend the operation of the treaty in whole or in part ...:

"(i) in the relations between themselves and the defaulting State".

The meeting of States parties to the International Convention could thus choose to apply such a procedure in order to suspend the operation of the relevant parts of article 8 (1), which provides that the members of the Committee shall be "elected by States parties from among their nationals" and of article 8 (4), concerning voting at the meeting of States parties, with respect to those States which have failed to pay their assessed contributions. (The meeting could decide for itself whether to apply such a rule equally to all States in arrears regardless of the amount or time involved or to establish some criteria such as, for example, $1,000 or more over a period to two years or more.) The main legal objection to this procedure might be based on article 60 (5) of the Vienna Convention, which provides that article 60 (2), inter alia, does "not apply to provisions relating to the protection of the human person contained in treaties of a humanitarian character, in particular to provisions prohibiting any form of reprisals against persons protected by such treaties". However, there would be strong grounds on which to argue, in response, that this provision would only apply if an attempt were made to suspend one of the substantive provisions of the Convention designed to promote respect for human rights. It would not apply in the case of a purely procedural provision.

92. The principal practical problem raised by the proposal is that the suspension of one State's voting privileges (along perhaps with suspension of the right to nominate a candidate for the Committee) would require unanimous agreement by all of the other States parties. Another difficulty is that the imposition of such a penalty might not necessarily be sufficient to persuade a defaulting State to pay its arrears. On the other hand, it may be that the very threat of such action would serve to underline the seriousness of the situation and would thus be sufficient to provoke compliance.

93. Another negative sanction that has been mentioned is to invoke article 11 of the Convention, which provides that "if a State Party considers that another State Party is not giving effect to the provisions of this Convention, it may bring the matter to the attention of the Committee". While this procedure was probably not expected by its drafters to be invoked in such a situation, there does not appear to be any compelling reason why it could not be, provided that an individual State party were prepared to make the required formal communication. The principal consideration favouring this procedure would seem to be the embarrassment factor. On the other side of the balance sheet, account would need to be taken of the unlikelihood of complaints being brought against a whole range of defaulting States parties; the fact that the two States involved in each dispute would be liable for all of the expenses involved (which, under article 12 (6), would be likely to be

considerably more than the arrears themselves); and the fact that it might still prove difficult to induce the State concerned, even at the conclusion of the relevant procedure, to comply with a recommendation to pay its arrears along with the expenses incurred.

94. Many of the considerations noted in the preceding paragraph would also apply in connection with the proposed application of article 22 of the International Convention on the Elimination of All Forms of Racial Discrimination, which provides that:

> "Any dispute between two or more States Parties with respect to the interpretation or application of this Convention, which is not settled by negotiation or by the procedures expressly provided for in this Convention, shall, at the request of any of the parties to the dispute, be referred to the International Court of Justice for decision, unless the disputants agree to another mode of settlement."

Article 30 (1) of the Convention against Torture contains a similar, but by no means identical, provision to the effect that a dispute concerning the interpretation or application of the Convention that cannot be settled through negotiation or arbitration may be referred to the International Court of Justice in conformity with the latter's Statute.

95. The principal problem involved in invoking this provision is that, as at 1 September 1987, 29 States parties to the International Convention on the Elimination of All Forms of Racial Discrimination had made a declaration or reservation indicating either non-acceptance of article 22 or acceptance only in cases where all of the parties concerned are amenable to its application. Similarly, in the case of the Convention against Torture, 13 States had as at the same date already made similar statements either upon signature or ratification of the Convention.

96. It is noteworthy in this context, however, that the Union of Soviet Socialist Republics notified the Secretary-General, in a letter dated 28 February 1989 (A/44/171, annex), that it proposed to accept the compulsory jurisdiction of the International Court of Justice in respect of any future cases that might arise under a total of six United Nations human rights conventions, including the two that are the focus of the present analysis. While this notification does not change the overall situation, it represents a welcome confirmation of the principle that disputes arising under these Conventions should be settled, as far as possible and appropriate, through available legal procedures. In the same spirit the General Assembly might wish to give further consideration to the possibility of referring future disputes over the non-payment of arrears to the Court. In addition, it might explore the possibility of appealing to the States parties concerned to reconsider the relevant reservations they have lodged with respect to article 22 of the International Convention on the Elimination of All Forms of Racial Discrimination and article 30 (1) of the Convention against Torture. Any such reconsideration could, if necessary, be confined to disputes concerning, for example, the fulfilment of financial obligations.

97. In concluding the analysis of this issue, it should first be noted that the situation under the Convention against Torture differs in several important respects from that under the International Convention on the Elimination of All Forms of Racial Discrimination so that possible measures that might be available under the provisions of the latter might not be available under the former. With respect to the latter there would seem to be several options open to the General Assembly, in addition to those considered above. One option would be to seek an amendment to the treaty so as to provide for the suspension of nominating, voting and/or other privileges in the event of non-payment of arrears. Another, considerably less complex, option would be to devise new means of applying pressure on States parties that are currently in default to pay their outstanding contributions. One such possibility would be to set criteria (in terms of amount owed and period involved) on the basis of which States parties that satisfy the criteria for default would be specifically identified as such in a resolution by the General Assembly. Another option is to pursue a combination of measures, which might involve, for example, an appeal for voluntary contributions on a once only basis combined with an understanding or agreement by the meeting of States parties that, in future, any default beyond a fixed amount would be deemed unanimously to be a material breach of the Convention and would result in the suspension of voting privileges for the State concerned.

98. The various options considered in the preceding analysis would all be appropriate measures in furtherance of the second consideration noted in paragraph 85 above. However, measures should also at the same time be taken in pursuance of the first consideration involved in finding a workable and appropriate short-term solution. It is thus necessary that measures also be adopted to ensure the effective functioning of the treaty bodies in the short term, until the current crisis is resolved. The most appropriate such measure would seem to be the authorization by the General Assembly of temporary regular budget funding to make up the shortfall required to enable the treaty bodies to continue to fulfil their functions. Such temporary support would be provided on the assumption that efforts would be undertaken concurrently to address both the short-term problem of discouraging default and the long-term challenge of ensuring the viability of the financing arrangements.

99. Any objection that such temporary funding is not specifically envisaged in the treaties themselves would seem to be undercut by the fact that, at least in the case of the Committee on the Elimination of Racial Discrimination, all Member States acquiesced in the comparable practice followed by the Secretary-General up until 1986 when the current financial crisis arose. Similarly, it would seem difficult in good faith to use as an argument against such temporary measures the suggestion that the letter of the treaty must be upheld when the assured consequence of such a formalistic position is the destruction of the integrity of the treaty régime itself. When issues as fundamental to the raison d'être of the United Nations as the elimination of racial discrimination and torture are at stake, taking a stand on hollow principle would seem inappropriate at best.

B. Length and frequency of Committee sessions

100. An issue to which considerable attention was devoted by the second meeting of persons chairing the treaty bodies concerns the adequacy or otherwise of existing arrangements with respect to the length and frequency of the sessions of the various bodies. At present, there is substantial variation from one body to another. Thus, for example, while the Human Rights Committee meets for nine weeks a year with an additional three weeks for working groups, the Committee on Economic, Social and Cultural Rights meets for exactly one third of that time (i.e. three weeks plus one week for a single working group). The Committee on the Elimination of Discrimination against Women, in accordance with article 20 of the relevant Convention "shall normally meet for a period of not more than two weeks annually". As an exceptional measure, the General Assembly has on one occasion authorized an additional eight meetings (four days) for the Committee.

101. The principal result of this discrepancy is that the time available for the examination of each State party report varies significantly according to the body concerned. Thus, the Human Rights Committee generally devotes four meetings (two days) to one report while the Committee on the Elimination of Discrimination against Women, the Committee on Economic, Social and Cultural Rights and the Committee on the Elimination of Racial Discrimination can generally spend little more than a single meeting (i.e. three hours) on each report. For example, at its thirty-fourth session, the latter Committee created a record by examining 26 reports in the space of 14 working days. 44/ The time available to the Human Rights Committee inevitably enables a much more detailed and thorough examination to be undertaken. A member of that Committee has recently written that "while wordiness is no guarantee of worth, a serious report must necessarily be of a certain length; as must a serious examination. Ten page reports and two hour examinations are simply pointless". 45/ Similarly, at the second meeting of chairpersons, it was noted that "a thorough examination of a report and a genuinely constructive dialogue with a State party required at least two meetings" (A/44/98, para. 40). But while the difficulties of conducting a comprehensive examination in the space of three hours are not to be underestimated, the present reality is that several of the treaty bodies presently have no choice but to try. Each of them has, at one time or another, expressed the view that more time would be desirable but, for a variety of reasons, principally financial (and in the case of the Committee on the Elimination of Discrimination against Women, legal) it has not been forthcoming.

102. In recent years the Committees concerned have recognized the problems and have sought to deal with them through procedural innovations designed to maximize the effective use of available time. The General Assembly, in paragraph 4 of its resolution 43/115, has welcomed these efforts "to streamline and rationalize reporting procedures, particularly by extending the periodicity of reporting, improving the efficiency of work methods and harmonizing and simplifying reporting guidelines". There is, however, a limit to the amount of streamlining and simplification that can be undertaken without at the same time damaging or even destroying the effectiveness of the reporting system.

103. In the medium term, and especially once streamlining efforts have come to fruition, it will be necessary to devote more systematic attention to the need for extended, or more frequent, sessions (or both) for some of the existing treaty bodies. As more and more States become parties to the relevant instruments, as reporting guidelines become more precise and sophisticated (and probably more demanding) and as the quality of reports improves, the need for more time will become too pressing to ignore. That is not to suggest that all treaty bodies should seek to emulate the Human Rights Committee in every way or that they should be given exactly the same meeting time as it has. In fact there is, and should be, considerable room for variations in procedure and emphasis from one treaty body to another. An attempt to achieve complete uniformity would undermine the ability of each body to develop in a manner that adequately reflects the unique context in which it is functioning.

104. By the same token, however, it seems reasonable to suggest that short-term measures might also be in order. This is particularly true of the situation in which the Committee on the Elimination of Discrimination against Women finds itself. Given the constraints imposed by article 20 of the Convention, there are three possible and mutually reinforcing solutions. These may also be applicable, in varying degrees, to some of the other Committees. The first, as specifically endorsed by the second meeting of chairpersons, is to encourage "each treaty body [to] consider how best to make use of the expertise of its members during the periods between sessions" (A/44/98, para 100). This technique is particularly pertinent to the preparation of General Comments or comparable analyses and the analysis of issues that are of general concern to the committee. The second is to determine that the "normal" meeting period for the Committee shall not apply when an abnormal number of reports is awaiting examination. Thus, if a specific threshold number is exceeded the General Assembly could, as a matter of course, authorize an extraordinary session in an attempt to return the situation to normal. The third is to provide the resources to enable a working group or groups of the Committee to meet either on an inter-sessional or pre-sessional basis.

105. These techniques are already being used to varying degrees by different treaty bodies. Thus, for example, the Committee on the Elimination of Racial Discrimination has noted in its most recent annual report that it has begun "using country rapporteurs to prepare analyses" of State party reports and believes that the system has contributed to the reduction of time required for the consideration of each report and has strengthened the dialogue with representatives of States parties. 46/ It is important, however, that the limited financial resources necessary to facilitate the use of these techniques be assured.

C. Conditions of service for experts

106. At a time of financial stringency for the entire United Nations system it may well not be the ideal time to raise issues concerning the conditions of service for expert members of the various treaty bodies. Nevertheless, the present study would be incomplete if it did not raise several relevant questions, at least in passing. The first concerns the payment of honoraria. The 18 members of the Human Rights Committee have received such payments ($5,000 to the Chairman and $3,000 to the

other members per year) since 1981. 47/ When the payment was originally proposed, an analogy was made to the International Law Commission whose members also receive an honorarium. The practice raises two questions. The first is why the members of the other human rights treaty bodies do not receive any such sum. One answer is that article 35 of the Covenant expressly allows for honoraria, so too does article 17 (8) of the Convention on the Elimination of All Forms of Discrimination against Women. However, it is unclear why a distinction should be made between the various Committees charged with comparable tasks. The second is why the honorarium is so small, given that each member of the Committee spends about two and a half months a year in Committee meetings while the amount received is less than a month's salary for a relatively junior-level Professional Officer in the United Nations system. The easy answer is that most if not all of the members are already receiving an annual salary from their regular employers. But this takes for granted a problem that is built into the present system, which is that few experts other than government officials, university professors or retired persons could afford to devote so much time to the work of a treaty body without receiving any significant remuneration. The situation would become especially problematic if the mandate of the members of the Human Rights Committee were to be further expanded or if its sessions were to be extended. It may be noted that the expert members of the European Commission on Human Rights (who currently meet for 14 weeks a year, only 2 more than most of their Human Rights Committee counterparts) will, in the near future, be "appointed in the service of the Council of Europe for two thirds of their working time". 48/ Another, far more minor, but none the less relevant issue concerns the desirability of ensuring that each expert member of each of the treaty bodies is offered the opportunity of taking accident insurance coverage that would apply whenever the individual was engaged in United Nations-related matters.

D. Secretariat servicing

107. A consistent theme that has emerged from recent reports of the various treaty bodies is the need for more significant and sustained secretariat servicing. The meeting of chairpersons noted that the level and amount of such services is "an important determinant of how efficiently and effectively" the various Committees were able to function (A/44/98, para. 72). In recent years, however, the situation has been less than satisfactory. Thus in its report on its eighth session, the Committee on the Elimination of Discrimination against Women, which had had to adopt the report of its seventh session by correspondence because of inadequate secretariat services, requested the immediate provision of more adequate staffing resources. 49/ The Committee indicated that staff were needed to draft reports, to provide adequate translation services and to enable basic preparatory research to be carried out at the Committee's request. Equally noteworthy is the fact that the Human Rights Committee, which currently receives the highest level of service of any of the treaty bodies, observed in its 1988 report that its secretariat would need to be strengthened if it was to be able to cope adequately with an ever increasing work-load. 50/ The level of assistance currently provided to most of the other bodies, including for example, the Committee on Economic, Social and Cultural Rights, includes virtually no research or other analytical work relating to the reporting process. This situation is in direct contrast with the view expressed in a report submitted to the General Assembly's Third Committee to the

effect that "the composition of lists of issues and the compilation of other background documentation by a competent and adequately staffed secretariat [is] essential if the committees are to function optimally". 51/

108. Although comparisons can be used only with great caution (given the different mandates and structures involved), the same report notes that the ILO Committee of Experts on the Application of Conventions and Recommendations, which monitors compliance with ILO Conventions, is assisted by a secretariat with a staff of 20-25 legally trained persons. Similarly, the European Commission and the European Court of Human Rights have 32 and 10 lawyers at their disposal respectively. 51/ By comparison, the International Instruments Section of the Centre for Human Rights consists of only six staff members to deal with all of the reporting functions under the two International Covenants, the Convention against Torture, the International Convention on the Elimination of All Forms of Racial Discrimination and the Convention against Apartheid. The number has actually diminished significantly in recent years at precisely the same time as the work-load has expanded dramatically.

109. In view of the fact that the current financial situation of the United Nations probably precludes a significant increase in available staffing resources, every effort should be made in the mean time to explore other initiatives that might at least mitigate the adverse consequences of inadequate staffing. In that regard the creation of a task force to examine the potential uses of computerization in facilitating the work of the treaty bodies is to be welcomed. Priority attention should also be given by the Secretary-General to the proposal noted in the report of the second meeting of chairpersons that a "committee resource room" be established at Geneva in order to provide Committee members with access to essential documentation that is currently largely inaccessible.

V. FUNCTIONING OF TREATY BODIES: SUBSTANTIVE ISSUES

A. Towards more effective monitoring of compliance

110. It has been correctly observed in a speech to the General Assembly that "setting standards cannot protect human rights if the standards laid down are then blatantly disregarded ... Ratification is not enough. Implementation is the essential task before us" (A/41/PV.54, p. 11). In that regard, action at the national level is clearly of pre-eminent importance. At the same time, however, the various treaty bodies also have a vital role to play in giving substance to the concept of international accountability, the importance of which was specifically noted by the General Assembly in the preamble to its resolution 43/115, by which resolution the preparation of the present study was requested. The key to ensuring such accountability is the development and application of effective procedures for monitoring the extent of States parties' compliance with their treaty obligations. The present study would therefore be incomplete if it focused only on the means by which to enable the system to continue functioning without also addressing the issue of how to make it function effectively.

111. The task of establishing an effective monitoring system, and of seeking to identify any improvements that may be necessary, belongs essentially to each of the respective treaty bodies. Nevertheless, the policy-making organs have a central role in monitoring the overall development of the human rights programme and they have, in that context, demonstrated a consistent interest in issues touching upon the effectiveness of the treaty bodies. In the present study attention will be paid only to a limited number of issues of particular current relevance.

1. Assisting the task of representatives of States parties

112. Each of the six treaty bodies has evolved a system, modelled largely on that pioneered by the Committee on the Elimination of Racial Discrimination in the early 1970s, by which one or more representatives of the reporting State are invited to present the report orally to the Committee and to engage in a constructive dialogue by responding to questions posed by individual members of it. This system has generally worked well but there would seem to be room for improvement in the actual practice of some of the treaty bodies. One means by which this can be done is already applied by some of the Committees and was endorsed by the second meeting of chairpersons; it involves making effective "use of individual rapporteurs or co-ordinators and working groups, in order to expedite the timely and effective consideration of periodic reports" (A/44/98, para. 91). From the perspective of the State party, the potential advantage involved in receiving (preferably well in advance) a list of some of the key issues that the members of the Committee are likely to raise facilitates the preparation of precise and accurate responses. It thus reduces the frequency of the situation that sometimes still arises in which the representative is confronted with a barrage of lengthy and complex requests for information and is expected to respond within a matter of hours or, at best, within a day or two. Such an overly compressed process makes it impossible for justice to be done either to the questions posed or in terms of the responses that should ideally be elicited. From the treaty body's perspective the advance preparation of a list of principal questions enables the questions to be expressed succinctly and precisely, assists other Committee members to avoid replication when formulating additional direct questions to the representatives and greatly enhances the likelihood of a thoughtful and adequate response.

113. It may be noted that such a procedure does not in any way limit the ability of any expert to pose additional questions or raise different issues. Moreover, it may be assumed that the rapporteur or working group will endeavour to include questions that reflect, as far as possible, some of the Committee's more general concerns as they apply to the report in question and to avoid questions that would seem likely to be of interest to only one expert.

2. Promoting improved access to information

114. In the early days of the United Nations human rights programme it was sometimes argued that the only information that should be taken into account was that which emanated directly (and even officially) from the Government concerned. However, this proposition has been so consistently rejected in practice by each and

every one of the human rights bodies that it is now rarely, if ever, suggested, let alone pursued. Nevertheless, it does not seem unreasonable to suggest that a certain reticence or timidity has sometimes characterised the approach of some of the treaty bodies when it comes to the sources of information to which reference is made. Such an approach would seem to be entirely out of step with the evolution of international practice generally and to result in an unnecessarily self-denying policy, which deprives the treaty body of information that is indispensable to its efforts to obtain a balanced and comprehensive picture of situation prevailing in the territory of any given State party. As a matter of principle, efforts by the treaty bodies to undertake effective monitoring can thus be facilitated by the adoption of procedures that help to provide each body with access to diverse but none the less well-informed sources of information.

115. An important step in this regard, which has been endorsed by both the General Assembly, in paragraph 7 of its resolution 43/115, and the second meeting of chairpersons, is to ensure the availability of statistical information that is "relevant to the consideration by the treaty bodies of the reports of States parties". In this regard, the meeting of chairpersons specifically suggested that "Committee members should have access to at least a copy of the Statistical Yearbook of the United Nations and the annual statistical report of the International Monetary Fund ... and should each receive annually a copy of the statistical tables appended to the World Development Report of the World Bank and The State of the World's Children Report by UNICEF" (A/44/98, para. 86). Similarly, the Committee on the Elimination of Discrimination against Women has recently noted "that statistical information is absolutely necessary in order to understand the real situation of women in each of the States parties to the Convention". 52/ Accordingly it has requested that States parties themselves make every effort to collect and provide appropriate disaggregated data 52/ and has also requested the Secretariat "to prepare a summary of statistics and to provide other information drawn from United Nations sources relevant to the work of the Committee" for each reporting State party. 53/

116. While statistics may indeed be of enormous value to the work of at least some of the treaty bodies there is also a need for systematic consideration to be given to the type of statistics that may be most useful, to the way in which they can be used most accurately and to the form in which such information can best be made available to the Committees. Otherwise there is a risk that the Committees will be buried in an avalanche of statistics of questionable utility or presented with raw data, the significance of which is not readily explained. Consideration should thus be given to requesting the preparation of an expert report outlining the means by which the relevant Committees can make optimal use of statistical data.

117. Another important and reliable source of information of which rather surprisingly little use tends to have been made in the past is the United Nations specialized agencies. These agencies possess a wealth of both issue-specific and country-specific information that would often be of considerable direct relevance to the work of various Committees. Yet for a variety of mainly historical reasons the treaty bodies have not made extensive use of such information. However, this trend now seems to be changing, albeit gradually. Thus, for example, the second meeting of chairpersons recommended that "requests for information directed to the

specialized agencies by the treaty bodies should be as precise as possible" and that "efforts should also be made to develop direct dialogue with competent officials from the agencies concerned" (A/44/98, para. 96). The Committee on the Elimination of Racial Discrimination, in its 1988 report, "took note with appreciation of the report" of the ILO Committee of Experts on the Application of Conventions and Recommendations. 54/ The Committee on Economic, Social and Cultural Rights decided at its third session to invite representatives of the specialized agencies to engage in a dialogue with it on several different issues. Similarly, the draft convention on the rights of the child provides that the relevant treaty body may invite specialized agencies, UNICEF and other competent bodies to provide expert advice and reports to it as appropriate. 55/ In general, therefore, it would seem appropriate for each of the treaty bodies to keep prominently in mind the possibility of seeking specific advice or information from appropriate agencies.

118. A closely related issue concerns the ability of the treaty bodies to seek advice (which they are, of course, free to reject) from qualified experts in a field of particular relevance. Thus, for example, in the preparation of a General Comment there would seem no good reason why a committee should not invite technical advice on specific issues if it feels that such inputs might be helpful to it. It is increasingly likely, as the work of the treaty bodies becomes more precisely focused and complex, that issues will arise with respect to which the relevant expertise is not represented on the Committee and might not be available in the secretariat. In such instances outside experts might usefully be consulted.

119. Another vitally important source of information that is potentially available to the treaty bodies is non-governmental organizations. The use of information from such sources is not specifically addressed in most of the treaties under review and in their early years most of the treaty bodies displayed a distinct ambivalence towards such information. However, as we enter the 1990s the importance of non-governmental organizations across a wide range of national and international activities can be seen to have grown enormously in recent years. Thus, the 1989 Report on the World Social Situation notes that:

> "The proliferation and momentum of voluntary organizations have been important forces in changing the social landscape in the 1980s. Participation in such organizations has been a spontaneous phenomenon in many countries but is also promoted by Governments. It has at the same time found greater prominence in international instruments and plans of action adopted under United Nations auspices." 56/

As a result of these developments it is now widely recognized, as the Under-Secretary-General for International Economic and Social Affairs noted in an address to the Economic and Social Council's Committee on Non-Governmental Organizations, that "current forms of co-operation between United Nations bodies and non-governmental organizations had gone beyond those envisaged by the Council in its resolution 1296 (XLIV)" (E/1989/40, para. 36).

120. In many respects these developments have been reflected in the work of the various treaty bodies, whose members, acting in their individual capacities, have

long been in regular receipt of, and have often made use of, reliable information emanating from non-governmental sources. These arrangements have, however, remained largely informal and the resulting status of the information as well as the procedures for conveying it have remained vague at best. It would now appear however that, at least in the longer term, it would be appropriate to encourage a more systematic consideration of the issue by the various treaty bodies. Thus, for example, a member of the Human Rights Committee has recently stressed "the growing importance of non-governmental organizations in the lawmaking processes of the international arena"; in his view "these organizations often express values and interests common to mankind as a whole". 57/

121. Some of the treaty bodies have already begun to evolve a constructive relationship with non-governmental organizations. Thus, for example, the Committee on the Elimination of Discrimination against Women has suggested that, in the preparation of a detailed reporting manual to assist States parties in the fulfilment of their reporting obligations, account should be taken of, inter alia; a guide published by the International Women's Rights Action Watch. 58/ The Committee against Torture has made provision for non-governmental organizations to supply relevant information under all of its procedures, 59/ although a proposal that would have permitted those organizations to address the Committee in public session subject to its approval was not adopted by the Committee when it drew up its rules of procedure. 60/ Similarly, provision has also been made by the Committee on Economic, Social and Cultural Rights to receive written statements submitted directly to it by non-governmental organizations. 61/

122. In view of the important role played by those organizations in national and international affairs generally and of the access they already enjoy to the vast majority of international human rights bodies, it would seem desirable for each of the treaty bodies to consider how best to develop its own relationship with those organizations. Experience to date has shown that non-governmental organizations are capable of playing an important, constructive and responsible role in facilitating the work of the treaty bodies, thereby contributing to their more effective functioning. Moreover, it is in the interests of the treaty bodies as well as of the States parties that the information provided by such organizations not be confined to a twilight zone in which its formal status is unclear but its potential impact is, for all practical purposes, unimpaired. It is surely preferable for such information to be dealt with as openly as possible and for any State party concerned to have the opportunity to respond in an appropriate fashion. It goes without saying that none of this is to suggest that limitations of some sort ought not to be applied or that each treaty body's approach should be identical.

3. Towards a more effective outcome from the consideration of reports

123. All of the treaty bodies have emphasized that the process of examining reports by States parties must be based on a constructive dialogue between the monitoring body and the State party. To the extent that a constructive dialogue might not be considered an appropriate, or the most effective, way of addressing a specific

situation, the United Nations human rights policy-making organs would generally be assumed to provide a more appropriate forum than the treaty bodies. This informal and far from clear-cut division of labour serves to insulate the treaty bodies from some of the political factors that inevitably surround some of the more controversial matters that may arise. In order to maintain an emphasis on the constructive nature of the work of the Committees and in order to facilitate a consensus-based approach, the treaty bodies have (correctly, in my view) sought to avoid any inference that they are passing judgement on the performance of a given State party on the basis of an examination of its report.

124. In the longer term, however, it is difficult to see how the treaty bodies can avoid seeking to develop more effective means by which to indicate, at the conclusion of the dialogue, that certain issues remain with respect to which at least some members of the Committee are not entirely satisfied. In situations where none of the questions on a given issue are answered despite strong expressions of concern by Committee members, or where the explanations provided are patently inadequate, the quest to ensure that the Committees function effectively would seem to require some specific follow-up action. In this spirit, several of the Committees are developing procedures under which individual expert members are able to make concluding observations in the course of which any persisting concerns might be noted. One of the important challenges for the future would seem to be to seek to arrive at a clearer indication on the part of individual experts of the conclusions that they believe can appropriately be drawn from the dialogue that has taken place.

125. In addition, several of the Committees have yet to devise specific procedures by which to take account of supplementary information provided by States parties in response to specific requests by the Committee during the examination of the report. As the average reporting cycle (or periodicity) moves to four to five years, the importance of such supplementary reports is further increased. (It will often make little sense for a State party to respond to pressing concerns only five years later in the context of the next required periodic report.) To date some Committees have received a relatively low response rate to such requests despite the assurances of States parties' representatives that supplementary information will be forthcoming. To a small extent, at least, this might be attributable to the absence of appropriate procedures for the consideration of such reports. Since requests for further information constitute an important and time-honoured practice, it would seem desirable for consideration to be given to the best procedures to be followed in cases where they do not already exist.

B. Promoting normative consistency

126. In addressing the General Assembly on the occasion of the twentieth anniversary of the adoption of the International Covenants, the Secretary-General noted that "we must be constantly vigilant that nothing is done to detract from their provisions" (A/41/PV.54, p. 6). Yet the introductory part of the present study (paras. 9-30) provides a clear illustration of the extent to which factors such as the recent proliferation of standards (both binding and non-binding), the increasing range and depth of the activities of the policy-making organs and the

expanding number of treaty bodies can combine in such a way as to render ever more difficult the maintenance of a reasonable degree of normative consistency. A recent manifestation of concern over this problem is reflected in the Economic and Social Council's appeal in paragraph 8 of its resolution 1987/4 to bodies dealing with similar questions of human rights to respect the Human Rights Committee's uniform standards.

127. Because of the uniqueness of each of the different treaty régimes, the quest to achieve normative consistency is subject to certain clear limitations. It is generally accepted, however, that the interpretation accorded to a given norm by one United Nations human rights body should, as far as possible, be consistent with that adopted by another body. In so far as complete consistency is neither possible nor appropriate for reasons inherent in the relevant treaty provisions, a principled explanation for the resulting differences should be available. But although these principles are unproblematic, at least in the abstract, the existence of a significant range of different treaty bodies, and the proposed creation of several new ones, inevitably gives rise to certain problems. They have recently been formulated in the following terms by a member of the Human Rights Committee:

> "Does the interpretation under the prior or later treaty prevail? Does interpretation given under a one topic treaty have greater authority than interpretation given of a specific right under a more general treaty? Is the integrity of each treaty to be protected by each body carefully not looking beyond its own jurisprudence in any given subject area? Is the authority and standing of any one interpreting body to be weighted against the authority and standing of any other interpreting body?" 62/

The problems that have already arisen in this domain 63/ can be expected to become even more frequent and troublesome as a phenomenon that has been called "permeability" becomes more widespread. 64/ Permeability refers to the process by which the norms contained in one instrument are used in connection with the interpretation of norms contained in another instrument. Thus, for example, economic rights contained in the International Covenant on Economic, Social and Cultural Rights might be taken into account by the Human Rights Committee, especially when deciding cases brought to it under the Optional Protocol to the International Covenant on Civil and Political Rights. This situation actually arose in several recent cases in which the Human Rights Committee held that article 26 of the latter Covenant, which provides for equal protection of the law, was applicable to social security legislation (an issue dealt with under article 9 of the other Covenant). 65/

128. In the longer term, it seems inevitable that instances of normative inconsistency will multiply and that significant problems will result. Among the possible worst-case consequences, mention may be made of the emergence of significant confusion as to the "correct" interpretation of a given right, the undermining of the credibility of one or more of the treaty bodies and eventually a threat to the integrity of the treaty system. While it is to be hoped that none of these scenarios will eventuate, the possibility exists that they might be sufficient to cause the international community to hesitate before creating new

treaty bodies beyond those already in the pipeline. It is also an important reason to consider long-term measures towards the rationalization of the present system (see chap. VI below).

129. In the short term questions of credibility and integrity will also probably arise. In addition, the transparency of the overall system (i.e. the ease with which Governments and their citizens can comprehend both the normative and institutional dimensions of the system) may well be threatened. The principal short-term solutions are twofold. The first is the recognition of the problem and of its potential seriousness by both the treaty bodies and the policy-making organs. Unless the problem is clearly recognized its solution will not be found. The second solution is to develop procedures designed to ensure that as much relevant information as possible is brought to the attention of any United Nations human rights body in connection with its consideration of a specific issue. In particular, the secretariat should be mandated to draw the attention of the body in question (whether a treaty body or a policy-making organ) to any proposal it believes involves or might involve normative inconsistency. The decision-making responsibility, of course, rests with the body concerned but its deliberations should at least be based on full information, and efforts to avoid inconsistency should be facilitated as far as possible.

130. The principal practical difficulty with this solution is the burden it imposes upon an already under-staffed secretariat. While that problem is beyond the confines of the present study, two suggestions may be offered. The first is that consideration be given to re-conceptualizing or supplementing the publication United Nations Action in the Field of Human Rights, 66/ which has retained essentially the same format since it was first produced in preparation for the International Conference on Human Rights held at Tehran in 1968. It currently constitutes an extremely valuable record of institutional developments and provides, in effect, an indispensable institutional memory. Nevertheless, it does not provide any sort of integrated or synthetic overview of the approaches or interpretation adopted by the various treaty bodies with respect to specific norms. For example, if information were to be sought as to the normative content of the prohibition of discrimination on the grounds of status or social origin, the publication would offer little, if any, direct assistance. An alternative course of action would be to begin work on an entirely new publication (perhaps in loose-leaf format), which would seek to provide the sort of information that States parties, the human rights organs and expert members of the treaty bodies could consult as required.

131. Another suggestion is that consideration be given by the secretariat to trying to build up a greater degree of specialist expertise on the basis of different topics or subject areas rather than allocating all human resources on a functional or institutional basis. As long as the latter approach is applied almost exclusively there is little likelihood of any officials developing a detailed knowledge of all of the activities relevant to specific subjects whether undertaken by a treaty body, a policy-making organ, a specialized or other agency or a regional human rights organization.

C. Public information

132. It has by now become almost a tradition for the annual report of each of the treaty bodies to call for greater publicity to be accorded to their work. The General Assembly (along with other concerned bodies) generally responds as it did at its forty-third session, in paragraph 20 of its resolution 43/114 of 8 December 1988, by urging "the Secretary-General ... to take determined steps, within existing resources, to give more publicity to the work" of the Human Rights Committee and the Committee on Economic, Social and Cultural Rights. Similarly, having considered the report of the Committee on the Elimination of Discrimination against Women, the General Assembly, in paragraph 16 of its resolution 43/100 of 8 December 1988, requested the Secretary-General "to provide, facilitate and encourage public information activities relating to the Committee and the Convention".

133. There is no doubt that the traditional means of promoting public information relating to the work of the treaty bodies should be promoted to the greatest extent possible. Nevertheless, it would also seem essential, especially in the longer term, to evaluate the obstacles that seem to stand in the way of greater public awareness of the work being undertaken. Given that the treaty bodies constitute the cornerstone of the overall United Nations human rights programme there can be no doubt that a greater effort needs to be made to disseminate at least the information contained in the annual reports of each treaty body. But the challenge of making such information accessible to a broadly defined public audience is not going to be met simply by printing more copies and circulating them more widely, as would sometimes seem to be assumed.

134. A meaningful effort to make the relevant information accessible requires that it be made available in a form that is able to be located and understood by individuals and groups outside the immediate circle of the "initiated" (i.e. those who are directly involved either through participation in, or attendance at, the sessions of either the treaty bodies themselves or the other human rights organs of the United Nations). It can be assumed that the annual report is the only Committee document (leaving aside for the moment the reports of States parties) that is ever likely to be of any potential informational value to anyone without a degree of expertise in relation to the work of international organizations. But the problem is that the annual reports would be almost certain, if entered into an appropriate competition, to win the first prize for incomprehensibility to an average concerned reader. The presentation is not especially clear, the writing style is dreadfully dull, the phraseology is intentionally circumlocutory and the layout is soporific. There are, of course, good reasons that can be offered to justify (or excuse) many of these features, but the bottom line is that, when taken together, they ensure that the reports are neither accessible nor interesting except to the select group of initiates.

135. Two steps should be taken to improve the situation. The present format and presentation of the reports should be systematically reviewed by a small expert group composed of a Committee member or two, a public information expert and an interested outsider. The aim should be to suggest various alternatives to the Committees by which their reports could, without affecting significantly the

existing substance, be presented in a more readable, accessible and attractive manner. The second step would involve a different exercise designed to consider how the information contained in the reports can be distilled and presented in an interesting fashion to lay readers. While it is clear that the official output of the Committees needs to be presented in its proper form and to maintain the carefully negotiated and nuanced formulations adopted by consensus, it is equally clear that such material is, by its very nature, not in a form that is conducive to attracting publicity, let alone widespread dissemination. Until such an approach is tried, there is little likelihood that the work of the Committees will ever be of real interest to anyone other than the specialists in the field.

136. A final suggestion is one that was made by the second meeting of chairpersons and warrants reiteration. It is that whenever the report of a State party is under consideration, the text of the report and a summary of the committee proceedings should be disseminated as widely as possible by the United Nations information centre, if any, located in the State concerned (A/44/98, para. 75). When all is said and done, it may well be that the most effective public information activities are those which are undertaken at the national and local level and which reflect a conscious effort to tailor the relevant materials to local circumstances and interests.

VI. A LONG-TERM PERSPECTIVE ON STANDARD-SETTING

A. Defining the issues

137. At its forty-first session, the General Assembly addressed itself specifically to the question of setting international standards in the field of human rights. In paragraph 4 of its resolution 41/120 of 4 December 1986, it invited:

> "Member States and United Nations bodies to bear in mind the following guidelines in developing international instruments in the field of human rights; such instruments should, inter alia:
>
> "(a) Be consistent with the existing body of international human rights law;
>
> "(b) Be of fundamental character and derive from the inherent dignity and worth of the human person;
>
> "(c) Be sufficiently precise to give rise to identifiable and practicable rights and obligations;
>
> "(d) Provide, where appropriate, realistic and effective implementation machinery, including reporting systems;
>
> "(e) Attract broad international support".

The Commission on Human Rights, in paragraph 3 of its resolution 1987/24 of 10 March 1987, subsequently requested the Secretary-General to bring General Assembly resolution 41/120 "to the attention of all bodies of the United Nations

system engaged in international standard-setting in the field of human rights". The preamble as well as the other operative paragraphs of that resolution would seem to reflect two distinct, but closely related, concerns. The first concern is that there may be an excess of new human rights standards either already being drafted or being proposed for future consideration. Thus, for example, it has been suggested in this vein that recent activities have led to "an inflationary increase in human rights texts" which threatens "to devalue the already existing" standards (A/C.3/42/SR.46, para. 11). Partly in response to such concerns, the General Assembly, in paragraph 1 of its resolution 41/120, called upon "Member States and United Nations bodies to accord priority to the implementation of existing international standards. Nevertheless, there may be compelling reasons militating in favour of the adoption of new standards in certain areas. It is therefore appropriate to consider not only whether an excess of standards exists but also whether viable alternative approaches exist.

138. The second concern explicitly reflected in General Assembly resolution 41/120 is to ensure that United Nations human rights standard-setting activities should be "as effective and efficient as possible" (sixth preambular paragraph). Each of these concerns is examined in some detail below. In the present context, it may be noted that these issues are integrally related to the effective long-term functioning of the treaty bodies for a variety of reasons. Firstly, as noted in chapter II, just as what happens in the treaty bodies is of relevance to the rest of the United Nations human rights programme, so too do the shape, direction and extent of the latter influence the work of the former. Secondly, the content of all new standards should be taken into account by the relevant treaty bodies. Where the new standards appear to be entirely compatible with the relevant treaty provisions, they may provide a useful guide to interpretation. Where they appear to be less than fully compatible, the resulting confusion may need to be resolved or somehow minimized. Thirdly, to the extent that formal or informal reporting procedures are envisaged, even non-binding standards may add directly to some of the problems dealt with elsewhere in the present study. Finally, the development of new standards may well lead eventually to the creation of new treaty bodies, a development that inevitably has major implications in terms of some of the issues dealt with here.

B. Is there getting to be an excess of standards?

1. Putting the issue into perspective

139. Before reviewing the range of standard-setting activities currently being undertaken or considered it is important to situate any problems that might be considered to exist in the human rights area in relation to the broader context of international standard-setting as a whole. A recent review of the multilateral treaty-making process (covering all fields, not only human rights) 67/ elicited a significant number of responses from a broad range of States to the effect that the international community's overall level of treaty-making is excessive. Thus, for example, one Government reply spoke of "international hyperactivity" leading to an "exorbitant increase" in the number of drafting exercises, 68/ while another alluded disparagingly to "the international community's unrestrained appetite for

new international instruments, which it then has difficulties in digesting nationally". 69/ Indeed, it has been estimated that in the course of any given year, Member States will be expected to participate in the preparation of one stage or another of at least a score of treaties. 70/ If we extend our purview to take account not only of treaties but of the drafting of non-binding instruments as well, the burden is certainly more than doubled. In the review compiled by the Secretary-General different States drew attention to different adverse consequences that they felt flowed from this collective exercise in normative "gluttony". These consequences are analysed in subsection 3 below.

140. In addition to this broad spectrum of United Nations standard-setting activity, account must also be taken of the extent of related activities being undertaken within the framework of the United Nations specialized agencies and the regional organizations. For example with respect to the latter, OAS has in recent years adopted an Inter-American Convention to Prevent and Punish Torture and an Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights. 71/ Similarly, the Council of Europe continues to be active in the adoption of new standards, including the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. 72/ Of the specialized agencies, ILO has been the most active standard-setter, having adopted 168 Conventions and 176 Recommendations as at 1 January 1989. In this regard, a 1987 report of an ILO Working Party on International Labour Standards noted that "most Governments" favoured reducing the pace at which new standards are adopted in the future. 73/ The reasons put forward in support of that approach by the Governments of two developing countries are revealing:

> "It would facilitate the work of national administrations having only limited means, and would make it possible to examine situations more closely and reach more accurate conclusions with a view to the submission of legislative texts, to review prospects of ratification at shorter intervals, to make greater efforts to bring national legislation and practice into line with Conventions, and to improve interaction between the legislature and the executive authorities. More generally, it would broaden participation in technical committees, and would improve the quality of standards and the operation of machinery for the supervision and promotion of standards". 74/

141. In brief, there may be grounds for concluding that many States are beginning to suffer what may be termed international norm fatigue. The question that remains is whether such a conclusion is applicable in the context of the human rights activities of the United Nations.

2. Current and proposed United Nations human rights standard-setting activities

142. Since the beginning of 1980, United Nations organs have finalized and adopted one Convention, three Declarations and two sets of Principles, all of which have emerged from the work of the human rights organs. In addition a wide range of new instruments is currently being considered by various organs. They include:

(a) Draft convention on the rights of the child, the consideration of which began in 1978;

(b) Draft convention on the protection of the rights of all migrant workers and their families, the drafting of which began in 1980;

(c) Draft second optional protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, consideration of which began in 1980;

(d) Draft declaration on the rights of persons belonging to national, ethnic, religious and linguistic minorities, the drafting of which began in 1982;

(e) Draft body of guidelines, principles and guarantees for persons detained on the grounds of mental ill-health or suffering from mental disorder, the drafting of which began in 1982;

(f) Draft universal declaration on indigenous rights, the drafting of which began in 1982;

(g) Draft 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 drafting of which began in 1987;

(h) Draft declaration on freedom and non-discrimination in respect of the right of everyone to leave any country, including his own, and to return to his own country, transmitted in 1988 to States for their comments;

(i) Draft declaration on the independence and impartiality of the judiciary, jurors and assessors and the independence of lawyers, under consideration since 1985;

(j) draft declaration on the protection of all persons from enforced or involuntary disappearance, under consideration since 1988;

(k) Draft declaration against unacknowledged detention of persons, under consideration since 1987.

143. It must be emphasized, however, that such a listing provides only a partial overview of the present situation. One element to be included in order to arrive at a more complete picture is the range of activities recently completed or currently under way in connection with the United Nations programme on crime prevention and control, the great majority of which are of direct relevance to the work of the human rights bodies, including the treaty bodies. For example, in the report on the tenth session of the Committee on Crime Prevention and Control 75/ reference is made to the following instruments that are among those presently being drafted: draft standard minimum rules for non-custodial measures (the "Tokyo Rules"); a draft model agreement on transfer of supervision of offenders who have been conditionally sentenced or conditionally released; a draft model agreement or transfer of proceedings in criminal matters; draft guidelines for the prevention of

juvenile delinquency ("Guidelines of Riyadh"); draft rules for the protection of juveniles deprived of their liberty; draft international standards designed to ensure effective domestic legislation or other domestic measures so that proper investigation, including provisions for an adequate autopsy, are conducted by appropriate authorities into all cases of suspicious death; draft basic principles on the use of force and firearms by law enforcement officials; and draft basic principles on the role of lawyers.

144. Another important element in the overall picture is the list of issues with respect to which new draft instruments have been proposed (but not yet acted upon). Reference could be made, for example, to proposals for a draft convention on the elimination of all forms of intolerance and of discrimination based on religion or belief; a draft declaration on the right to adequate food; a new covenant on solidarity rights; a legally binding instrument dealing with the right to development; a draft convention on the establishment of an international penal tribunal for the suppression and punishment of the crime of apartheid and other international crimes; and many other, often less precisely spelled out proposals.

145. It may be asked whether, as a result of all this activity, it can be concluded that there are now too many standards or too many new standards on the way. But there can be no single definitive answer to such a question. Much will depend on the priorities, as well as the overall policy perspective, of whoever is posing the question. It seems clear that some States are now seriously worried about the extent of human rights standard-setting activities while others believe there to be a pressing need for new standards in a variety of different areas. Still others might share both viewpoints. But whatever conclusion is drawn, it is desirable that account be taken of the fact that a fast pace in standard-setting has certain potential consequences that warrant being taken into account.

3. Some consequences of extensive standard-setting activity

146. It would seem to be universally accepted that human rights standard-setting is one of the United Nations greatest, and potentially most enduring, achievements. But it also seems that, perhaps inevitably, the flurry of activity that has taken place, especially over the past decade or so, has had its costs as well as its benefits. While the latter are reasonably obvious and rarely disputed, the former have not been subjected to systematic examination. It is therefore useful in the present context to take note of some of the problems or difficulties that might arise as a consequence of an active and wide-ranging standard-setting programme.

147. From the perspective of States, problems might arise at several levels. At the international level, many States are unable to afford to send specialized delegations to observe or participate in all of the drafting exercises being undertaken at any one time. Cost may be a major factor as also might the availability of the necessary expertise. 76/ This is likely to be particularly true for developing countries but the problems are certainly not limited to them. One result might be the imposition of an enormous work-load on a State's diplomatic representatives posted in New York, Geneva or elsewhere in terms of the preparatory work required, participation in intensive drafting and negotiating sessions, and

reporting home. Another result is that some countries are unable to follow such drafting activities as closely as they might wish, so that the standards drawn up might not adequately reflect the views of all concerned States.

148. In addition, the proliferation of standards being drafted "may place too great a burden on the legal resources of the domestic organs of countries". 77/ In emphasizing the importance of this domestic dimension, one State has noted that Governments inevitably have a limited absorptive capacity:

> "The sparsity and slowness of comments of States on treaty drafts, the state of preparation of delegations to committees and conferences of plenipotentiaries, the frequent requests to defer the convening of conferences because of the press of other business, and the length of time that States take to ratify treaties - when they ratify them at all - suggest that the problems may lie at least as much in the ability of States to absorb treaties and to participate in their preparation as in the capacity of existing or future mechanisms to elaborate them". 78/

A further burden placed on the domestic administrative, and perhaps also judicial, machinery of States arises in the process of the implementation of the burgeoning array of standards. In addition to the formal reporting obligations provided for in most treaties, it is also increasingly common today for United Nations organs to follow up on the adoption of non-binding standards by the creation of ad hoc implementation mechanisms, usually involving some form of voluntary reporting requirements. 79/

149. From the perspective of United Nations human rights bodies one of the resulting problems is the demand placed upon the secretariat, which may be unable to provide enough staff with the appropriate expertise in order to service the various drafting bodies. The difficulty of ensuring consistency with existing standards also increases considerably as the overall body of standards grows. It has even been suggested that new standard-setting exercises might sometimes be encouraged for the express purpose of providing an occasion for seeking to dilute, weaken or even undermine existing standards, or in order to distract attention and resources away from other activities. 80/ But regardless of the validity of such suggestions, there is no doubt that standard-setting is both expensive and time-consuming. Thus, it has even been implied that standard-setting might be part of a zero-sum game in terms of the allocation of available resources. For example, in response to a recent proposal to draft a new convention, one State suggested that the result would be to "divert scarce United Nations and Member State resources from other pressing human rights matters" (E/CN.4/1988/44/Add.2, p. 2). In other words, if the United Nations chooses to devote a given amount of resources to standard-setting, the resources available both to the Organization itself and to the Member States for other aspects of human rights promotion and protection will be reduced proportionately. Given the relatively small percentage of the United Nations budget devoted to human rights, the limited number of secretariat officials with the technical and legal expertise required for standard-setting, the constantly growing demands on the limited meeting time available to the various organs and the immense pressures for restraint generated by the Organization's financial crisis, there are strong arguments supporting the zero-sum game

assumption. Indeed a recent analysis by a member of the Sub-Commission on Prevention of Discrimination and Protection of Minorities concluded that the current large number of drafting exercises "results in heavy and competing demands on the United Nations policy organs and tends to cause stagnation in the work of these organs". 81/

C. Means by which to accord priority to the implementation of existing instruments

150. Both the General Assembly, in its resolution 41/120, and the Commission on Human Rights, in its resolution 1987/24, have called upon "Member States and United Nations bodies to accord priority to the implementation of existing international standards in the field of human rights". The challenge to which this policy gives rise is to identify approaches that: (a) respond to the principal concerns noted above; (b) are capable of mustering a significant degree of support; and (c) are consistent with the overall aim of contributing to the codification and progressive development of international human rights law. In recent years a variety of different approaches have been put forward. They include the imposition of a moratorium on new standards; the creation of a specialist standard-setting body; and the setting of priorities to govern future activities. Each of these proposals will now be briefly considered.

1. A moratorium on new standards

151. Given the cumulative impact of the demands placed upon States as a result of the existing pace and range of standard-setting activities, it is hardly surprising that calls have been made to set limits upon the initiation of new activities. 82/ Others, while not endorsing such far-reaching proposals, have suggested that relatively few new standards would be needed in the decade ahead. While acknowledging the possibility that "changes in the global habitat" and "new areas of human endeavour" might give rise to the need for more standards, the Secretary-General recently urged that the major focus of activities should be "on bringing universal respect in fact for what has been agreed in principle" (A/42/512, enclosure, p. 4). However, in the Third Committee of the General Assembly one of the responses to this suggestion was to emphasise that "much standard-setting work remained to be done, for instance, on the right to development, the right to adequate housing, human rights and mass exoduses, human rights in the administration of justice, migrant workers and their families, the enhancement of social life, and the strengthening of international co-operation in the field of human rights" (A/C.3/42/SR.40, para. 33). On the other hand, it has been suggested that no more totally new fields remain to be explored. But the latter view would not seem to be widely supported. On the contrary, the following assessment, made with respect to the need for continued standard-setting by ILO, would seem to be a more accurate reflection of the reality, and perhaps of the prevailing attitude, of the majority of States:

> "It is true that the existing standards already cover a very wide range of labour problems and even human rights but it would be an illusion to imagine

> that the body of standards could ever be complete, whether on the international or on the national plane. In either case there can be no exhaustive or immutable code, especially in an era of rapid change: needs and concepts alter with the years and old instruments must be added to or overhauled to adapt them to new requirements." 83/

This assessment was reflected by the ILO Governing Body in 1987 when it adopted a report that identified a very wide range of "possible subjects" on which ILO should consider the adoption of new standards. 84/ Thus, whatever advantages might be seen in reducing the pace of new standard-setting, the suggestion of a moratorium would not seem to be widely acceptable. Moreover, it is in any event not easy to envisage an acceptable formula for a measure that would, in effect, seek to limit the sovereign prerogative of States to propose new standards.

2. Creation of a specialist standard-setting body

152. Another proposal that has been put forward is to centralize the bulk of the United Nations human rights standard-setting functions in an entirely new expert body, a "Human Rights Law Commission (UNHRLC)" "that would devote its entire time to, and specialize exclusively in, human rights law-making". 85/ Its proponent recognized that his proposal was "likely to be greeted with scepticism, well justified no doubt" on the grounds that the United Nations "already suffers from a proliferation of organs and that there is no guarantee that the UNHRLC would measure up". 86/

153. In the light of the continuing financial crisis, and of recent efforts to reduce the overall number of United Nations organs, such a proposal would seem to have little prospect of being acted upon. Other difficulties would also seem to arise with respect to the merits of the proposal. One factor that it neglects is the desirability of maintaining the important link that exists at present between the preparation of detailed studies and the drafting of related standards. Since the Sub-Commission and the Commission are the principal organs responsible for the former it is logical that they should also retain their standard-setting functions. The alternative, which would be to entrust the proposed human rights law commision with the preparation of studies, would, depending on the relevant arrangements, either duplicate existing activities or deprive the principal organs of a very important source of intellectual input. Another difficulty is the problem of (inadvertently) encouraging additional proposals for new standards by virtue of making a whole new apparatus available for that purpose. Thus, the establishment of a new body need not *per se* do anything to address any problems that presently exist. It could simply result in transferring the same procedures from one arena to another.

154. Another factor militating against the proposed new body is the limited transferability to the human rights field of the experience of bodies such as the International Law Commission and the United Nations Commission on International Trade Law (UNCITRAL) on which it appears to be largely modelled. In the first place the subject-matters dealt with by human rights bodies are remarkably diverse

(e.g. development, religion, mental patients, disappearances, food, immigration, etc.) and lack the relative homogeneity enjoyed by UNCITRAL and, to an important, albeit lesser extent, by the International Law Commission. An even more important distinguishing element is the extent to which there often remain fundamental disagreements both as to the ends and the means of standard-setting in human rights. The various topics are, as a result, inherently more politically controversial than the bulk of their counterparts that are dealt with efficiently by the International Law Commission and UNCITRAL. While technical drafting expertise remains important, it is only one of the elements required in the human rights field.

155. In the foreseeable future, therefore, there does not seem to be any likelihood that the General Assembly will change the policy it endorsed in its resolution 41/120 in which it reaffirmed the central role of the Commission on Human Rights in the area of standard-setting.

3. The setting of priorities

156. In a context in which continuing demands for new standards are inevitable, the most logical and even "scientific" way of reconciling supply and demand is to set priorities. Indeed that is the approach that was suggested by a significant range of States in the context of the United Nations review of the multilateral treaty-making process. One State, for example, concluded that "only the setting of priorities and the concurrent reduction of the yearly output could provide a remedy". 87/ This view was endorsed by States from all of the principal regional groupings and in the replies of several international organizations. 88/ In principle, it could be achieved with respect to human rights standard-setting on the basis of a thorough review of all existing and new proposals by the Commission on Human Rights, combined with decisions to allocate a particular amount of time each year to drafting and to authorize the work of only a limited number of drafting groups. Several precedents for such an approach could be cited in the work of various international organizations. By the same token, other examples could be cited in which the adoption of a fixed set of standard-setting priorities proved unacceptable, in part because of the perceived need to "remain free to take decisions ... in the light of changing circumstances". 89/ In the United Nations context, even States which have conceded that "there is no doubt that the burden ... is becoming too cumbersome" have nevertheless been resistant to the setting of priorities:

> "It does not seem possible to envisage a decision of a general and abstract character to reduce the number of treaties being formulated. If a decision is taken to prepare a treaty on any given subject, it is because a majority of the States involved believe that such a treaty is necessary." 90/

157. In the light of this opposition, it is noteworthy that none of the States or international organizations that advocated the establishment of priorities offered any specific suggestions as to how such a system might work. There have in fact been several attempts in the past to establish long-term programmes of work for United Nations human rights organs. Most have been rejected and those few which

have been pursued have achieved very little. In 1976, for example, the Economic and Social Council, in its resolution 1992 (LX), requested the Commission to draw up a long-term work programme. The latter appointed a review group, which in effect rejected the proposal on the grounds that "it is impossible to predict what new issues of promotion of human rights will merit ... urgent consideration in the future" (E/CN.4/1243, para. 10).

158. Similar proposals re-emerged in the next few years, mainly in the context of the continuing review of "alternative approaches and ways and means" of improving the United Nations human rights system. Standard-setting was a constant theme in these reviews and, on occasion, proposals were again made to draw up a long-term programme of standard-setting. In 1984 the Commission's Working Group concluded that no agreement could be achieved, citing three reasons: "the difficulty of foreseeing future needs; the limited value of a formal plan; [and] the rigidity in functioning that could result" (E/CN.4/1984/73, para. 17 (18)).

159. The principal conclusion to be drawn from this review is that the establishment of a set of long- or medium-term priorities for human rights standard-setting is unlikely to be acceptable to a majority of States and is perhaps even less likely to be effective in actually reducing the number of new standard-setting exercises undertaken. It could in fact have the opposite effect if States felt obliged to come up with as many new suggestions as possible in order to ensure that no issue of potential importance to them would be excluded or pre-empted.

160. Another conclusion that can be drawn is that while many States are seriously concerned that the existing pace of standard-setting might be excessive, radical solutions are unlikely to be of much help at this stage. A more productive approach would be to request that the Secretary-General prepare, and update periodically, an inventory of all of the human rights standard-setting exercises currently being undertaken by the United Nations and its agencies. That information is not presently available in one place and the conclusions to be drawn from such an inventory might have a salutary effect when new proposals are being evaluated. A second constructive solution is that efforts should be made to move towards more efficient and effective procedures for the drafting of new instruments. Potential innovations in this regard are examined below.

D. Towards more effective standard-setting procedures

161. It has frequently been suggested that the procedures used in the drafting of United Nations human rights instruments could be improved. Thus, for example, the view was expressed during the thirty-fifth session of the General Assembly that "much of work in this area proceeds without planning, in a kind of haphazard manner, at a desultory pace and with overlapping jurisdictions. We have working groups in the Third Committee, in the Commission on Human Rights and in the Sub-Commission. It is difficult to keep track of the different drafts. There is a lack of continuity and expertise among the persons working on the draft". 91/ More recently, a member of the Sub-Commission on Prevention of Discrimination and Protection of Minorities has suggested that standard-setting activities "are undertaken and carried out without proper planning". 92/

162. The proposals put forward below are directed at different aspects of the standard-setting process. Their purpose is to stimulate long-term reflection rather than to provide a comprehensive analysis. Ultimately, it must be borne in mind that "within the bounds of respect for negotiating [in] 'good faith' and for the rules of international jus cogens, the negotiating parties must be allowed to enjoy maximum freedom in the treaty-making process, and the treaty must be an act freely arrived at not only with regard to its provisions but also, as much as possible, in the procedures followed during its negotiation". 93/

1. The initiation phase

163. The absence of established procedures that are followed with any degree of consistency in human rights standard-setting is nowhere better illustrated than in the process of initiating the drafting of a new instrument. Examples could be cited of cases in which elaborate draft instruments have been presented without any considered decision ever having been taken by any of the organs concerned that an instrument should be drafted. The draft thus acquires a life of its own despite the paucity of consultation that might have taken place as to the need for it, the form it should take, the most appropriate approach to be adopted, its relationship to existing standards and so on.

164. As a first step, those proposing the adoption of new standards could in the future be encouraged to consider, as a matter of course, the desiderata spelled out in General Assembly resolution 41/120. Whether the proponent is a Government, a special rapporteur or a non-governmental organization, some consideration should first be given to the broader implications of any new standard-setting activity.

165. Another possible step is to require that a pre-initiation study be undertaken. In a significant number of international organizations the standard-setting process is not formally begun until after a detailed preliminary feasibility study has been completed. According to a review by the Secretary-General, "the purpose of such studies is to ascertain the need for the enterprise and its likely success and the optimum method of approaching it. Experience seems to show that the proper use of such studies makes it less likely for an organization to embark on treaty-making projects that must later be abandoned or that extend for undue periods". 94/ In most cases it is the secretariat that is called upon to prepare the study, although a rapporteur or a committee of experts may also be relied upon. 95/ As a general rule, this would seem to be an appropriate approach in the human rights area and to be consistent not only with resolution 41/120 but also with some of the recent practice of the policy-making organs. Moreover, as a general rule, any body engaged in standard-setting should be presented by the secretariat with a comprehensive analytical compilation of all existing standards of direct relevance.

166. An additional safeguard is to require that a specific decision be taken before the drafting of an instrument is begun. In some international organizations, the responsibility for formally initiating a standard-setting exercise is vested in a specific organ (often the equivalent of the governing body or executive board), which acts by authorizing a particular action, such as the inscription of an agenda

item devoted to the matter in question. In the political organs of the United Nations, however, "the process is often initiated in a rather tentative way, to be reinforced or weakened at successive sessions as reports ... confirm or cast doubt on the desirability and feasibility of the enterprise". 96/

167. In the human rights area there would seem to be considerable advantages involved in charging a single body with principal responsibility for formally initiating a standard-setting exercise. In particular, it would ensure a more carefully co-ordinated approach and diminish the possibility of a variety of competing exercises being initiated in different contexts at the same time. The body charged with such responsibility could be either the General Assembly or the Commission on Human Rights. However, with respect to the former it may be noted that, less than a decade ago, when the Secretary-General sought the reaction of States to a proposal that the Assembly should assume a central co-ordinating role in respect of all United Nations treaty-making activities, the response was predominantly negative. Among the reasons cited were that: "(i) such a role would slow down the process and increase the work of the General Assembly, whose agenda was already congested; (ii) the high degree of sensitivity of the other organs operating in a particular field; (iii) overall co-ordination was dependent on the nature of each particular treaty and the circumstances of each case, which rendered a general role impracticable; (iv) the General Assembly had no competence in this regard". 97/ By contrast, the terms of reference of the Commission on Human Rights were expanded by the Economic and Social Council in its resolution 1979/36 so as to entrust it with the function of assisting the Council to co-ordinate activities concerning human rights in the United Nations system. Moreover, in its resolution 41/120, the General Assembly reaffirmed the important role of the Commission on Human Rights, among other appropriate United Nations bodies, in the development of international instruments in the field of human rights. Consideration might thus be given to entrusting to the Commission formal responsibility for approving the initiation of a new standard-setting exercise. It goes without saying that, in the exercise of such a responsibility the Commission would still be acting as a subsidiary organ of the Council and that full account would be taken of any relevant views expressed by the General Assembly. The proposed change is thus of a procedural rather than a substantive nature.

2. The type of instrument

168. Two issues arise under this heading. The first is whether a proposed instrument is intended to be binding or non-binding. The second concerns the terminology to be used in the case of a non-binding instrument. The first issue is of particular relevance in the context of the present study since it can usually be assumed that a legally binding instrument (i.e. a treaty) will make provision for some sort of supervisory procedure, which might or might not involve the creation of a new treaty body. In recent years there has been an increasingly strong preference for non-binding instruments, for which several reasons have been suggested:

> "The advantage is that [such] instruments ... address themselves immediately (without long ratification delays) to the whole of the United Nations membership and, as the case may be, to other actors and organs of society at national and international levels, thus expressing the notion of collective and universal responsibility. To use the words of the present United Nations Secretary-General: 'They represent not only important political commitments by States, but also ground rules for the conduct of international relations'. 98/ And it may be added that in so far as they pertain to the field of human rights, these instruments also constitute ground rules for the conduct of domestic policies." 99/

While recognizing that there will be issues with respect to which a binding instrument is preferable, it would seem reasonable to encourage the use of a non-binding instrument whenever possible and appropriate. Such a policy could contribute significantly to controlling the proliferation of treaty bodies and the resulting demands placed upon States parties, especially in terms of reporting.

169. The second issue that arises in this regard is of sufficient complexity that it can only be noted in the present study. It is whether sufficient consideration is being given to the choice of terms such as "universal declaration" and "declaration" rather than to alternatives that might more accurately describe the content and significance of the instrument. The former term has now been adopted twice but in practice is used almost without exception to refer to the Universal Declaration of Human Rights rather than to the Universal Declaration on the Eradication of Hunger and Malnutrition. The latter instrument was adopted by the World Food Conference rather than the General Assembly, although the Assembly subsequently endorsed it in its resolution 3348 (XXIX) of 17 December 1974. There are currently two proposals for instruments to be termed "universal declarations". It would seem appropriate for careful consideration to be given to the question of whether the use of such terminology is appropriate.

170. The legal status of a "declaration" is not susceptible of any precise formal definition. Nevertheless, a frequently quoted 1962 memorandum by the Office of Legal Affairs indicated that "in United Nations practice, a 'declaration' is a solemn instrument resorted to only in very rare cases relating to matters of major and lasting importance where the maximum compliance is expected". 100/ At that time, in the human rights field, the United Nations had adopted only 4 declarations over a period of 17 years. By contrast, in the period since then, another 17 declarations have been adopted and at least 6 more are currently in preparation. This evolution gives rise to the question of whether or not an effort should be made to resort less frequently in the future to the form of a "declaration" in order to ensure that the sense of solemnity is not undermined by frequency of use.

3. The formulation phase

171. The formulation or drafting phase of standard-setting raises issues that, for the most part, extend beyond the scope of the present study. In the present context, the principal concern is to ensure that adequate and continuing expert advice is available from the secretariat or another appropriate source and that a

major effort is made to ensure that proposed provisions that are actually or potentially in conflict with existing standards are brought to the attention of the drafting body. In this regard, consideration might be given to requesting the secretariat to provide, as a matter of course, a "technical review" similar in scope to that undertaken in connection with the draft convention on the rights of the child. 101/ In that instance the objectives of the review were:

(a) To identify overlap and repetition between and within draft articles;

(b) To check for consistency in the text, including the use of key terms and the use of gender-neutral language, and between the different language versions;

(c) To compare the standards established with those in other widely accepted human rights instruments, particularly the two International Covenants;

(d) To make textual and editorial suggestions and recommendations as to how any overlaps or inconsistencies identified might be corrected in the second reading, including through the consolidation and relocation of articles.

Such a request is clearly in conformity with the practice generally followed in the process of drafting and adopting multilateral treaties. Thus, as the Secretary-General has noted, "practically all organs that formulate treaties, whether expert or representative, at one or more stages submit the text for consideration" by a drafting committee and, in many cases, those "committees also include secretariat experts; even when this is not so, secretariat members often play an important role in servicing committees consisting only of governmental or expert members". 102/

172. In the same study, the Secretary-General also drew attention to the importance of ensuring that conflicts do not rise between existing treaties on the one hand and the new treaty being drafted on the other and to the role of the secretariat in that regard:

> "As the body of international law created by multilateral treaties increases, greater and greater problems arise about possible conflict between treaties already in force, whether on a world-wide or regional or otherwise restricted basis, and new proposed instruments. Naturally, identification of the existing instruments that bear on the subject-matter of a proposal is always part of the research performed at some stage of the treaty-making process by the secretariat of the organization concerned." 103/

It may also be recalled in this regard that the General Assembly in paragraph 5 of its resolution 41/120 requested the Secretary-General "to provide appropriate specialized support to United Nations bodies working on standard-setting in the field of human rights".

173. Two final suggestions with respect to the drafting phase should also be mentioned in passing. The first is that consideration should be given to formally enhancing the role of non-governmental organizations. An important precedent in this regard was set by the Commission on Human Rights Working Group on the drafting

of the Convention on the Rights of the Child, which accorded non-governmental organizations a significant role in all appropriate aspects of its work. As drafting exercises become more complex, it becomes all the more important to seek as great a range of inputs as possible and to promote the active involvement of those groups whose support for the process will significantly enhance the potential acceptability of the final product. This approach has clearly been adopted by the Working Group on Indigenous Populations (E/CN.4/Sub.2/1989/36, paras. 49-92). Similarly, the importance of involving experts and representatives of non-governmental organizations in any process of drafting a further binding international instrument on freedom of religion or belief and on the elimination of intolerance and discrimination based on religion or belief, has recently been emphasized (E/CN.4/Sub.2/1989/32, paras. 12 and 13).

174. Another suggestion is that every effort should be made to ensure the detailed and careful preparation of travaux préparatoires and their subsequent ready availability. In addition, wherever possible, encouragement should be given to efforts to prepare detailed explanatory commentaries or annotated guides to the travaux préparatoires. In the past this has not always been done and, as a result, it may be needlessly difficult to comprehend the rationale underlying the adoption of particular formulations. The availability of such materials can greatly assist not only Governments but also the treaty bodies and other interested parties in the application of the relevant treaty.

VII. OTHER SELECTED LONG-TERM ISSUES

175. In the preceding chapters of the present study it has been noted that the proliferation of treaty bodies (from one in 1970 to possibly as many as eight in 1995) has given rise to concern on the part of States. That concern has been further reinforced by various commentators and by members of the treaty bodies themselves. 104/ The nature of some of the problems that have arisen, or might arise in the future, has been examined in the earlier part of this study. In the present chapter, consideration is given to some of the possible long-term means by which the treaty régime might be overhauled or rationalized. Such rationalization should not necessarily be viewed as a radical or drastic approach. It should be seen rather as a natural and eventually unavoidable response to a prolonged period of broadening and deepening the treaty régime, which, perhaps by its very nature, has so far developed in a relatively unco-ordinated or ad hoc fashion. Indeed in many respects, the need for major reform can be seen as a tribute to the success of the treaty bodies as manifested in a continuing increase in the number of ratifications by States, a growing interest on the part of all States and of the public at large and a significant evolution of the ability of the treaty régime to promote enhanced respect for human rights.

176. The following analysis is intended as food for thought on the part of the General Assembly and the Commission on Human Rights. It does not purport to provide a specific blueprint for future action, nor is it confined to action that seems likely to be contemplated in the immediate future.

177. The principal, but not the only, focus of the present chapter is on the options that are available to States by which to restrain the creation of new treaty bodies and/or to reduce the number of existing bodies. One option that is not considered is to impose a ban on the creation of new bodies. Such a ban would be neither politically nor legally feasible. Moreover, it might do little to improve the existing situation and might create major difficulties if a compelling need arises for a specialist body to perform important but unique functions. Indeed, in the long term, if the principles underlying international supervision of human rights obligations are to evolve so as to support a truly effective set of mechanisms for promoting accountability, it may well be essential to create entirely new bodies with functions that differ considerably from those presently performed by existing bodies.

178. Thus, leaving aside a moratorium, three possible options may be considered. The first is to consolidate the existing network of treaty bodies in some way. The second is to entrust existing treaty bodies with new functions provided for in new treaties. The third is to attach additional instruments (protocols) to existing treaties, thereby expanding the range of issues dealt with or functions undertaken by the relevant treaty bodies. Each of these options will now be considered.

A. A long-term consolidation of the existing network of treaty bodies

179. The most radical option that has been put forward for resolving many of the problems currently being experienced by the six treaty bodies is to consolidate them all into one or perhaps two new treaty bodies. 105/ The initial attraction of such a proposal is considerable. The existing régime is "untidy" in virtually every respect. It is therefore instinctively appealing to contemplate its replacement by a system that would, inter alia, standardize the various procedures to be followed; reduce the overall volume of documentation; eliminate the need for multiple reports and accordingly reduce the overall reporting burden imposed on States; presumably operate on the basis of assured funding; eliminate overlapping competences; greatly reduce the likelihood of inconsistent interpretations; and facilitate the emergence of an extremely competent supervisory committee potentially enjoying both considerable credibility and high visibility. It may well be that the potential advantages of this approach are such as to warrant its consideration over the longer term. However, in doing so, it would be necessary to acknowledge the fact that many drawbacks also need to be factored into the equation.

180. The precise details of a "super-committee" are relatively unimportant for present purposes. While many variations could be proposed, the main theme of the proposal is clear enough. Its implementation would require a fundamental overhaul of the entire system. Thus, the issue of modalities would be at this stage of secondary importance because virtually any combination of elements would, in theory, be possible in designing the new committee. Suffice it to say that the super-committee would be an entirely new one and would not necessarily bear any resemblance in terms of composition, expertise, structure or even methodology to any one of the existing committees. At the appropriate time the General Assembly

could request the preparation of an expert study that would carefully evaluate the different modalities by which to achieve some degree of consolidation.

181. Proponents of consolidation can argue that the ILO Committee of Experts on the Application of Conventions and Recommendations, which is often held up as a particularly effective supervisory body, constitutes a desirable model since it involves a single committee responsible for the supervision of almost 170 different treaties. But there are fundamental differences between the respective treaty régimes of the United Nations and ILO, and assumptions as to the transferability of different approaches should not be made too readily. Another possible model from which lessons can be drawn is that of the Council of Europe. In recent years extensive deliberations have taken place with a view to assessing both the desirability and feasibility of merging the European Commission of Human Rights with the European Court of Human Rights. 106/ Such a merger has, for example, been described by one commentator as "the only realistic and effective ultimate answer to the present stagnation of the supervisory machinery" of the European Convention on Human Rights. 107/ It is relevant to note in the present context that, only a few years ago, such proposals would have been widely considered to have been much too radical to warrant serious discussion. The turning point seems to have come once the difficulties the system was confronting reached the point where less dramatic solutions appeared pale and ineffective. Nevertheless, the analogy with the United Nations system is still less than convincing in many respects.

182. Leaving aside such potential analogies, it seems clear that the issues raised by the consolidation proposal will at some point warrant a sustained exchange of views in order that the advantages and disadvantages can be adequately articulated. At this point it would seem that the respective cases (for and against) are not especially clear-cut. They are, moreover, greatly complicated by the fact that many of the advantages can equally well be portrayed as disadvantages, and vice versa, depending on the assumptions and perspectives of the observer. This may be illustrated by several examples. It can be argued that the super-committee would, by virtue of its extensive purview and probably almost permanent sessions, develop enormous expertise. The counter-argument is that the variety of expertise represented on the existing range of committees is greater than could ever be captured on a single committee. Or, it can be argued that a single report would enable all dimensions of a given problem to be presented, but the counter-argument is that the single report might still be superficial and would probably be presented by one or two representatives of the State concerned who would have little, if any, detailed knowledge of some of the relevant fields. Or, it can be argued that a single committee would facilitate the effective integration of different concerns such as racial and sex-based discrimination, children's and migrant workers' rights, and economic, social and cultural rights. The counter-argument is that some of those concerns might simply be glossed over and that the supervisory process would no longer serve to galvanize those sectors of the Government and of the community dealing with, or interested in, a specific issue.

183. Another range of issues that would warrant particularly careful consideration concerns the opportunities provided by any process involving a fundamental overhaul for the weakening or undermining of some of the most effective aspects of the

present system. Given the magnitude of the changes that would be required in order to achieve a significant consolidation, it might be difficult to prevent the adoption of procedural or institutional "innovations" that would in practice diminish the effectiveness of existing approaches. Moreover, the present decentralization of functions provides a form of insurance so that if one treaty body is failing to function effectively others might be able to compensate. Reliance upon a single super-committee would, in this sense, involve putting a lot of eggs into a single basket.

B. Entrusting new functions to existing treaty bodies by means of new treaties

184. When the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment was being drafted, a proposal was made to entrust the implementation functions provided for in the treaty to the Human Rights Committee (established under article 28 of the International Covenant on Civil and Political Rights). Such a proposal gives rise to two different types of issue. The first is a matter of law and the second a matter of policy.

1. Legal considerations

185. The appropriateness of the proposal in terms of international law seems to have been the principal stumbling block in the context of the Convention against Torture. On the basis of the proposal as formulated by its sponsors, the Legal Counsel provided the following opinion:

> "...
>
> "B. In my view this proposal presents serious legal obstacles and if adopted its legal validity could be challenged on the ground that it constitutes a modification of the terms of the Covenant which has established the Human Rights Committee and defined its terms of reference. Such modification can only be effected by the procedure specified in article 51 of the Covenant.
>
> "C. As a treaty organ the Human Rights Committee must function in accordance with the provision of its constituent treaty. It is not sufficient in my view that there is a general concordance in purpose between the proposed convention and article 7 of the Covenant on Civil and Political Rights." 108/

As a result of this advice, the proposal was not pursued any further. It should be noted, however, that the result that had been sought could in fact have been achieved by other means. A first possibility would be to entrust the implementation of the new treaty to the members of the Human Rights Committee acting not in their capacity as members of that Committee but in another appropriate capacity. While this could be characterized as involving the use of a "legal fiction", such a technique is not especially uncommon.

186. A second possibility is to undertake an appropriate amendment to the Covenant in accordance with the provisions of article 51. In principle this is straightforward; in practice it is immensely complicated and time-consuming. All in all, it would not seem to be a feasible solution as long as it is sought to be done on an ad hoc basis. It would, however, become feasible if consideration were to be given to amending the Covenant (or the other appropriate treaties) with a view to including a new provision to the effect that additional functions could be entrusted to the Committee pursuant to another treaty, provided that certain criteria were satisfied. Various criteria might be contemplated. They could include, for example, the requirement of a two-thirds majority in favour in the meeting of States parties to the Covenant, provisions for objections to be lodged to the proposal by existing States parties, with a specified threshhold number being sufficient to block the proposal, and so on.

187. Another possibility is to make use of the unique arrangements governing the establishment of the Committee on Economic, Social and Cultural Rights. The creation of that Committee was not specifically foreseen under the International Covenant on Economic, Social and Cultural Rights and its formal role is to advise the Economic and Social Council in the performance of the responsibilities entrusted to it under the Covenant. Nevertheless, with the consistently expressed approval of all of the principal policy-making organs, the Committee functions in much the same way as do the other expert treaty supervisory bodies. Since its mandate is not limited by the terms of the Covenant but is instead determined by the Economic and Social Council, there would be no difficulty in entrusting additional functions to it provided that the Council's approval is forthcoming and that appropriate arrangements are provided for in the new instrument. The latter should also include a contingency plan in the event that the Council might decide to terminate the Committee's mandate at any stage.

2. Policy considerations

188. A variety of policy considerations are also raised by the proposal at hand. Perhaps the most troubling problem for many States is the fact that States parties that ratify the new instrument but are not parties to the existing treaty (for example, the International Covenant on Civil and Political Rights) would be unable to participate in the election of members of the Committee unless appropriate legal arrangements are made by means of an amendment. As participation in the treaty régime becomes increasingly widespread, the dimensions of this problem will diminish, although there would probably be a number of "disfranchised" States for the foreseeable future. This difficulty also arises with respect to the Committee on Economic, Social and Cultural Rights but in that case the link between being a party to the Covenant and being entitled to vote in elections for the Committee was severed many years ago. Ever since the first elections for the Committee in 1986 and before that for its predecessor (the Sessional Working Group on Implementation of the International Covenant on Economic and Social Rights), voting has taken place in the Economic and Social Council rather than in a meeting of States parties. Thus the voting practices with respect to the election of that Committee would not be affected even if new functions were entrusted to it under a new instrument.

189. Other policy considerations revolve principally around issues such as whether one committee can have or develop the expertise required in different fields, whether its effectiveness would be diluted by the addition of new issues or functions, and how States parties will react to the situation in practical terms.

C. Entrusting new functions to existing treaty bodies by means of additional protocols

190. Both in principle and in practice the use of additional protocols to existing treaties would seem to be an appropriate means by which to avoid the creation of new treaty bodies. In the case of the International Covenant on Civil and Political Rights, one Optional Protocol already exists and a second is under active consideration. A similar approach might also be adopted in the case of the other principal human rights treaties, depending on the nature and scope of the issue being dealt with or of the functions being entrusted to the treaty body. In that regard it is evident that there are limits to what might be considered appropriate for inclusion in a protocol, at least in the sense that there should be a clear and direct link between the subject-matter of the treaty and that of the protocol.

191. Note should also be taken, however, of the principal drawback of the technique of using protocols instead of drafting new conventions. Since it is clear that only those States which choose to ratify the relevant protocol(s) would be bound thereby, consideration would have to be given to whether States not parties to the basic instrument would be permitted to ratify one or more of the protocols. This issue does not arise in the context of the European Convention on Human Rights because each of the protocols thereto is only "open to signature by Member States of the Council of Europe, signatories to the Convention". It is conceivable that a protocol could be drafted in such a way as to permit ratification by States not parties to the original instrument but it seems unlikely in practice given that such States would not be able to participate in the meeting of States parties to the original instrument (unless it too was amended accordingly).

192. The upshot of all of this is that protocols would therefore in all likelihood only be open to ratification by States parties to the original instrument. By way of illustration of the resulting drawback, an optional protocol to the International Covenant on Civil and Political Rights dealing in greater detail with the prohibition on slavery (art. 8 of the Covenant) 109/ would not be able to be ratified by a State that was not already a party to the Covenant. Thus the 70 or so States Members of the United Nations in the latter category would be precluded from participating in the new protocol-based régime, a result that would not occur if a separate treaty had been adopted. The counter-argument to this proposition is, however, not entirely without merit. At a time when the importance of seeking universal ratification of the principal human rights treaties (and particularly the two Covenants) is generally accepted, it is arguably inappropriate to bend over backwards to enable States to undertake more limited obligations while at the same time continuing to eschew ratification of the principal treaties.

D. Amending the treaties

193. Several of the possible long-term options considered in the present study could only be pursued by means of an amendment to the provisions of the relevant treaties. When individual proposals are made for the amendment of one of the treaties a common, although often unstated, response is to assume that the process is too complex, too time-consuming and too uncertain of receiving unanimous support to warrant being undertaken. Up until now there may have been good grounds for making such an assumption. In the future, however, the pressures for rationalization of the system and for appropriate measures required to ensure its effective functioning may be so great as to necessitate serious consideration being given to the making of amendments.

194. The actual procedures laid down in the different treaties are not, in fact, unduly complex, provided that sufficient time is allowed for the process to take its course. In other words, amendments only make sense as part of a longer-term strategy and not as short-term or emergency measures. Three of the treaties considered here contain identical provisions with respect to "revision". They are article 23 of the International Convention on the Elimination of All Forms of Racial Discrimination, article 26 of the Convention on the Elimination of All Forms of Discrimination against Women and article XVII of the International Convention on the Suppression and Punishment of the Crime of Apartheid. The provision reads as follows:

> "1. A request for the revision of the present Convention may be made at any time by any State Party by means of a notification in writing addressed to the Secretary-General of the United Nations.
>
> "2. The General Assembly of the United Nations shall decide upon the steps, if any, to be taken in respect of such a request."

195. The two International Covenants contain a different provision. It is, however, common to each of them and reads as follows:

> "1. Any State Party to the present Covenant may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate any proposed amendments to the States Parties to the present Covenant with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that at least one third of the States Parties favours such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.
>
> "2. Amendments shall come into force when they have been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of the States Parties to the present Covenant in accordance with their respective constitutional processes.

"3. When amendments come into force they shall be binding on those States Parties which have accepted them, other States Parties still being bound by the provisions of the present Covenant and any earlier amendment which they have accepted."

Article 29 of the Convention against Torture is also modelled on this procedure, but with two significant differences. In paragraph 1, the requirement that one third of the States parties favours the convening of a conference must be met "within four months from the date of such communication". In paragraph 2, the approval of the General Assembly is omitted.

196. In the case of the first set of three treaties the General Assembly could be expected to adopt procedures that would meet the general requirements set out in articles 39 to 41 of the Vienna Convention on the Law of Treaties of 1969. In doing so, it might well opt to follow a procedure similar to that provided for in the second set of treaties. In the present study it would not seem appropriate to delve more deeply into the possible details of such a procedure since the General Assembly will be guided in part by the nature of the proposed amendments and would probably wish to seek the opinion of the Legal Counsel before proceeding.

197. The principal conclusion to be drawn in the present context is that political will is the principal requirement. If that exists it should not be unduly difficult to secure any necessary amendments.

Notes

1/ Alexei Glukhov, "A Two-Way Street", International Affairs, July 1988, 31 at 34.

2/ Rosalyn Higgins, "The United Nations: Still a Force for Peace", 52 Modern Law Review 1 at 20 (1989). The title of the article was subsequently corrected to read "The United Nations: Some Questions of Integrity".

3/ Official Records of the General Assembly, Twenty-fifth Session, Supplement No. 27 (A/8027).

4/ Ibid., Thirty-fourth Session, Supplement No. 18 (A/34/18).

5/ Ibid., Supplement No. 40 (A/34/40).

6/ Ibid., Forty-third Session, Supplement No. 40 (A/43/40), para. 642.

7/ United Nations publication, Sales No. E.88.XIV.1.

8/ Official Records of the General Assembly, Forty-second Session, Supplement No. 40 (A/42/40), para. 28.

9/ Ibid. Forty-fourth Session, Supplement No. 38 (A/44/38), para. 8.

Notes (continued)

10/ Official Records of the Economic and Social Council, 1989, Supplement No. 4 (E/1989/22), para. 314.

11/ Ibid., para. 347. The Special Rapporteur's preliminary report is contained in document E/CN.4/Sub.2/1988/19.

12/ Official Records of the General Assembly, Forty-fourth Session, Supplement No. 46 (A/44/46), para. 18.

13/ John Humphrey, "The International Law of Human Rights in the Middle Twentieth Century", in M. Bos (ed.), The Present State of International Law and Other Essays (Deventer, Kluwer, 1973) 75 at 91.

14/ Official Records of the General Assembly, Forty-third Session, Supplement No. 40 (A/43/40), para. 486.

15/ Official Records of the Economic and Social Council, 1989, Supplement No. 4 (E/1989/22), annex III.

16/ These figures were given in document HR1/MC/1988/L.2, prepared for the second meeting of the persons chairing the human rights treaty bodies.

17/ See, for example, Benedetto Conforti, "Prolifération organique, prolifération normative et crise des Nations Unies: réflexions d'un juriste", in D. Bardonnet (ed.), The Adaptation of Structures and Methods at the United Nations (Dordrecht, Martinus Nijhoff for the Hague Academy of International Law, 1986), p. 153.

18/ This is not the case with the draft convention on the rights of the child, article 44 of which provides for mutual reports within two years and periodic reports every five years thereafter (see E/CN.4/1989/29).

19/ ILO, Chart of Ratifications of International Labour Conventions, 1 January 1989.

20/ Rosalyn Higgins, op. cit., p. 9.

21/ See the summary of the presentation by Mr. Pocas in document CCPR/C/SR.859, para. 8.

22/ Official Records of the General Assembly, Forty-fourth Session, Supplement No. 38 (A/44/38), para. 392.

23/ It may be noted in this regard that the Human Rights Committee has expressed the view that "efforts towards harmonization and unification may also find an appropriate solution within a State party, particularly through the creation of a co-ordination mechanism" (Official Records of the General Assembly, Forty-third Session, Supplement No. 40 (A/43/40), para. 28 (4)).

Notes (continued)

24/ ILO, 52 Official Bulletin 181-216 (1969).

25/ The exception relates to the cost of the expenses of an ad hoc Conciliation Commission established in cases of inter-State matters pursuant to article 42 of the Covenant. Article 42 (9) provides that "the States parties concerned shall share equally all the expenses of the members of the Commission".

26/ The members of the Group of Three are also members of the Commission on Human Rights and they meet immediately before or after the Commission's session.

27/ Official Records of the General Assembly, Forty-third Session, Supplement No. 40 (A/43/40), para. 8.

28/ Ibid., Forty-second Session, Supplement No. 18 (A/42/18), paras. 29-33.

29/ Ibid., chap. VIII, sect. B, decision 1 (XXXV).

30/ Ibid., Forty-third Session, Supplement No. 18 (A/43/18), para. 11.

31/ Ibid., chap. VII, decision 1 (XXXVI).

32/ Official Records of the International Convention on the Elimination of All Forms of Racial Discrimination, Twelfth Meeting of States Parties, Decision (CERD/SP/35).

33/ See generally R. St. J. Macdonald, "The Charter of the United Nations and the Development of Fundamental Principles of International Law", in Bin Cheng and E. D. Brown (eds.), Contemporary Problems of International Law (London, Stephens & Sons Ltd., 1988), p. 196.

34/ This procedure was established pursuant to Commission on Human Rights resolution I (XII) of 14 March 1956. See also Economic and Social Council resolutions 728 B (XXVIII) of 30 July 1959, 888 B (XXXIV) of 24 July 1962 and 1074 C (XXXIX) of 28 July 1965.

35/ The decision to discontinue the procedure was taken pursuant to Commission on Human Rights decision 10 (XXXVII) of 13 March 1981.

36/ For the view that these issues constitute norms of customary law, see generally Oscar Schachter, International Law in Theory and Practice, 178 Recueil des cours (1982) chap. XV; and Antonio Cassese, International Law in a Divided World (Oxford, Clarendon Press, 1986) 148-150.

Notes (continued)

37/ Barcelona Traction, Light and Power Co. (Belgium v. Spain), 1970 ICJ Reports 3, paras. 33 and 34. With respect to the issue of jus cogens, see the statement made in the South-West Africa case (1966) by Judge Tanaka that "surely the law concerning the protection of human rights may be considered to belong to the jus cogens" (ICJ Reports (1966) p. 298). Also see generally M. Virally, "Reflexions sur le jus cogens", 12 Annuaire français de droit international 1 (1966); E. Schwelb, "Some Aspects of International Jus Cogens as Formulated by the International Law Commission", 61 American Journal of International Law 948 (1967); I. Brownlie, Principles of Public International Law (Oxford University Press, 3rd ed., 1979) 512-515; and V. Alexidye, "Legal Nature of Jus Cogens in Contemporary International Law" 172 Recueil des cours 227 (1981).

38/ I. I. Lukashuk, "The Principle Pacta Sunt Servanda and the Nature of Obligation Under International Law", 83 American Journal of International Law 513 (1989).

39/ Official Records of the General Assembly, Forty-fourth Session, Supplement No. 6 (A/44/6/Rev.1), sect. 23, table 23.1. Estimated expenditures for 1988-1989 are only $2,260,000.

40/ Official Records of the United Nations Conference on the Law of Treaties, Vienna, 26 March-24 May 1968 and 9 April-22 May 1969 (United Nations publication, Sales No. E.70.V.5), p. 287.

41/ See art. 4 of the Vienna Convention dealing with the Convention's non-retroactivity. It provides, inter alia, that it "applies only to treaties which are concluded by States after the entry into force of the present Convention with regard to such States".

42/ See, for example, Restatement of the Law (Third), The Foreign Relations Law of the United States (Saint Paul, American Law Institute, 1987). "This Restatement accepts the Vienna Convention as, in general, constituting a codification of the customary international law governing international agreements" (p. 145).

43/ See generally Bruno Simma, "Reflections on Article 60 of the Vienna Convention on the Law of Treaties and Its Background in General International Law", 20 "Österreichische Zeitschrift für Öffentliches Recht 5 (1970).

44/ Official Records of the General Assembly, Forty-second Session, Supplement No. 18 (A/42/18), para. 60.

45/ Rosalyn Higgins, op. cit., p. 19.

46/ Official Records of the General Assembly, Forty-fourth Session, Supplement No. 18 (A/44/18), para. 28 (6).

Notes (continued)

47/ Pursuant to General Assembly resolution 35/218 of 17 December 1980. The total cost per year is $56,000.

48/ Henry G. Schermers, "Has the European Commission on Human Rights Got Bogged Down?", 9 Human Rights Law Journal 175 at 179 (1988).

49/ Official Records of the General Assembly, Forty-fourth Session, Supplement No. 38 (A/44/38), para. 26 (d).

50/ Ibid., Forty-third Session, Supplement No. 40 (A/43/40), para. 22.

51/ Letter dated 29 September 1988 from the Minister for Foreign Affairs of the Netherlands addressed to the Secretary-General, enclosing an advisory report of the Netherlands Human Rights and Foreign Policy Advisory Committee on the functioning of the human rights conventions under United Nations auspices (A/C.3/43/5), p. 17.

52/ Official Records of the General Assembly, Forty-fourth Session, Supplement No. 38 (A/44/38), para. 392, general recommendation No. 9 (eighth session 1989).

53/ Ibid., para. 26 (d) (ii) a.

54/ Ibid., Forty-second Session, Supplement No. 18 (A/42/18), para. 12.

55/ See document E/CN.4/1989/29, art. 45 (a).

56/ 1989 Report on the World Social Situation (United Nations publication, Sales No. E.98.IV.1), chap. X, sect. B.

57/ R. A. Mullerson, "Sources of International Law: New Tendencies in Soviet Thinking", 83 American Journal of International Law 494 at 512 (1989).

58/ Official Records of the General Assembly, Forty-fourth Session, Supplement No. 38 (A/44/38), para. 26 (e).

59/ Rule 62 of the rules of procedure of the Committee against Torture states that:

"1. The Committee may invite specialized agencies, United Nations bodies concerned, regional intergovernmental organizations and non-governmental organizations in consultative status with the Economic and Social Council to submit to it information, documentation and written statements, as appropriate, relevant to the Committee's activities under the Convention.

"2. The Committee shall determine the form and the manner in which such information, documentation and written statements may be made available to members of the Committee."

Notes (continued)

(Official Records of the General Assembly, Forty-third Session, Supplement No. 46 (A/43/46), annex III.) See also, in the report of the Committee to the forty-fourth session (Official Records of the General Assembly, Forty-fourth Session, Supplement No. 46 (A/44/46), annex IV), rule 76 (4) (pertaining to proceedings under article 20 of the Convention).

60/ CAT/C/SR.2, paras. 82-88; CAT/C/SR.5, paras. 45-59; and CAT/C/SR.6, paras. 2-4.

61/ Rule 69 of the Committee's provisional rules of procedure states:

"1. Non-governmental organizations in consultative status with the Council may submit to the Committee written statements that might contribute to full and universal recognition and realization of the rights contained in the Covenant.

"2. The Committee may recommend to the Council to invite United Nations bodies concerned and regional intergovernmental organizations to submit to it information, documentation and written statements, as appropriate, relevant to its activities under the Covenant."

(Official Records of the Economic and Social Council, 1989, Supplement No. 4 (E/1989/22), annex IV.)

62/ Rosalyn Higgins, op. cit., p. 8.

63/ Ibid., pp. 8-11.

64/ Craig Scott, "The Interdependence and Permeability of Human Rights Norms: Towards a Partial Fusion of the International Covenants on Human Rights", 27 Osgoode Hall Law Journal 769-878 (1989).

65/ Official Records of the General Assembly, Forty-second Session, Supplement No. 40 (A/42/40), annex VIII, views B, C and D.

66/ United Nations publication, Sales No. E.88.XIV.2.

67/ Review of the Multilateral Treaty-Making Process, United Nations Legislative Series (United Nations publication, Sales No. E/F.83.V.8).

68/ Ibid., p. 51, paras. 4 and 5.

69/ Ibid., p. 43, para. 2.

70/ Ibid., p. 8, para. 6.

71/ Adopted respectively on 9 December 1985 (see Organization of American States Treaty Series, No. 67) and 14 November 1988 (ibid., No. 69).

Notes (continued)

72/ Adopted on 26 June 1987 (see Council of Europe, European Treaty Series, No. 126); entered into force on 1 February 1989.

73/ 70 ILO Official Bulletin, Special Issue, Series A, 1987, appendix I, para. 30.

74/ Ibid., para. 32.

75/ Official Records of the Economic and Social Council, 1988, Supplement No. 10 (E/1988/20); see also "United Nations norms and guidelines in crime prevention and criminal justice: implementation and priorities for further standard-setting" (A/CONF.144/IPM/5).

76/ Review of the Multilateral Treaty-Making Process, op. cit., p. 63, para. 1 (a).

77/ Ibid., para. 1 (c).

78/ Ibid., p. 56, para. 4.

79/ See, for example, the "Procedures for the effective implementation of the Basic Principles on the Independence of the Judiciary" in the report on the tenth session of the Committee on Crime Prevention and Control (see note 75 above), draft resolution V, annex; and the "Guidelines for the effective implementation of the Code of Conduct for Law Enforcement Officials", ibid., draft resolution VI, annex.

80/ One commentator suggested two decades ago that "high profile" drafting activities "may foster a harmful illusion of accomplishment and serve as an excuse for failure to pursue more practical, if more difficult, courses of action" (Richard Bilder, "Rethinking International Human Rights Law: Some Basic Questions", 1969 Wisconsin Law Review 171 at 205).

81/ Theo van Boven, "The Future Codification of Human Rights: Status of Deliberations - A Critical Analysis", 10 Human Rights Law Journal 1 at 6 (1989).

82/ For example, E/CN.4/1988/NGO/36, p. 2.

83/ N. Valticos, "The Future Prospects for International Labour Standards", 118 International Labour Review 679 at 680 (1979).

84/ 70 ILO Official Bulletin, Special Issue, Series A, 1987, appendix II, pp. 29-37.

85/ Theodor Meron, Human Rights Law-Making in the United Nations: A Critique of Instruments and Processes (Oxford, Clarendon Press, 1986), p. 284.

86/ Ibid., p. 291.

Notes (continued)

87/ See note 67 above, p. 43, para. 2.

88/ Ibid., pp. 63-68.

89/ See note 84 above, para. 11.

90/ See note 67 above, p. 62.

91/ See summary in document A/C.3/35/SR.56, paras. 57 and 58. Quotation taken from the verbatim text cited by Meron, op. cit., p. 271.

92/ Van Boven, op. cit., p. 6.

93/ See note 67 above, p. 47.

94/ Ibid., p. 24, para. 24.

95/ Ibid., p. 25, para. 25.

96/ Ibid., p. 25, para. 26.

97/ Ibid., p. 68.

98/ Address by the Secretary-General at a meeting held to commemorate the seventy-fifth anniversary of the Peace Palace at The Hague on 6 September 1988 (press release SG/SM/918, p. 3).

99/ Van Boven, op. cit., pp. 8 and 9.

100/ Quoted in document E/3616/Rev.1, para. 105.

101/ The technical review was issued as document E/CN.4/1989/WG.1/CRP.1 and Corr.1 and Add.1.

102/ See note 67 above, p. 29, paras. 37 and 38.

103/ Ibid., p. 32, para. 49.

104/ For example, Torkel Opsahl, "Instruments of Implementation of Human Rights", 10 Human Rights Law Journal 13 (1989).

105/ For example, E/CN.4/1988/NGO/36.

106/ See generally "Merger of the European Commission and European Court of Human Rights", 8 Human Rights Law Journal 1-216 (1987).

107/ Ibid., p. 108, para. 342.

Notes (continued)

108/ E/CN.4/1981/WG.2/WP.6. See generally J. H. Burgers and H. Danelius, The United Nations Convention Against Torture (Dordrecht, Martinus Nijhoff, 1988), pp. 74-77.

109/ See, for example, the "Study on ways and means for [sic] establishing an effective mechanism for the implementation of the Slavery Conventions" (E/CN.4/Sub.2/1989/37).
