

AMERICAN BAR ASSOCIATION
SECTION OF
INTERNATIONAL LAW AND PRACTICE
AND
THE STANDING COMMITTEE ON WORLD ORDER UNDER LAW

RECOMMENDATION

BE IT RESOLVED, that the American Bar Association recommends that the U.S. Government 1
take the following steps to advance the promotion and observance of international human 2
rights: 3

- A. Strongly support the recently created post of High Commissioner for 4
Human Rights. 5
- The High Commissioner should oversee and direct the work of 6
all U.N. agencies concerned with human rights; should be able to 7
convene sessions of the Commission on Human Rights to address 8
emergencies; should integrate human rights obligations into U.N. 9
peacekeeping and humanitarian operations; and should have the 10
authority to raise human rights concerns in the Security Council. 11
 - The High Commissioner should be based at U.N. headquarters in 12
New York so as to have ready access to the General Assembly 13
and the Security Council and should be provided with adequate 14
staff and resources to carry out the High Commissioner's 15
responsibilities. 16
 - To fulfill its potential, the office of the High Commissioner must 17
have an adequate staff that could be stationed around the world to 18

	help victims, provide advisory services, give technical assistance,	19
	observe developments, mediate disputes, and express concern	20
	about violations.	21
B.	Support in addition, the establishment of special regional Commissioners	22
	for the protection of minority rights in regions in which such	23
	Commissioners do not exist at present.	24
C.	Help to increase U.N. resources for the promotion of democracy and	25
	the strengthening of the rule of law.	26
D.	Expedite the ratification of important U.N. conventions relating to the	27
	protection of human rights and enact legislation that would make it	28
	possible to remove most of the reservations to various human rights	29
	treaties that have already been ratified, such as the International	30
	Covenant on Civil and Political Rights.	31
E.	Strongly support the appointment of women to senior positions in the	32
	United Nations system.	33
F.	Support the strengthening of the system of Special Rapporteurs and	34
	Working Groups by providing them with sufficient resources and staff to	35
	carry out their assignments and allowing them to investigate human	36
	rights abuses within their jurisdiction on their own initiative.	37
G.	Work to more appropriately institutionalize the relationship between	39
	non-governmental organizations (NGOs) and the U.N. system so as	40
	better to reflect and utilize the full potential of NGOs in norm creation	41
	and in more systematic scrutiny of state compliance, and to protect	42
	NGOs providing humanitarian assistance.	43

REPORT

This recommendation is the third in a series of five recommendations which deal with important issues of international law that are crucial to the maintenance of international peace and security and justice. They have been developed by the Section of International Law and Practice, through its Working Group on Improving the Effectiveness of the United Nations, as a contribution of the American Bar Association to the 50th Anniversary of the United Nations, in fulfillment of the American Bar Association's Goal 8 -- to advance the rule of law in the world. This recommendation addresses the issue of the international protection of human rights, with emphasis on the strengthening of the Office of the United Nations High Commissioner for the Promotion and Protection of All Human Rights.

Reforming the U.N.'S Work In Human Rights Through the High Commissioner for Human Rights

The U.N.'s work for human rights should become more staff-driven, less political, more responsive to the expertise of bodies established to monitor the implementation of human rights treaties, and should be better funded. It also should become more capable of handling emergencies. In recent years, some innovative steps have been introduced to deal with emergencies. Special sessions of the U.N. Commission on Human Rights have been called; on-site monitors have been deployed; and humanitarian action has been authorized by the Security Council. These measures will need to be strengthened and streamlined and more consistently applied. This vision for improving the effectiveness of the U.N. in the area of human rights may take years to accomplish but should be seen as a long-term objective and a way of encouraging incremental steps toward that objective.

One significant step in improving the effectiveness of the U.N. in the area of human rights took place in December 1993 when the U.N. General Assembly established the post of the High Commissioner for Human Rights. Although it may take years for the High Commissioner to reform the U.N.'s work in the field of human rights, the creation of the post of High Commissioner should prompt rethinking of how the U.N.'s efforts ought eventually to be restructured.

The most important innovation in the creation of this post is that the Commissioner can act without previous authorization by the political bodies of the U.N. Most of the U.N.'s previous efforts required authorization by the General Assembly, the Security Council, the Economic and Social Council (ECOSOC), the Commission on Human Rights, or other bodies. The governments represented on those bodies have been increasingly willing to respond to gross violations of human rights but have been unable to develop the consensus required for action on many serious problems. The new High Commissioner will be able to react more promptly and without awaiting political approval.

In order to fulfill its potential, however, the office of the High Commissioner must have an adequate staff. Indeed, the High Commissioner should not only be responsible for coordinating the work of the Centre for Human Rights in Geneva but should also be the central focus for all of the diverse activities of the U.N. related to human rights. The predicted budgetary implications for the High Commissioner in December 1993 called for a staff of only two in Geneva and two in New York. The Centre of Human Rights presently has only about 150 employees, including clerical staff. While the High Commissioner may, on occasion, be able to draw upon Centre staff, he will have to build a sufficient staff of his own to implement his mandate effectively. Many of this staff should be stationed around the world to help victims, provide advisory services, give technical assistance, observe developments, mediate disputes, and express concern about violations. The operational nature of U.N. agencies like the U.N. High Commissioner for Refugees and the U.N. Development Programme could serve as models. It will take time and considerable resources to build the staff needed by the High Commissioner for Human Rights to enable the High Commissioner to carry out U.N. human rights objectives effectively.

The High Commissioner should coordinate the work of the Special Rapporteurs and Working Groups. At present, ten kinds of human rights concerns have been designated for investigation by Special Rapporteurs or Working Groups reporting to the Human Rights Commission. They are: enforced or involuntary disappearances; arbitrary detention; internal displacement; summary or arbitrary execution; torture; religious intolerance; mercenarism; sale of children; independence of the judiciary; and violence against women.

Strengthening Mechanisms for Protection of Minority Rights

The upsurge in ethnic conflicts and disputes over the scope of minority rights in recent years demands a response from the United Nations. Adoption of the Declaration on the Rights of Minorities by the General Assembly in 1992 will have little meaning if it is not supplemented by an appropriate monitoring mechanism. Given the sensitive and complex nature of many issues related to minority rights, it is preferable that they be addressed by an expert rather than a political body.

This was precisely the role envisaged by the U.N. Commission on Human Rights when it created the Sub-Commission on Prevention of Discrimination and Protection of Minorities in 1946. It is time to reinvigorate the Sub-Commission's activities with respect to minorities, both by expanding its research studies and by appointing a pre-sessional working group to report regularly on the progress achieved in implementing the 1992 Declaration. Ample precedent exists for such a working group, which would be similar to the Working Group on Indigenous Populations. The expertise of Sub-Commission members could contribute by establishing a forum for monitoring potential conflicts and analyzing information in a more positive way than might be possible in an intergovernmental body such as the Commission on Human Rights, and it would ensure that the Declaration on the Rights of Minorities becomes more than just a piece of paper.

To assist the Sub-Commission in monitoring the treatment of minorities, special regional Commissioners for the protection of minorities should be appointed similar to the High Commissioner on National Minorities established by the Conference on Security and Cooperation in Europe (CSCE).

Focusing U.N. Resources on Democracy Promotion

In the past several years the United Nations has become actively involved in the area of democracy promotion. The focus of its activities in this field to date has been electoral assistance. During 1992 and 1993, the United Nations carried out more than fifty different electoral assistance projects. The U.N.'s electoral work has in a few cases consisted of comprehensive assistance projects in which the U.N. is a primary actor in organizing and carrying out national elections in a country, such as in Haiti in 1990 and Cambodia in 1993. In most cases, the electoral work is more limited and consists of one or more of the following specific components: needs assessment and/or technical assistance concerning electoral administration, assistance in the drafting of electoral laws or election observation and reporting. In the major cases of comprehensive electoral assistance, the U.N. usually acts on a basis of a specific General Assembly or Security Council resolution. In the more frequent and more limited instances of electoral assistance, the U.N. is usually responding to a request for assistance from the country concerned.

The primary way in which the U.N.'s electoral activities could be strengthened would be to increase the financial resources available to the Electoral Assistance Unit. The Unit is quite small (approximately a dozen people) and has been receiving requests for assistance in excess of its capacity to respond.

In addition, the Centre for Human Rights and the Electoral Assistance Unit should work together to articulate standards for free and fair elections and to promote the formal acceptance of such standards by U.N. member states. They should also work together to ensure that a full range of human rights concerns are factored into the U.N.'s work on elections.

Electoral assistance is an important form of democracy assistance but clearly not the only form. Democracy involves much more than the holding of free and fair elections. Another broad area of assistance programs to foster democracy are programs aimed at strengthening the basis of governing institutions of democracy -- programs of technical assistance and training for courts, government ministries and parliaments in countries in transition to democracy -- as well as strengthening of the rule of law. The U.N., like the World Bank, has approached this area through the concept of governance, or good governance, rather than democracy. The United Nations Development Program (UNDP) has begun to work in this area, having adopted good governance as one of its program objectives in 1992. This area of assistance is somewhat removed from human rights promotion, although the promotion of democracy and the rule of law may clearly have implications for the human rights performance of any particular country.

Broadening Acceptance of Human Rights Conventions

One important step the U.S. can take to strengthen the effectiveness of the U.N. is to broaden its own acceptance of U.N. and other human rights and humanitarian conventions.

The protection and promotion of human rights is one of the U.N.'s major purposes and has become one of its leading priorities. While the U.S. has been in the forefront of efforts to draft international human rights instruments and establish an effective international human rights system, it has been noticeably slow in ratifying a number of the most significant and widely-adopted human rights conventions. The international community has long been critical of U.S. reluctance to accept international human rights obligations which most of its friends and allies -- in fact, almost all other developed and democratic nations -- have accepted. Indeed, our poor record in this respect is equalled only by some of the world's most repressive states.

At the present time, the U.S. is party to only the following international human rights instruments: the Slavery Convention of 1926 and the Protocol amending that Convention; the Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery; the U.N. Convention on Political Rights of Women; the Inter-American Convention on the Granting of Political Rights to Women; the four Geneva Conventions of 1949 relating to armed conflict; the Protocol Relating to the Status of Refugees; the Genocide Convention; and the Covenant on Civil and Political Rights. Of these, the Genocide Convention and U.N. Civil and Political Covenant were ratified by the U.S. only very recently and then only subject to a long list of reservations, declarations and understandings which significantly limit certain U.S. obligations under these treaties.

The U.S. has still not ratified a number of the most important and broadly accepted human rights instruments. Four of these -- the Convention of the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination Against Women, the Covenant on Economic, Social and Cultural Rights, and the American Convention on Human Rights -- have been signed by the U.S. and submitted to the U.S. Senate, but have not as yet been acted upon. Prompt ratification of these treaties by the U.S. is necessary. The ratification of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment has received the consent of the U.S. Senate, but the necessary implementing legislation has not yet been enacted, preventing the deposit of the ratification document. Other important treaties -- such as the 1977 Protocols I and II Additional to the Geneva Convention of 1949, the Optional Protocol to the Civil and Political Covenant, and the Convention on the Rights of the Child -- have either not yet been signed by the U.S. or not yet submitted to the Senate for ratification.

With the end of the Cold War and increased prospects for a more effective U.N. role in international human rights efforts, it is well past time for the U.S. to commit itself more unequivocally to this effort by broadening its acceptance of these international human rights instruments. The U.S. would be in a stronger position to persuade other nations to accept

effective international human rights standards and implementation procedures if it accepts them itself. Such broadened acceptance could consist not only of U.S. ratification of additional important human rights treaties but also enactment of legislation that would make it possible to remove most of the reservations to some now ratified treaties, such as the Civil and Political Covenant.

Such broadened acceptance of human rights conventions would impose few new obligations and little real risk for the U.S. To the contrary, it could have many prospective benefits, including:

- Demonstrating to the international community, as well as to our own citizens, our strong national commitment to the goal of protecting and promoting international human rights, thus relieving our country of charges of hypocrisy in this respect.
- Permitting us to support more effectively the U.N. and to work with like-minded nations in promoting human rights and focusing international attention on human rights deficiencies or violations in other countries.
- Allowing us to participate more effectively in the processes designed to monitor the implementation of various conventions and thus help shape relevant U.N. and other human rights institutions and policies in ways we believe most appropriate, instead of abdicating such influence to others.
- Through our leadership in this respect, encouraging other countries to broaden their own acceptance of international human rights obligations and to participate more meaningfully in international human rights efforts.
- More generally, signalling a renewed U.S. engagement to contribute fully and seriously in building a more effective United Nations.

Increasing the Role of Non-Governmental Organizations

Non-governmental organizations (NGOs) have played a critical role in the development of contemporary human rights norms, both as policy advocates and as watchdog groups. At the same time as the number and type of NGOs has multiplied far beyond a few pathbreaking but now well established groups (such as Amnesty International), NGO participation in international institutions is hampered by inadequate status, anachronistic procedures, and insufficient accommodations. The relationship between NGOs and the United Nation system should be more appropriately institutionalized so as better to reflect and exploit the full potential of NGOs in norm creation and more systematic scrutiny of state compliance.

Institutional reforms could include:

- Enhanced rights of participation in standard-setting institutions. More than 1500 NGOs representing all regions (including substantial numbers from outside the West) and several non-territorial groupings (e.g., women, indigenous peoples, the disabled) attended the 1993 World Conference on Human Rights at Vienna. Although NGOs undoubtedly affected conference results, they were excluded from drafting sessions due to adamant opposition from African and Asian delegations, led by China. An intergovernmental working group has been established by ECOSOC to consider changes to the rights and privileges of consultative status with U.N. bodies, including ad hoc world conferences. This group should recommend that NGO representatives be afforded greater uniform rights in the decision making process, to approach those rights afforded national delegations.
- Streamlined procedures for participating in international fact-finding and compliance regimes. NGO attendance in the annual session of the Commission on Human Rights and of treaty committees has also greatly increased. These bodies, however, have not efficiently availed themselves of the informational resources presented by NGO participants. NGOs typically have rights to circulate written statements and address plenary sessions, but these voices have tended to be lost in a cacophony. Papers are left unread and speeches are made to empty halls. These institutions should consider procedures for information gathering more along the lines of congressional hearings in the U.S., in which the relevant NGOs could be invited to panel consideration of particular countries or subject areas. This and other improved mechanisms for obtaining and processing information from NGO sources should be developed by more efficiently channeling information to both decisionmakers and to the public at large.
- Efforts to ensure protection of NGOs operating at the local level. Local/indigenous human rights NGOs, as groups with on-the-ground expertise, have historically formed the nucleus of efforts to expose particular human rights violations at the international level. As a result, such groups (and their leaders) become a natural target of repressive regimes. The U.N. should more systematically highlight the importance of these groups to the protection of human rights by stressing the right to freedom of association as provided in the Covenant on Civil and Political Rights (ICCPR) and other international

instruments. The Subcommittee on the Prevention of Discrimination and Protection of Minorities should prepare a report, perhaps on an annual basis, on the harassment and intimidation of NGOs.

Respectfully submitted,

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Chairman

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