

The United Nations System for the Protection of Human Rights

*Larry Johnson**

Thank you very much Professor Wilner. It is good to be back at Georgia and to see you and Professor Sohn again. I begin with the standard disclaimers, but I have a few more than the other speakers. The first disclaimer is the standard one that the official view of the United Nations does not necessarily correspond to anything I might say. I do not speak on behalf of the United Nations or the Office of Legal Affairs. My second disclaimer is that since I am with the United Nations Legal Office, not the Centre for Human Rights, I cannot purport to be expert in the intricacies of human rights law and procedure. My experience concerns the United Nations legal system as a whole, its general procedures and modes of operation. For those of you who are aware of the "human rights system" it is impossible to try to describe the system comprehensively in the short time available, let alone to analyze it. Therefore, I will touch upon human rights activities of the United Nations in the broader sense. My comments will be superficial to those of you who are expert in the field. However, if there are some listeners who are not familiar with United Nations human rights activities, my comments might be of some interest. Finally, my presentation is not a prepared speech but rather a collection of thoughts and comments on U.N. human rights activities and the United States role therein, as an American lawyer working in the United Nations.

First of all, the word "system" is not quite the right word for describing the United Nations framework. But for lack of another term, I will use it. The phrase "United Nations system" usually refers to the group of organizations related to the United Nations, including the specialized agencies. However, I will not have time to comment on the activities of such agencies. Certainly the ILO, UNESCO, FAO, and WHO have extremely important activities within the field of human rights and any thorough examination of activities in the United Nations system as a whole must include the work of those agencies.

* Principal Legal Officer, United Nations Office of the Legal Counsel, New York City, New York.

Equally important in the field of human rights is the work of UNICEF and the United Nations High Commissioner for Refugees, two semi-autonomous United Nations organs. These two bodies are involved in the daily protection of human rights in the field. I am going to touch upon just the United Nations proper, that is, the structure comprising the United Nations principal and subsidiary organs in New York and the Centre for Human Rights in Geneva. Obviously, the beginning of United Nations human rights activity stems from the Charter. Professor Sohn gave us the background of that topic yesterday. The Charter speaks of human rights from the second preambular paragraph and the subject of human rights appears throughout the Charter. The last mention of human rights may well be in Article 76 on the Trusteeship System. Virtually all the principal organs of the United Nations have been involved in human rights at some point. Article 13 confers a substantial role to the General Assembly in regard to human rights and fundamental freedoms. The Economic and Social Council (ECOSOC) has been granted a pivotal role in the area of human rights. The Commission of Human Rights was established by ECOSOC and reports to it; many of the human rights activities of the United Nations are directed through these two bodies. The Secretary-General at times conducts "quiet diplomacy" on human rights matters.

What may be somewhat of a maze is the process through which human rights questions and instruments pass. For example, from the Subcommittee on Protection of Discrimination and Protection of Minorities, a draft convention would go to its parent, the Commission on Human Rights, then to ECOSOC and finally to the General Assembly. A number of commentators have found this process somewhat cumbersome. There have been suggestions that something has to be done with ECOSOC structure and agenda, which concern too many disparate matters. It deals with such varied topics, as the reports of the Statistical Commission, the Population Commission, the Committee on Natural Resources, the Committee on Transnational Corporations, the Commission on Human Rights, the Committee for Programme and Co-ordination, and a number of other bodies. There must be some way it is said, of streamlining or increasing the efficiency of ECOSOC and various initiatives have been undertaken over the years. Sometimes, by the time human rights questions that were burning before the Commission on Human Rights in Geneva get to ECOSOC in New York, they have lost their immediacy. In the General Assembly, however, human rights issues may become lively again;

since the Third Committee of the Assembly focuses on human rights issues and discusses these issues thoroughly.

Another body reporting to ECOSOC which deals with human rights is the Commission on the Status of Women. Many of the most important initiatives for the improvement of the status of women originated there.

In the General Assembly you may find initiatives that have not gone through the ECOSOC or the COHR. At the present time, a convention is being drafted on the rights of migrant workers. This convention is not going through the COHR and ECOSOC process; the drafting is a General Assembly activity via a working group of the Third Committee. The convention, I have been told, should be ready this year or next. From what I understand, it will be a convention similar in procedure to the Torture and the Rights of the Child Conventions. In these conventions, committees with reporting procedures have been established.

I should mention the wide range of United Nations conventions and instruments in the field of human rights. (The Centre for Human Rights should be commended for publishing, particularly in the last few years, extremely valuable reference material on human rights, including compilations on human rights instruments.) United Nations human rights instruments include, for example: the Declaration on the Right to Development; the Declaration on the Rights of Disabled Persons; the Declaration on the Protection of Women and Children in Emergency and Armed Conflict; Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages; Code of Conduct for Law Enforcement Officials; Principles of International Cooperation in the Detection, Arrest, Extradition and Punishment of Persons Guilty of War Crimes and Crimes against Humanity; and of course, the conventions and covenants we discussed yesterday.

The United Nations has thrown its net very wide in terms of the human rights subjects covered. An area of United Nations action which we have not discussed, but which is very much a part of human rights, is the right of peoples and nations to self-determination. A high point was the adoption by the General Assembly in 1960 of the Declaration on the Granting of Independence to Colonial Countries and Peoples. A special committee, the Special Committee on Decolonization, was established by the General Assembly under that resolution. Referred to as the Special Committee of Twenty-four, it reports on various aspects of the aspirations of peoples to exercise their right of self-determination and assesses progress towards self-

determination in various territories. The Committee has been particularly active in supporting self-determination in such places as Southern Rhodesia, Namibia, and Western Sahara.

The United Nations has also worked to eliminate racism, racial discrimination, and intolerance or discrimination based on religion or belief. We touched upon that yesterday in terms of the human rights covenants but there are numerous General Assembly resolutions, declarations, and principles in that area. It has sought the elimination of *apartheid* and assistance to its victims. In addition to two conventions in this area, several declarations also exist, as well as the Special Committee against *Apartheid*.

Advancement of women is another area of human rights activity. Primary responsibility in this area lies in the Commission on the Status of Women, a subsidiary of ECOSOC, which I mentioned earlier. Various activities have been organized by the Commission, including the Decade for Women and conferences to examine the progress achieved towards the equal treatment of women.

I need not touch upon the subject of the realization of economic, social, and cultural rights to any great extent as this has already been discussed. Certain aspects of these rights have had peak periods of attention. The right to adequate food has led to such activities as the World Food Conference and the establishment of the World Food Program and the World Food Council. The right to culture is closely linked to the work of UNESCO. The right to a clean environment is now one of the priority topics in the United Nations. Another such topic is drugs. They are the two issues currently before the General Assembly which attract the most concern and interest from the point of view of both the public and the policy-maker.

Realization of civil and political rights has been the focus of our discussion, particularly yesterday.

The protection of and assistance to vulnerable groups of persons is a subject which includes the rights of the child, the aging, indigenous populations, aliens, migrant workers, and disabled persons. The protection and assistance to refugees and stateless persons is a similar area of activity. Responsibility for this important area rests with the UNCHR.

I now proceed to the situation of human rights in particular areas and countries. The Assembly and ECOSOC, through the Commission on Human Rights, may focus on the situation of human rights in particular countries. Nations recently receiving the Commission's attention include: Chile, El Salvador, Guatemala, Iran, Poland, and Nicaragua. An activity in the human rights field which is very im-

portant, and I think relatively recent, is the provision for advisory services and assistance to governments. Instead of criticizing a government immediately and directly or sending a team of investigators to a country to investigate governmental activities (which may be perceived as a critical move), the United Nations might first offer that government assistance, technical services, and training. For example, the police of that nation would be taught what the human rights obligations are of that country. In the political arena of the COHR or the Third Committee, sending a special rapporteur or otherwise investigating a nation's alleged massive violations constitutes action "after the fact". The possible form of action involved here is to try the preventive route, assisting a government by providing training courses to educate those who must implement the nation's human rights obligations.

The protection of human rights in armed conflicts relates to the 1949 Geneva Conventions on the Law of War and the 1977 additional protocols thereto. In addition, human rights issues may appear in United Nations debates concerning disarmament. The questions of the prohibition and restriction of certain weapons and whether the use of these weapons cause particularly serious injuries or are excessively injurious invoke human rights concerns. A convention on this subject has been concluded.

The Assembly works through its Third Committee to oversee human rights activities. It receives recommendations from ECOSOC, various committees, and councils. However, it is quite obvious that the COHR is the true centerpiece of the United Nations human rights framework. Established in 1946, the COHR was responsible for drafting the International Bill of Human Rights.

A key factor in this "oversight" area is the role of "NGO's" in ECOSOC and COHR. The Charter provides for non-governmental organizations to play a role in ECOSOC. An established process exists on how an organization becomes a recognized NGO. This is also known as receiving "consultative" status with ECOSOC. Once having obtained such status, a right to address COHR and ECOSOC and to have one's statements distributed arises. These rights are extremely important and as a result, NGO's are actively involved in the debates of the COHR. It is through the NGO's participation that some of the worst human rights violations are flagged. Even if governments may not address directly these alleged abuses, the allegations are aired in public. Alleged abuses are often debated in the corridors outside the public glare. While NGO's have a great role to play in ECOSOC bodies, in the Assembly, NGO's lack such rights.

They may request to appear before an Assembly committee and the request may be granted, but the committee is under no obligation to grant such a request. An Assembly committee might be concerned that if it granted one or two NGO requests, it would be flooded with requests.

In general, one way the Human Rights Commission can do its job is to publicize, spotlight, and investigate. Interestingly, the Commission appoints rapporteurs and special rapporteurs, or experts, not only to cover particular countries but also specific topics or themes. According to the 1988 report, experts or special rapporteurs have been appointed in the following areas: a special rapporteur on the question of human rights in Chile; a working group of experts on human rights in southern Africa; a special rapporteur on the use of mercenaries; a working group on enforced or involuntary disappearances; a special rapporteur examining questions relevant to torture; a special rapporteur on summary or arbitrary executions; a special representative on human rights in Iran; a special rapporteur on Afghanistan; a representative on human rights in El Salvador, and a special rapporteur on Romania. Under the heading "advisory services," special rapporteurs have been appointed on Equatorial Guinea, Haiti, and Guatemala. As a result of this approach, reports are presented and publicity is engendered; governments must decide whether to let an official enter their country and how much to cooperate with any investigation. The risk of exposure of certain governmental action within a country is balanced against the virtual self-incrimination in public, by refusing to cooperate. In fact, this procedure is viewed with more concern by governments than examining allegations of human rights violations via the "1503 Procedure." That is a confidential procedure by which individuals complain about the treatment they are receiving from their own governments. Mr. de Zayas can provide the details of this procedure, but I would like to summarize the procedure briefly.

If the Commission receives a complaint from an individual under this procedure, the named government is informed of the complaint and is offered an opportunity to reply. A summary is made of the complaint and of the reply, which is then confidentially submitted to the forty-three states' members of the Commission on Human Rights, and to the twenty-six individuals who are members of its Subcommittee on Protection of Discrimination and Protection of Minorities. The test is whether the complaint evidences a "consistent pattern of gross and reliably attested violations."

A working group of the Subcommittee, in private, examines the complaint. The Subcommittee examines the report of its working group. Upon recommendation of the Subcommittee, the complaint moves to a working group of the Commission on Human Rights. The Commission itself then considers the complaint if the working group favorably reports the issue. Finally, ECOSOC deliberates over the complaint. The process remains confidential except that ECOSOC or the COHR reports which countries are under examination. Such reports do not contain any facts of the case, nor do they reveal any of the allegations. Ironically, the "1503 procedure," which was feared twenty years ago by human rights violators, is now preferred by a number of governments to the public appointment of a special representative or special rapporteur who would produce public reports.

Another interesting issue, as Professor Wilner mentioned earlier, is the United States participation in this area. The United States is extremely active in the Third Committee of the General Assembly and in the Commission on Human Rights. It is ironic, as some would say, that the United States strenuously lobbies and uses its political muscle to get its views across in these two fora when a treaty is being drafted, yet many suspect that in the end the United States will not sign or ratify such a convention. Of course, one can never be sure and the Executive might still submit a text for ratification, but it is left pending by the Senate.

Seven bodies exist within the United Nations which monitor the implementation of seven human rights treaties. The United States does not participate in any of the seven, because it is not a party to any of the treaties being monitored. The Committee on the Elimination of Racial Discrimination ("CERD") is the oldest. It began in 1970 with the entry into force of the Convention of the same name, which has 128 states parties. It has an optional procedure for receiving complaints from states concerning the differences between states as to whether particular terms of the Convention are being complied with. It does possess a procedure for receiving individual complaints, and this too is optional.

Second is the Human Rights Committee formed under the Covenant on Civil and Political Rights, which has eighty-seven parties. An optional provision for state complaints under this Covenant also exists. Twenty-four of the Covenant's eighty-seven parties have opted for this provision. There are forty-five parties to the optional protocol dealing with individual complaints.

The Committee on the Elimination of Discrimination Against Women ("CEDAW") began in 1982 and has 100 parties. In lieu of a complaint

procedure, the Commission relies upon a reporting mechanism whereby states parties report their ongoing activities and legislation implementing their obligations under the Convention.

The Committee against Torture began in 1987 and has forty-one states parties. It employs a dual optional complaint procedure allowing action both by states and individuals. Eighteen states have opted for the state procedure and seventeen states for the individual mechanism.

The Commission against *Apartheid* in Sports is the newest treaty body, created under the Convention against *Apartheid* in Sports. It promotes the boycott of South Africa in sporting events. While the Olympics bars South African participation, various sporting associations do not. The idea was to publicize, penalize, and prevent these sporting associations from having anything to do with South Africa. As of October 1989, there were forty-three states parties to the Convention. However, not one Western state is a party to the Convention. (This created a problem when the states parties met to select the members of the Commission. Most bodies in the United Nations have five officers, one officer from each of the five region of groups. Absent any Western participation, the Commission ended up with one less Vice President than usual.) The Convention has a provision for state, but not individual, complaints. The Commission has met only once. Its largest problem, like that of the CERD, is financial. The states parties pay the bill for those two bodies. The United Nations' regular budget picks up the bill for some human rights treaty bodies, but not for these two. Therefore, the states parties are responsible and assessed accordingly their respective share of the costs. CERD has had serious problems with this recently, resulting in the cancellation of some of its meetings due to a lack of funds. The Commission against *Apartheid* in Sports has a more serious problem because it lacks Western members to help pay for its operation. Because of this, the states parties faced an inequitable division of expenses. At first, the Soviet Union, the party which would pay the most, argued for a flat sum to be paid equally by each state party. In contrast, the non-aligned states preferred the United Nations scale to apply, which meant a heavy Soviet burden. A compromise was proposed but that fell through in the end. Eventually, the Eastern European parties agreed to the United Nations scale of assessments as a basis but only for a one-year trial basis. This resulted in the Soviet Union paying sixty to seventy percent of the Commission's expenses. Meetings will be required in the next few months to determine how expenses of the Commission will be shared following the one-year trial period.

The Committee on Economic, Social and Cultural Rights certainly does not suffer from the problem of funding. Although it is a body monitoring a treaty (the Covenant on Economic, Social and Cultural Rights), it is an established subsidiary organ of ECOSOC. It reports to ECOSOC and its budget is part of the United Nations regular budget. It does not have an individual complaint procedure as it deals exclusively with government reports.

The last treaty monitoring body is the Group of Three, which deals with the International Convention on the Suppression and Punishment of the Crime of *Apartheid*. It consists of three states which examine various reports. They are appointed by, and report to, the Chairman of the Commission on Human Rights.

The Convention on the Rights of the Child, adopted last December but not yet in force, provides for funding from the United Nations regular budget, to prevent a CERD-like problem. Even though the United States was very pleased with the substance of the Convention, it insisted on a vote in the Assembly's Third Committee on the funding provision. The result was 137 to one, with one abstention. The United States voted against and Japan abstained. Despite fifty-nine nations participating at the opening signing ceremony of the Rights of the Child Convention in January, the United States has yet to sign it. It is interesting to note that Senators Bill Bradley and Richard Lugar are co-chairmen of the Advisory Council on the Rights of the Child. They introduced a resolution in the Senate calling for prompt ratification of that instrument. In addition, Senator Bradley sent a memorandum to President Bush requesting that he take part in the signing ceremony on January 26, 1989, to no avail.

As mentioned yesterday, this Convention, as well as the Torture Convention, will be gone over with a fine-toothed comb by the Senate. I hope the Administration will find a "proprietary" interest in seeing Conventions which the Reagan Administration negotiated come into force for the United States. Looking at the Rights of the Child draft convention, I was struck by the number of times the word "appropriate" appeared. It may be the kind of language that David Stewart mentioned yesterday as helping to reassure the Congress. Those experienced in drafting in the Sixth Committee of the General Assembly (the Legal Committee) or in the International Law Commission may view Third Committee draft conventions as containing too much "soft law". In fact, however, this may well serve a very useful purpose as Mr. Stewart indicated yesterday.

Various issues concerning the Convention on the Rights of the Child were raised in the General Assembly prior to adoption. One

article discusses the right of the child to freedom of thought, conscience, and religion. Islamic countries interpreted the article to mean that while the child could practice his religion, the child could not change its religion. Under Islamic law evidently, a child is not allowed to change his religion. This is quite different from the concept adhered to by the United States and most other Western countries. Substantial discussion also arose over a provision dealing with children in armed conflict.

The Death Penalty Protocol to the Civil and Political Rights Covenant was also adopted by the Assembly last December but is certainly more troublesome, especially after the *Soering* case. This is the proposed second optional protocol to the International Covenant on Civil and Political Rights. It was transmitted to the General Assembly for appropriate action by ECOSOC and COHR. It was not transmitted by either body with a strong recommendation for Assembly adoption. However, in the Third Committee of the General Assembly, that is exactly what happened. It was a draft developed at a very measured pace as it came up to the top, but a gallop developed as it was taken up in the Third Committee.

Looking through the Committee's papers, a variety of arguments were made. The proponents, mainly Western Europeans, stressed that in no way were they attempting to shove the Protocol down anybody's throat, particularly the United States and those countries retaining the death penalty. Moreover, they argued, the Protocol is purely optional and those who wished to make a commitment to others to ban the death penalty as between themselves should not be blocked from doing so. Nor did the proponents criticize those states which did not wish to sign the instrument. As the special rapporteur on the topic had indicated, no state should or could ever be forced to accept such an international undertaking. On the other hand, basic logic tells us that if the Optional Protocol comes into force, the abolition of the death penalty will be considered, at least by some, as part of the fundamental human rights system. The language clearly indicates that the abolition of the death penalty contributes to both the enhancement of human dignity and the progressive development of human rights. I am convinced that for the sponsors, all measures to abolish the death penalty would be considered as progress in the enjoyment of the right to life. It seems to me that the abolition of the death penalty deals with the extremely important issue of the right to life. To argue at the same time, "Do not be concerned, we are not criticizing you if you do not sign the Protocol," is illogical.

I found the voting record extremely interesting. The vote on the draft resolution recommending the protocol against the death penalty was fifty-nine in favor, which is not a large number in United Nations terms, twenty-six against and forty-eight abstentions. The vote showed serious opposition and hesitation. The United States voted against the Protocol. It was joined by China and Japan. The United States' position was also shared by Afghanistan, Iran, Iraq, Saudi Arabia, and Syria. Abstaining countries included Libya, Ceausescu's Romania, India, Israel, and many of the non-aligned bloc. Those voting in favor were almost all European nations including our NATO allies and the USSR, and also such countries as Cambodia and Noriega's Panama. Frankly, it is a clear example of a case where the process did not work as it should have—such proposals should be “cooked” to avoid votes on such an important question. Such votes will not help those in the United States urging Congress to ratify the Covenant on Civil and Political Rights because somebody out there will say, “Those are the same people that want us to get rid of the death penalty. How can we support that?” Federalism will also be argued. Before I close, I want to add some random and personal thoughts on things that came to mind from yesterday's discussion.

First, as Professor Sohn indicated, the Covenants on Civil and Political Rights and Economic, Social and Cultural Rights are very much intertwined. With the events in Eastern Europe, human rights activists will have to deal with some questions that may be raised in the near future. These peoples are exercising for the first time civil and political rights. They can vote and decide the type of government and economy they want. They are dabbling in capitalism while rejecting communism, but this may threaten the job security and health care systems with which they are accustomed. There may be a point, as in Poland, where they will begin to lose their jobs and question the benefits of civil and political rights if it costs them the enjoyment of other rights. I think the answers are there, but I think that human rights activists should be aware that in some cases you may have people saying these new civil and political rights are all well and good, but if I cannot feed my family, of what real good are they?

The question of whether it is worthwhile for the United States to ratify treaties encumbered by reservations, declarations, and undertakings is one on which one can go back and forth. If the United States enters a treaty with a monitoring mechanism, however, I think it would still be a good idea for the United States to be a party, even with reservations, etc.

The human rights "boom" exists whether it is good news or bad news. It is bad news in terms of the increased number of violations reported, but certainly attention on human rights issues is booming. The Centre for Human Rights in Geneva is absolutely overloaded with work as Mr. de Zayas indicated. Now is the time to stress human rights as new-found allies and strong advocates of human rights emerge in Eastern European governments. Numerous ideas are being discussed in the United Nations system now as to how to deal with this increased activity. As I said, seven treaty-monitoring bodies now exist. Eight or nine could soon exist, with Rights of the Child, and Rights of Migrant Workers Committees as strong possibilities for the future. There may be a certain amount of overlap. Different committees may monitor the same activities but come to different conclusions and countries could easily be overloaded with reporting requirements. The human rights exercise has so high a profile with so many experts and rapporteurs that an idea was put forward to increase the membership of the COHR beyond forty-three. This is seen by some as a move by the non-aligned to water down the allegedly pro-Western Commission. Last I knew, the idea's proponents were raising it at the Commission in Geneva.

A triage must be made in a number of senses. First, human rights activists must chose their convention carefully. There should be more coordination in Washington as to which conventions should be pushed for ratification and which have the least resistance. I also think we will have to watch carefully to see if the Bush Administration really wants to push for any of these conventions. Second, I think we will have to watch the Administration and the United Nations itself as to where the *money* is going. The United States is presently between \$500 and 600 million in arrears to the United Nations. The United States is very interested in the environment, drugs, and peace-keeping, such as possibly in Cambodia. Human rights must compete with all of these for financial resources. We must ensure that human rights does not take a back seat to other highly visible activities, when it comes to allocation of the already reduced amount of resources available.

Finally, it seems to me that one should be able to recruit new members of the "human rights choir." Grass roots efforts and picking the right treaty for ratification are obvious first steps. Perhaps as Professor Sohn mentioned, a reporting process outside the treaty framework, like the one which was done away with, should be reinstated. I think reporting is the key factor in the whole success of the human rights exercise. It makes governments take the matter

seriously because they must produce something and are subject to questions; there is accountability. This aspect should be stressed to win over new converts to human rights involvement. I certainly agree with Professor Wilner that the whole purpose of all this is multilateralism and a universal approach to human rights. What does the United States have to be afraid of in terms of both the reporting exercise and the rights and obligations under the conventions? If it has the best constitution and civil libertarian laws and traditions, what is it afraid of? If so-called "conservative" Senators want to go after a given country and show the world how it fails to live up to human rights standards, then why not do it before the Committee on Human Rights? Why should not United States lawyers participate in the work of the Committee? It seems to me that it can be used as an opportunity. Why do we have this fear of treaty-monitoring mechanisms? There has to be a new concerted effort to reach beyond the already converted and to indicate to policy-makers that these conventions and international human rights are in our national interest. It is not just a "do-good" impulse. It is in our interest to promote, become involved in, and not be left out of the development of human rights law and jurisprudence. Greater observance of human rights throughout the world is also good for trade and business.

I close with a reminder of what a number of speakers have described as the British experience. While we might use arguments now, for domestic purposes, that stress how much we can teach others, in the end we just might learn something ourselves in this process.

