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## Whither the Commission on Human Rights: A Report After the 35th Session

Gerson Smoger

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# WHITHER THE COMMISSION ON HUMAN RIGHTS: A REPORT AFTER THE 35TH SESSION\*

*Gerson Smoger\*\**

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The statement that the Commission on Human Rights “functions as the focal point of the United Nation’s concentration on the international observance of human rights”<sup>1</sup> is fraught with definitional inconsistencies. Throughout its existence one of the main problems faced by the members of the Commission has been to agree upon the appropriate limits of the expression “human rights.” The question arises whether the term includes the right of a retired school teacher to speak out against his country’s employment practices or his entitlement to receive social security after his departure from the teaching force.<sup>2</sup> If these are both considered to be human rights, then which should the Commission on Human Rights, with its limited time and monetary resources, emphasize?

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\* I would like to thank Mr. Bushey and the Ford Foundation for the grant which made this work possible. I would also like to note my debt to the delegates, NGO’s, and members of the United Nations staff with whom I discussed these matters.

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1. *E.g.*, H.R.C. Res. 10 (Sess. 30); E/Cn.4/Sr.1443, para. 1; E/CN.4/1292, paras. 155-57.

2. Res. 8 (Sess. 14).

Does "international observance" connote merely an international forum for the discussion of human rights or an activist agency concerned with the enforcement of international standards? As the "focal point" is the Commission designed merely to serve as the nerve center for a multitude of United Nations human rights interests or should all UN human rights interests come under the actual supervision of the Commission?

The Commission has attempted to resolve these controversies under its Agenda Item 11 entitled "Further Promotion and Encouragement of Human Rights and Fundamental Freedoms, Including the Question of the Programme and Methods of Work of the Commission."<sup>3</sup> As early as 1963 the Commission had considered existing and alternative measures by which "the promotion of respect for human rights and fundamental freedoms" could be encouraged.<sup>4</sup> The Commission addressed these issues again at its twenty-second, thirtieth, thirty-first, thirty-second, and thirty-third sessions.<sup>5</sup> This self-analysis became a priority when the General Assembly passed Resolution 32/130 on December 16, 1977.<sup>6</sup> The Resolution required the Commission to give priority at its thirty-fourth session to development of "alternative approaches and ways and means for improving the effective enjoyment of human rights and fundamental freedoms."<sup>7</sup> The Resolution further requested the Commission to submit through ECOSOC a report to the General Assembly on its conclusions and recommendations. After interminable hours of debate, the Commission could reach no agreement during its thirty-fourth session, and it decided to table the item and give the issue priority at the thirty-fifth session. The members established an open-ended working group composed of all Commission members to deal with this item a week prior to the official opening of the thirty-fifth session.<sup>8</sup>

The preliminary working group was unable to reach a satisfactory agreement and decided to continue its work during the thirty-fifth session. Meanwhile, a private working group composed of the delegations from Australia, Brazil, Bulgaria, Cuba, France, India, Senegal, the United States and the USSR attempted to develop a

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3. *Id.*

4. A/32/130.

5. A/32/130; E/CN.4/1292, para. 156.

6. H.R.C. Res. 26 (Sess. 34); E/CN.4/L.1482, para. 1; A/33/104; E/CN.4/1297/Add.1/Rev.1, pp. 12-13.

7. E/CN.4/L.1482, para. 22; E/CN.4/Wg.2/Wp.10, para. 2.

8. *Id.*

meaningful consensus in a more restricted forum. In the eleventh hour of the final day of meetings, the members of this private working group resolved their differences and passed Resolution 22 (Sess. 35). The Commission adopted the Resolution with little discussion.<sup>9</sup>

In their deliberations the members of the drafting group concentrated their efforts on four areas: (1) the mandate of the Commission; (2) the structure of the UN Secretariat supervising human rights organs and bodies, including the elevation of the Commission and Division of Human Rights to Council status, the establishment of a post of High Commissioner for Human Rights, and the staffing and resources of the Division of Human Rights; (3) intersessional activities, including those of the Commission's Bureau; and (4) the duration and frequency of the sessions and the composition of the Commission. The following analysis critically assesses the discussions concerning these four areas.

### I. THE MANDATE

The main impetus for examining the Commission's functions derives from General Assembly Resolution 32/130. The Resolution contains specific recommendations which the Commission must review when analyzing future programs. The significance of the Resolution is such that the question has arisen whether the General Assembly intended to accord the Resolution status comparable to that of the United Nations Charter or the Universal Declaration of Human Rights.<sup>10</sup> It is the view of most Western states that the emphasis of the Commission's work should be upon the monitoring of individual violations of civil and political rights and the enforcement of human rights standards. Article 1(e) of Resolution 32/130 addresses civil and political rights violations in the following manner:

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9. E/CN.4/Wg.2/WP.10, para. 4; E/CN.4/1292, para. 189; E/CN.4/1318/Add.1.

10. There are three major legislative caucuses, the Western group, the Eastern European group, and the Non-Aligned, which is sub-divided into Latin American, African, Arab, and Asian caucuses and is composed of the bulk of the world's developing nations. Though Cuba is a member of the Non-Aligned movement, many Non-Aligned delegates complained to me that the Cubans were clearing all of their proposals with the Soviet delegation. While these caucuses are by no means monolithic, for convenience in this article particular policy positions are identified with the caucus which supports those positions.

In approaching human rights questions within the United Nations system, the international community should accord, or continue to accord, priority to the search for solutions to the mass and flagrant violations of human rights of peoples and persons affected by situations *such as* those resulting from apartheid, from all forms of racial discrimination, from colonialism, from foreign domination and occupation, from aggression, and threats against national sovereignty, national unity and territorial integrity, as well as from the refusal to recognize the fundamental rights of peoples to self-determination. . . (emphasis added).<sup>11</sup>

This passage raises a question whether the General Assembly attempted to limit the gamut of prospective violations which the Commission may handle to those offenses listed, or by using the words "such as" attempted to indicate that the enumerated violations are merely exemplary and not all-inclusive. In other words, the issue is whether Resolution 32/130 restricts the Commission's scope of action to only those civil and political rights violations which affect collectivities, thereby limiting the enforcement of individual rights such as the right to free expression or the right to receive a fair trial. To Western nations such a prospect is obviously disconcerting, particularly at a time when the Director of the Division of Human Rights has called for the development of "further ways and means of tackling violations," especially "those which take place under new guises such as the pretext of national security or quasi-permanent states of emergencies."<sup>13</sup> Western states also fear that Resolution 32/130, viewed in this restrictive fashion, would abet the socialist position that an activist stance on human rights violations by the Commission constitutes interference with the internal affairs of the state in which the violations take place and thus contradicts the terms of Article 2(7) of the Charter. At the same time these states believe that real progress in human rights comes not from condemnation but instead from a gradual process of dialogue and international cooperation.<sup>14</sup>

Even more intense has been the controversy over whether the promotion of full economic, social and cultural rights should su-

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11. G.A. Res. 32 (Sess. 130), Art. 1(e).

12. See Bulgarian Draft Resolution E/CN.4/Wg.2/Wp.3; E/CN.4/SR.1449, para. 49.

13. Address of Theo. C. Van Boven, Director of the Division of Human Rights (Feb. 12, 1979) (unpublished).

14. UN Commission on Human Rights [1978]. REV. INT'L COMM. JUR. 30-31. But see E/CN.4/1318/Add.1, at E/CN.4/SR.1447.

persede attention to civil and political rights. For years the socialist nations of Eastern Europe have maintained that the lack of full economic and social rights is the root cause of violations of civil and political rights and that the Commission should give primary consideration to the causes rather than the symptoms of oppression. The developing nations shared this viewpoint to varying degrees. Although gross violators have used this assignment to justify repressive internal policies, many other developing nations have legitimately contended that each nation's observance of civil and political rights should be viewed only in the context of its peculiar national situation. They argue that the criteria used to evaluate a nation's actions should include the economic development of the country in question, and that such criteria should not be applied uniformly and blindly in most cases.<sup>15</sup> This position is supported by Parts (b) and (f) of 32/130:

(b) The full realization of civil and political rights without the enjoyment of economic, social and cultural rights is impossible; the achievement of lasting progress in the implementation of human rights is dependent upon sound and effective national and international policies of economic and social development, . . .

(f) The realization of the new international economic order is an essential element for the effective promotion of human rights and fundamental freedoms and should also be accorded priority.

Some Western analysts are skeptical of the commitment of non-Western nations to economic and social rights.<sup>16</sup> They argue that human rights violators are merely pursuing this dialogue in order to justify their brutal internal policies. The question whether severe economic or social deprivations can ever justify indiscriminate arrest and torture is certainly legitimate. While recognizing the ideal of equal emphasis for all human rights, it is the view of these analysts that civil and political rights lend themselves to more precise definition and enforcement. The ability of a state to accord

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15. E/CN.4/SR.1442, para. 10; E/CN.4/SR.1449, para. 39; E/CN.4/SR.1491, paras. 27-28; E/CN.4/SR.1492, para. 14; M. Mitlin, *The Social System and Human Rights*, BOURGEOIS DEMOCRACY AND HUMAN RIGHTS 14 (1978); J. Pronk, *Human Rights and Development Aid*, 18 REV. INT'L COMM. JUR. 34 (1977); H. Schoenberg, *The Implementation of Human Rights by the United Nations*, ISRAEL Y.B. HUMAN RIGHTS 22 [1977]; G. Von Bornsdorff, *Human Rights Change*, 30 REV. INT'L AFF. 26 (1979); See 30 REV. INT'L AFF. 26 (1978).

16. For strident views of the intent of 32/130, see, W. Korey, *The U.N.: Scraping Individual Rights for Collective Rights*, The Washington Post, Jan. 11, 1978, and S. Lifskofsky, *Human Rights Minus Liberty* (unpublished).

its population full economic and social rights depends on the overall development of the state, making any proposed international enforcement difficult.<sup>17</sup>

The failure to resolve the perceived dichotomy between civil and political rights and economic, social and cultural rights has resulted in the development of a rhetorical standard in which Commission delegates refer to the indivisibility and interdependence of all human rights and insists that attention be given to their realization equally. This rhetoric is embodied in Resolution 32/130 Part (a):

[A]ll human rights and fundamental freedoms are indivisible and interdependent; equal attention and urgent consideration should be given to the implementation, promotion and protection of both civil and political, and economic, social and cultural rights.

The utilization of this broad language, however, serves only to obscure the ongoing debate over the Commission's focus.<sup>18</sup>

The difficulties faced in determining the meanings and application of Resolution 32/130's provisions have also led to intense debate over the place which the Resolution should occupy in the Commission's self-appointed analysis of "alternative approaches and ways and means for improving the effective enjoyment of human rights and fundamental freedoms."<sup>19</sup> In the end, the western states succeeded in preventing the incorporation of Resolution 32/130 into the terms of reference for the Commission's work. The resulting Resolution 22 (Sess. 35) merely states that the concepts contained in Resolution 32/130 should be taken into account—something which had already been mandated by the General Assembly when it originally passed Resolution 32/130.

Regardless of whether Resolution 32/130 is "to be taken into account" or actually incorporated into the Commission's terms of reference, the crucial question is how Resolution 32/130 will affect the work of the Commission. The correct emphasis of the Commission and the extent to which trends, symbolized by Resolution 32/130, will affect its work product require further investigation.

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17. E/CN.4/1318/Add.1, 18.

18. *Id.* at 15, 18.

19. E/CN.4/L.1482, para. 6; E/CN.4/1292, para. 165; E/CN.4/1318, 8; E/CN.4/1318/Add.1, 4; E/CN.4/1318/Add.3, 5; E/CN.4/1320, 4; E/CN.4/SR.1488, 5.

### A. *Economic, Social and Cultural Rights*

Despite the hortatory statements and polemic debates about the paramount importance of all human rights, the Commission spends extraordinarily little time discussing economic, social and cultural rights. It is not clear whether this situation may be attributed to Western domination of the Commission in its formative years as some Socialist nations insist or to the inordinate attention given certain human rights violations by South Africa, Chile and Israel, or to the fact that other organs of the United Nations system including the International Labor Organization and the United Nations Educational, Scientific and Cultural Organization address violations of economic, social and cultural rights. It is clear that except for discussions pursuant to Agenda Item 8,<sup>20</sup> and the recent debates about the Commission's future work, these rights are rarely mentioned.<sup>21</sup> In recent years the Commission has given Agenda Item 8 slightly greater emphasis. The reason for this shift in focus derives from the genesis of a "new" human right—the right to development. After lengthy scholarly debate, the United Nations Secretary-General submitted a detailed study "of the international dimensions of the right to development as a human right" to the 35th Session of the Commission.<sup>22</sup>

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20. Agenda Item 8 is: "Question of the Realization in All Countries of Economic, Social and Cultural Rights Contained in the Universal Declaration of Human Rights and in the International Covenant on Economic, Social, and Cultural Rights and Study of Special Problems Which the Developing Countries Face in Their Efforts to Achieve These Human Rights."

21. Report by the Secretary-General, *The International Dimensions of the Right to Development as a Human Right in Relation to Other Human Rights Based on International Co-operation*, E/CN.4/1334. (The first half of the report details the legal and scholarly antecedents of the concept. In discussions ranging over international co-operation, disarmament, the New International Economic Order, political participation, the role of transnational corporations, and self-determination, the right to development is then shown to be an interdependent right. While the report indicates that civil and political rights should be infused into all aspects of the development process, it also seems to suggest the converse that the necessity for economic development should be infused into all aspects of human rights. The most intriguing suggestion in the report is that development projects should require "human rights impact statements" similar to environmental impact reports. Yet, nowhere in the report is the "right to development" explicitly defined.)

22. Res.4 (Sess. 33), para. 4. The right to development is incorporated into the UNESCO Declaration on Race and Racial Prejudice (November 27, 1978). E/CN.4/1271. See E/CN.4/1340, para. 4. See also SS.78/Conf.630/12; UNESCO Expert Meeting on Human Rights, *Human Needs and the Establishment of a*

While the "right to development" has become the chief vehicle for discussion of economic, social and cultural rights, conceptually this right, including the Secretary-General's treatment of it, lacks focus. Because of the scarcity of definitive material on the nature of the "right," a Commission mandate to discuss right, and the political inexpedience of asserting a precise definition, the Secretary-General's study is understandably vague. Nor do the delegates to the Commission agree upon the meaning of the concept. In the final analysis, the "right to development" has become a catch-all phrase which includes every right which might be necessary for both a nation's overall development and the development of each individual within that nation. Thus, the right to development is said to include "components relating to health, food, shelter, work and working conditions, social security, the right to leisure, and individual freedoms."<sup>23</sup>

Despite the appeals by Keba M'Baye, the delegate from Senegal and one of the driving forces behind discussion of this new concept,<sup>24</sup> the right to development has become another victim of the interminable debate over the priority to be accorded various human rights. Emphasizing the individual aspects of the right to development, nearly every western nation has either quoted or paraphrased the report's conclusion that "a development strategy based on political repression and the denial of human rights could perhaps appear to succeed . . . , but full and genuine development would never be achieved."<sup>25</sup> To most Western nations, the right to development requires full respect for individual rights and the incorporation of such concern for human rights in the formulation of national development strategies.<sup>26</sup>

Rejecting the notion that individual rights are a prerequisite for development, many non-Western states have countered that full economic development is required before individual rights can be assured. In this sense the right to development may be viewed as a collective right of third world peoples to have obstacles to national development removed. Promotion of this idea would require that transnational corporations be regulated, that former imperial-

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*New International Economic Order* (1978) (final report); M. GANJI, *THE REALIZATION OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS: PROBLEMS, POLICIES AND PROGRESS*.

23. E/CN.4/L.1425/Add.3, para. 12.

24. See E/CN.4/SR.1488, paras. 13-23 (M'Bay's views).

25. E/CN.4/1334, para. 129.

26. E/CN.4/L.1425/Add.3, para. 9.

ist nations and corporations be forced to reimburse the victims of their imperialism, and that states should have sovereign control over their natural resources. Furthermore until the emergence of this New International Economic Order, there can be no true development, and without development there cannot be full observance of human rights.<sup>27</sup> While these nations recognize that the denial of civil and political rights may prevent full development, this recognition is limited to the rhetoric of Resolution 32/130—"colonialism, aggression, threats against national sovereignty, foreign occupation, apartheid and all forms of discrimination and domination. . . ."<sup>28</sup>

This conflict between the supporters of these opposite views resulted in the passage of two quite contrasting resolutions. Resolution 4 (XXXV), drafted by the Senegalese delegation with the intention of gaining Western support, was passed by consensus.<sup>29</sup> While it took into account "the requirements of the New International Economic Order,"<sup>30</sup> it also noted that the right to development "implies equal access to the means of personal and collective advancement and fulfillment in a climate of respect for the values of civilizations and cultures, both national and world-wide."<sup>31</sup> Article 3 of the resolution noted the importance of integrating individual human rights into the development process.<sup>32</sup>

Resolution 5 (Sess. 35) was passed later after heated debate.<sup>33</sup> Its first operative paragraph clearly stated that "equality of opportunity for development is as much a prerogative of nations as of individuals within nations." In standard fashion it declared that "the denial of the right to self-determination of peoples, foreign occupation, colonialism, *apartheid*, racism and racial discrimination con-

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27. E/CN.4/SR.1491, para. 40; E/CN.4/SR.1489, para. 16; E/CN.4/SR.1492, para. 6, 19.

28. E/CN.4/L.1425/Add.3, para. 19; E/CN.4/SR.1489, para. 16; E/CN.4/SR.1492, paras. 6, 17, 19.

29. E/CN.4/L.1425/Add.3, paras. 24-25.

30. Res. 4 (Sess. 25).

31. *Id.*

32. *Id.*

33. E/CN.4/L.1425/Add.3, paras. 24-25. At the request of Canada separate votes were taken on two of the operative paragraphs, both being adopted by 23 votes to 7 with 1 abstention. The resolution as a whole was then adopted by 23 votes to 1 with 7 abstentions. This is a good example of a rather curious policy of many Western states in which they attempt to display a conciliatory attitude by voting against the operative paragraphs of a resolution and then abstaining on it as a whole.

stitutes an impediment to social and economic progress." Despite vehement objections by Western states, Resolution 5 further expressed the Commission's "concern that qualitative and human rights conditions are being imposed in bilateral and multilateral trade policies with the intention and effect of perpetuating the existing structure of world trade." Significantly, article 7 of Resolution 5 required that the Commission heed the provisions of the Resolution in future discussions of Agenda Item 8, thereby contradicting the authority of consensus Resolution 4. The question remains open as to which alternative view of the "right to development" will be favored by the Commission.

Many resolutions on economic rights and the New International Economic Order are written with an intent to display to the western states the solidarity of the non-aligned world. Because the very nature of the present world economic system requires that the western "industrialized" states acquiesce in the implementation of a changing international economic order, resolutions against which industrialized nations will unite are as little more than public relations exercises. With this political consideration in mind, article 7's direction of Commission work on Item 8 may be better understood. Resolutions 4 and 5 represent extreme positions—one much too soft for the non-aligned members of the Commission and the other "anti-imperialist propaganda." The Commission's actual position lies somewhere in between—in acknowledgement of the existence of a "right to development," however nebulous its definition might be.

Resolutions 4 and 5, by requesting substantial outside work which must be reported to the Commission, should lead to increased consideration by the Commission of economic, social and cultural rights. Resolution 4 invited the Secretary General to prepare a study on the regional and national dimensions of the right to development. The Secretary General's earlier report was restricted by its mandate to an examination of the international aspects of the right to development and hence international economics collective rights, the report invited by Resolution 4 should dwell upon internal economic policies and individual rights.<sup>34</sup> Resolution 5, on the other hand, authorized a seminar to be held in 1980 which will focus on the "unjust international economic order" and how it inhibits full implementation of human rights.

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34. E/CN.4/1334, para. 3; H.R.C. Res. 4 (Sess. 33).

35. E/CN.4/L.1425/Add.3, para 22; E/CN.4/1334, para. 309; E/CN.4/SR.1488, para. 18.

The extent of the impasse is exemplified by discussion in the one substantive area of economic rights with which the Commission has concerned itself—the incorporation of human rights questions into development assistance programs. In recent years some Western nations have begun to take human rights violations into consideration when they offer economic assistance.<sup>36</sup> Unfortunately, decisions to reduce aid because of human rights violations have been made quite selectively and have not been accompanied by increased allocation of aid to those states with an acceptable human rights policy. As a result, many developing nations have viewed the insertion of a “human rights” criteria into aid policies as merely a means by which Western nations justify avoidance of their obligation to provide economic assistance. In order to resolve this problem, the Secretary General’s report<sup>37</sup> recommended that internationally sanctioned standards of human rights be formulated.<sup>38</sup> Western nations could point to these standards when taking human rights into consideration in their aid programs. While it is unrealistic to believe that nations will agree upon such standards in the midst of the ideological quagmire the Secretary General’s suggestion was completely misinterpreted. The United States summarily rejected the notion that industrialized states have an obligation to make reparations for the past injustices alleged by the nonaligned nations or that developing nations have a legal right to receive aid. Meanwhile, several developing nations attacked the implication that donor nations should judge the human rights situation in the country receiving assistance. They argued that examination of another sovereign’s internal human rights policies violates the concept of international cooperation. No one dwelt upon the substance of the Secretary General’s proposal.<sup>39</sup>

### B. *Civil and Political Rights*

As previously stated, the Commission has spent the bulk of its time engaged in discussions of civil and political rights. In light of the Commission’s reassessment of its priorities two questions arise: whether this emphasis should be maintained, and whether it has

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36. See, e.g., Pronk, *supra* note 15.

37. E/CN.4/L.1425/Add.3, para. 20; E/CN.4/SR.1489, para. 28.

38. E/CN.4/1334, paras. 254-79, 312.

39. E/CN.4/L.1425/Add.3, para. 20; E/CN.4/SR.1489, para. 28; E/CN.4/SR.1491, para. 40.

been productive. For years the Commission has devoted much of its debate to three countries—South Africa, Israel, and Chile—colloquially known as the “unholy trinity.” At minimum the first two weeks of the Commission’s work are consumed by discussions of *apartheid* in Southern Africa, the occupied territories in Israel, and the post-Allende atrocities in Chile. This is not to say that these situations do not present serious human rights problems, but their repeated selection as topics for discussion is clearly as much the result of their isolated political position and their intimate, sometimes infamous relationship to the West as it is the intrinsic nature of the violations occurring within their borders.

While discussion of human rights violations in these countries has degenerated to mere rhetoric, equally serious human rights violations in other states have been ignored.<sup>40</sup> For years despite the egregious human rights violations in Uganda, that nation’s policies were not scrutinized by the Commission in full public debate. The same is true of many other horrendous situations, such as the thousands of missing persons in Argentina.

It is true that at the thirty-fifth session the practices of nations other than the “unholy trinity” were raised for condemnation. These condemnations, however, were motivated more by external relations between states than by a desire to achieve any genuine internal improvement. For instance, despite the lack of discussion on the substance of the proposed claims, Algeria and Morocco authored opposing resolutions, both of which were deferred before the sensitive issue could be debated.<sup>41</sup> The Cubans authored a vituperative resolution condemning Nicaragua for “wholesale and flagrant violations of human rights”<sup>42</sup> and a telegram to Guatemala condemning the assassination of Dr. Alberto Mohr.<sup>43</sup> While the human rights policies of both of these nations probably warranted such condemnation, the Cuban texts were written without preliminary Commission consideration of the violations and, more importantly, they provided no special reporting or enforcement mecha-

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40. K. Suter, *The UN Commission on Human Rights*, Australian Outlook, Aug. 1977, at 295; E/CN.4/SR.1442, para. 20.

41. H.R.C. Res. 7 (Sess. 35); E/CN.4/L.1455; E/CN.4/L.1461; E/CN.4/L.1425/Add.18, paras. 13-15.

42. H.R.C. Res. 14 (Sess. 35); E/CN.4/L.1425, para. 11; E/CN.4/L.0447/Rev.2.

43. E/CN.4/L.1425/Add.18, para. 16. Columbia and Peru offered a counter-proposal, E/CN.4/L.1474, to Cuba’s text on Guatemala, E/CN.4/L.1456, and a compromise was finally reached, E/CN.4/L.1479.

nisms.<sup>44</sup> The resolution was drafted purely for public relations purposes. Such a procedure is, of course, consonant with the socialist view that any enforcement procedures would violate the Charter by interfering with the internal affairs of sovereign states. However, the Commission must consider the fact that condemnations issued in such a lynch mob fashion might destroy the organization's credibility.

The telegram to Guatemala points to another problem which the members of the Commission must face. Up until this time the purpose of telegrams was either to deal with an emergency situation or to condemn a country which over a period of years had "persisted in the commission of gross violations of human rights"—namely South Africa and Israel. Dr. Mohr had died two months earlier. Obviously, random telegrams will reduce the effectiveness of what can be a very potent mechanism in a limited arsenal of enforcement procedures. Criteria must be established for the issuance of telegrams which would take into account: (1) the effectiveness of alternative procedures; (2) the immediacy of the violation and the proposed remedy; and (3) the gravity of the violation. On none of these bases would a telegram such as the one delivered to Guatemala be a reasonable action.

This is not to say that Commission work on civil and political rights is in a period of stagnation. On the contrary, in recent years the Commission's work in these areas has burgeoned—but in private, not public sessions. In 1970 the Economic and Social Council passed what one human rights scholar has referred to as "the single most promising human rights development in the past twenty years"<sup>45</sup>—Resolution 1503 (XLVIII) which formalized procedures for dealing with communications to the Commission.<sup>46</sup> All U.N. member nations fall under the purview of its provisions.<sup>47</sup> When communications—a U.N. euphemism for complaints—appear to reveal a "consistent pattern of gross and reliably attested violations of human rights" by a member state, that state's actions may be scrutinized in private session.<sup>48</sup> The meetings are held privately in order to protect the authors of the communications and to facili-

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44. E/CN.4/L.1447/Rev.2; E/CN.4/L.1456.

45. Green, *Changing Approaches to Human Rights: UN, 1954 and 1974*, 12 TEXAS INT'L L.J. 236 (1977).

46. E/CN.4/L.1425/Add.18, para. 23; E/CN.4/1317, paras. 15, 16, 22; Schoenberg, *supra* note 15, at 32-34.

47. E/CN.4/1318/Add.1, at 24.

48. E.S.C. Res. 1503 (Sess. 48); E/CN.4/1317, paras. 15 and 16.

tate a freer discussion of the violators by Commission members.<sup>49</sup>

After a rather spasmodic beginning, the work on ECOSOC Resolution 1503 has been a primary focus of the Commission. At the thirty-fifth session the policies of ten different countries were reviewed: Bolivia, Ethiopia, Uganda, Equatorial Guinea, Malawi, South Korea, Paraguay, Uruguay, Burma and Indonesia. The discussions required more than a week of meetings.

The Commission has various options to choose in dealing with violations by member nations. It may decide merely to keep the matter open for discussion; it may conclude that the situation necessitates further study, requiring that a report and recommendations be made to ECOSOC; or it may, with the consent of the concerned state, authorize an investigation by an *ad hoc* committee or special *rapporteur*.<sup>50</sup> Finally, failing improvement of the situation in that country after one or more of these alternatives have been tried, it may recommend that the case be submitted for public discussion where the threat of adverse international publicity will hopefully persuade the violating nation to alter its policies.<sup>51</sup> At the thirty-fifth session the Commission decided for the first time to remove a nation (Equatorial Guinea) from the procedure of Resolution 1503 and debate the issue publicly.<sup>52</sup>

The procedure set by Resolution 1503 does have its problems. Unfortunately, the procedure gives the appearance of inaction because the procedure occurs in private, and there are rarely overt signs of progress.<sup>53</sup> The private nature of Resolution 1503 is enforced by an official gag rule which prevents public comment on communications currently being discussed in private session.<sup>54</sup> The Commission has unofficially extended the scope of this gag rule, and its application no longer depends upon whether public discussion would prejudice the outcome of the confidential procedures. Thus, nations which are being reviewed under Resolution 1503 may use it as a shield. Realization of this fact has led some members to attempt to expand the coverage of Resolution 1503. For

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49. E/CN.4/1318/Add.3, p. 7; E/CN.4/SR.1447, para. 9.

50. E/CN.4/1317, para. 19; E/CN.4/1318/Add.1, at 30.

51. E/CN.4/1442, para. 20.

52. H.R.C. Res. 15 (Sess. .35); E/CN.4/L.1425/Add.18, para. 17; E/CN.4/L.1457/Rev.2.

53. E/CN.4/SR.1442, para. 20.

54. E/CN.4/1273/Add.1; E/CN.4/1317, para. 22; E/CN.4/1318/Add.1, at 6. The only exception to the rule is that in order to preclude public debate on the countries with respect to which some action has been authorized under 1503, the names of the countries under consideration are announced.

example, when Australia and Canada proposed a resolution on missing and disappeared persons, some nations sought to revise the Resolution to confine to private proceedings all discussions of missing persons in any nation. The intended effect was to withdraw this sensitive topic from public scrutiny and opinion.<sup>55</sup>

ECOSOC Resolution 1503 also has a procedural problem. The deadline for submission of confidential communications to the Commission is June 30, many months before the Commission actually meets.<sup>56</sup> Accused nations, on the other hand, may make written and oral presentations of their case to the Commission and defend themselves on the grounds that the situation has improved since the communications were filed. Moreover, since nongovernmental organizations, one of the major sources for such communications, are not always able to prepare current files on all nations which have been under discussion and are not always aware of which nations might be added to the discussions, delegates must often rely upon quite dated material.

Finally, despite the confidential nature of the 1503 procedure, the Commission still remains selective in determining which countries it should cite for violations.<sup>57</sup> It appears that three categories of nations have been established: (1) those which may be discussed publicly; (2) those which may be discussed privately; and (3) those which may not come under serious discussion at all. Among the third category are Eastern bloc and Arab nations, none of which have been cited despite some reports of massive violations. The second category includes particularly egregious African and non-Arab Asian violators whose human rights policies are so repulsive that other Asian and African nations are not willing to unite in their defense. Vacillating between groups one and two are the Latin American nations whose caucus is not sufficiently cohesive to shield its members from censure.<sup>58</sup>

While many analysts criticize these trends, one would be naive to believe that caucus groups would not rally around each other in the spirit of mutual protection. The caucuses are composed of representatives of governments and these representatives obtain instructions from their respective capitals on almost every issue. It is encouraging, however, that the powerful African caucus has

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55. E/CN.4/L.1458/Rev.1 and proposed amendments.

56. E/CN.4/1317, para. 20; Schoenberg, *supra* note 15, at 33.

57. Suter, *supra* note 40, at 294-95; Schoenberg, *supra* note 15, at 43; J. CAREY, UN PROTECTION OF CIVIL AND POLITICAL RIGHTS, 143-53 (1970).

58. UN Commission on Human Rights, 16 REV. INT'L COMM. JUR. 24 (1976).

taken the Commission's work seriously enough to allow inspection of certain members.

### C. Conclusion

It is quite apparent that the debate over appropriate emphasis for various human rights has not produced substantive results. In the final analysis, the allocation of effort to various aspects of the Commission's work depends not on rights listed in order of their priority but on the position and time allotted each item on the Commission's session agenda. The agenda is suggested by the Secretariat, organized by the Bureau of the Commission which is composed of one member from each of the five world regions, and then finalized by the Commission after suggestions are made during the first day of its actual meetings.<sup>59</sup> The agenda has changed little from year to year. This leaves the issue one of concentration within the time allotted. On the whole, it appears that the Commission's present focus is determined more by convenience than by substantive policy choice.

## II. THE STRUCTURE OF THE U.N. SECRETARIAT

Many western states believe that the human rights enforcement potential of the United Nations could be improved through a structural upgrading of the United Nations human rights machinery. For years scholars have argued that the Commission's status is not commensurate with the important responsibilities entrusted to it and that in order for the Commission to deal effectively with problems brought to its attention, either its enforcement power must be strengthened or prestigious alternative mechanisms must be created.<sup>60</sup> For this reason proposals concerning "alternative ways and means to . . ." have recommended either upgrading of the Commission to Council status and the Director to Undersecretary General or creating a separate agency headed by a Human Rights Commissioner.<sup>61</sup>

The Eastern bloc nations are resolutely opposed to new structural mechanisms. They argue that the Commission is not competent to authorize such changes in the United Nations Charter;<sup>62</sup>

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59. See PROCEDURAL RULE OF THE ECOSOC FUNCTIONAL COMMISSIONS 5.

60. See, e.g., A.H. ROBERTSON, HUMAN RIGHTS IN THE WORLD, 46 (1972).

61. E/CN.4/1318/Add.1, at 8-9; See, e.g., E/CN.4/WG.2/WP.1-10.

62. E/CN.4/1273, para. 76; E/CN.4/1189, para. 29; E/CN.4/1292, para. 181; E/CN.4/1318/Add.3, at 7; E/CN.4/1320, para. 52.

changes may be made only through an international convention. They also contend that creation of any post or institution would only lead to further duplication and overlapping in United Nations work and endanger international cooperation among states.<sup>63</sup> Progress in human rights, they submit, can only be achieved through the free cooperation of states, and the existing framework of United Nations organs can best accomplish this purpose.<sup>64</sup>

The structural change most often discussed is the proposed creation of the post of United Nations High Commissioner for Human Rights.<sup>65</sup> Western nations routinely support the designation of an official to head a permanent organization including field officers and permanent fact-finding machinery, with sufficient resources to coordinate all United Nations human rights activities and to act in a consultative capacity, providing both advice and assistance on human rights questions when specifically requested by member states. As coordinator of all United Nations human rights activities, this official's duties would encompass economic, social and cultural, as well as civil and political rights. The person appointed as the Commissioner would have international prestige and presumably could more immediately and effectively address human rights violations than the Commission.<sup>66</sup>

Countries opposing the creation of such a post argue that the picture painted by its supporters is foolishly optimistic. Far from having greater prestige, a single individual would naturally have less than the Commission, a collective body. Moreover, they argue that such a demonstration of lack of confidence in the Commission would seriously diminish its ability to promote human rights.<sup>67</sup> It is also argued that it is unrealistic to believe a state would really request the Commissioner to use his "good offices" to investigate its own violations of human rights. It is here that an often-made comparison between the proposed High Commissioner for Human Rights and the extant High Commissioner for Refugees breaks down. Whereas the High Commissioner for Refugees is invited to

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63. E/CN.4/1273, para. 76; E/CN.4/1189, para. 29; E/CN.4/1292, para. 181; E/CN.4/1318/Add.1, at 33; E/CN.4/1320, para. 52.

64. E/CN.4/1273, para. 76; E/CN.4/1189, para. 29; E/CN.4/1292, para. 181; E/CN.4/1318/Add.1, at 33; E/CN.4/1318/Add.3, at 7.

65. E/CN.4/1273, paras. 72 and 73; R. Clark, *Memorandum on the Proposal for a United Nations Commissioner for Human Rights*, (unpublished).

66. E/CN.4/1273, para. 75; E/CN.4/1292, para. 181; E/CN.4/1318, at 13, 15; E/CN.4/1318/Add.1, at 25; E/CN.4/1320, para. 44; E/CN.4/SR.1451, para. 52; *The UN Commission on Human Rights*, *supra* note 14 at 30.

67. E/CN.4/SR.1453, para. 24.

deal with the lost and forgotten, it is not very likely that a human rights violator would invite a Commissioner's assistance in curtailing its own violations.<sup>68</sup> Opponents of the appointment of a High Commissioner conclude their argument by stating that the coordinating activities would duplicate a function already being performed by ECOSOC.<sup>69</sup>

Whatever the virtue or impracticability of the Office of the High Commissioner for Human Rights, it is clear that the proposal does not have sufficient support to be enacted by the Commission in the near future. Resolution 22 (Sess. 35) stated that "the Commission could not reach an agreement" on the proposal.<sup>70</sup> The purpose of this language was to encourage the General Assembly to take up once again the subject of the High Commissioner, since it could no longer evade the issue by claiming that it was before the Commission. While the proposal may gain a more sympathetic hearing in the Assembly, its passage remains unlikely.

An alternative proposal for structural change is the upgrading of the Commission to the status of a Council. The Council would be charged with the functions presently assigned to ECOSOC and the Commission and would perform additional tasks necessitated by the recent entry into force of the Covenants on Human Rights.<sup>71</sup> It would report directly to the General Assembly, control its own budget, and be administered within the Secretariat by a newly created Office of the Undersecretary-General for Human Rights and Humanitarian Affairs.<sup>72</sup> Advocates of this proposal believe that human rights activities would then be given the coordination and prestige they merit.

Should these proposals to upgrade the Commission fail, many members believe that the Commission should be allowed to report directly to the General Assembly as recommended in the Undersecretary-General's proposal. This reporting procedure would increase the prestige of the Commission which would no longer be viewed as a mere subsidiary organ of ECOSOC.<sup>73</sup> At the same time,

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68. E/CN.4/SR.1453, para. 24.

69. E/CN.4/1292, para. 181; E/CN.4/1320, para. 52. *But see* Clark, *supra* note 65. Some Western scholars do not view these objections seriously, assuming that they are raised by members who are afraid that a completely independent agency for exposing violations would prove embarrassing. *See, e.g.,* Green, *supra* note 45.

70. E/CN.4/L.1425/Add.15, para. 5.

71. E/CN.4/1273, para. 7; E/CN.4/1318/Add.1, at 8.

72. E/CN.4/1273, paras. 7, 9; E/CN.4/1292, paras. 174, 189; E/CN.4/1318/Add.1, at 8.

73. E/CN.4/1273, para. 7; E/CN.4/1292, para. 174.

some members argue that direct reporting will not improve the Commission's efficiency and may subject the Commission to new pressure from the General Assembly.<sup>74</sup>

Other recommendations have dealt with vesting independent budgetary control with the Commission. These recommendations are particularly noteworthy because the workload of the Human Rights Division of the Secretariat has multiplied many times in recent years without commensurate increase in its manpower or facilities. Currently a mere .75 percent of the United Nations budget is funneled to the Division. Obviously, such a figure is incompatible with the importance of the work performed.<sup>75</sup> Even so, Eastern European nations have opposed proposed changes in budgetary control, arguing that additional expenditures should be justified and that general budget increases are not necessary.<sup>76</sup>

From a western perspective, the upgrading of the Commission, while beneficial in theory, might not have positive practical effects. In 1977 a human rights activist, Theo C. Van Boven of the Netherlands, became the Director of the Division of Human Rights. Should the Commission be upgraded to Council status and the Director to Undersecretary, it is quite unlikely that Van Boven would be appointed to the new position. There is little chance that another Undersecretary would act as vigorously in the investigation and prevention of serious abuses of human rights. Recognizing this possibility, Van Boven has stated that the point of departure for the enhanced enforcement of human rights should be the maintenance of existing organs, mandates, and procedures and the development of ways of enhancing their effectiveness.

In sum, Resolution 22 (Sess. 35) authorized no substantive structural enhancement of human rights machinery. The terms of reference for the Commission were officially changed to the effect that "the Commission shall assist the Economic and Social Council in the co-ordination of activities concerning human rights in the United Nations system." This is, however, merely an affirmation of the existing relationship. Concerning budgetary matters, the Secretary-General was requested by Resolution 22 (Sess. 35) to examine "in the light of the increases in the workload of the Division of Human Rights . . . the question of the staffing and the resources of the human rights sector of the Secretariat . . ."<sup>77</sup>

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74. E/CN.4/1318/Add.1.

75. E/CN.4/1292, para. 173; E/CN.4/1318, at 5, 10.

76. E/CN.4/1318/Add.3, at 7.

77. Van Boven, *supra* note 13.

### III. INTERSESSIONAL ACTIVITIES

Advocates of a stronger role for the United Nations in the enforcement of human rights are also concerned about the lack of an effective mechanism to deal with emergency situations.<sup>78</sup> The Commission has met each year for only five or six weeks. Of course, the proposed High Commissioner would be able to deal with these situations, but, as has been stated, it is not likely that the office will be established.

One way to deal with crisis situations between sessions is through the creation of *ad hoc* working groups or special *rapporteurs*. Individuals would be specifically authorized to monitor potentially dangerous situations during the period between Commission sessions and then report to the Commission when it meets. Highly successful work has been done by the *Ad Hoc Working Group of Experts on Southern Africa*, and the *Ad Hoc Working Group on the Situation of Human Rights in Chile* has fostered substantial improvement in the observance of human rights in that country.<sup>79</sup> The success of the Chile Working Group led the Secretary-General to report that it "represents a positive development that the broader obligation of Member States for the promotion and protection of human rights is not incompatible with that of domestic jurisdiction."<sup>80</sup> Despite this appraisal, however, a general authorization for similar working groups seems unlikely. The Russians grudgingly supported the establishment of the Chile Working Group, hoping instead to pass a resolution which would denounce the Chilean government.<sup>81</sup> Now that the Chile Working Group has succeeded in its mission, the Russians argue that its establishment presented an exceptional case. Working groups have also been opposed on grounds that they tend to operate in a selective and one-sided fashion—and that more impartial mechanisms with worldwide scope should be authorized to defend human rights. Finally, working groups and *rapporteurs* are subject to the varying whims of the Commission. For example, the Commission recently infuriated the Chairman of the Sub-Commission on Prevention of Discrimination and Protection of Minorities by voting not to even consider his report on the situation in Democratic

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78. E/CN.4/1273, para. 72-76; E/CN.4/1318, at 5, 13, 15; E/CN.4/1318/Add.3, at 4; E/CN.4/SR.1451, para. 52.

79. E/CN.4/1318/Add.1, at 6; E/CN.4/L.1425/Add.1, at 6.

80. Report by the Secretary-General, A/33/1, 7; E/CN.4/L.1425/Add.1, at 6.

81. E/CN.4/1318/Add.1, at 6; E/CN.4/SR.1450, para. 51.

Kampuchea.<sup>82</sup>

The idea which has received the most favorable response from members of the Commission is that the Chairman or the Bureau of the Commission should be able to meet intersessionally and consider human rights violations as they occur.<sup>83</sup> It has also been suggested that the Chairman of the Bureau should have the power to contact the alleged human rights offenders. Such an arrangement would result in an equitable sharing of responsibilities since the Chairmanship rotates yearly among the five caucus groups and each group has one representative on the Bureau.

While there is general agreement that the Bureau of the Commission should meet between sessions, several procedural problems have arisen: (1) whether such meetings would discuss only Resolution 32/130 type violations; (2) whether the Bureau would be able to call the Commission into emergency session; (3) the time and place of Bureau meetings; and (4) whether the Bureau would merely provide a "good services" function?<sup>84</sup> Resolution 22 (Sess. 35) resolves none of these problems. It merely authorizes the Commission on Human Rights to prepare suggestions on the possibility of convening meetings of the Commission in intersessional periods in exceptional circumstances. It is important, however, that the Commission has acknowledged that exceptional circumstances do arise during intersessional periods and that they might require immediate handling.

#### IV. DURATION, FREQUENCY, COMPOSITION, AND CONDUCT OF THE COMMISSION

The Commission also has serious problems of functional efficiency. Under its present structure, it is responsible not only for the implementation and enforcement of human rights, but also for the establishment of human rights standards. All of this work has been crowded into one five-week session during which as much as two-thirds of the time has been dominated in the past by repetitious discussions of South Africa, Israel, and Chile. The result is that the Commission has consistently failed to complete its agenda, ignoring important items year after year.<sup>85</sup>

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82. E/CN.4/L.1425/Add.18, paras. 8-10.

83. E/CN.4/1273, para. 59; E/CN.4/1292, paras. 179, 189; E/CN.4/1318, at 4-5; E/CN.4/1318/Add.1, at 23; E/CN.4/SR.1447, para. 13; E/CN.4/SR.1452, para. 43; E/CN.4/SR.1453, para. 20.

84. E/CN.4/1292, para. 179; E/CN.4/SR.1447, para. 13.

85. E/CN.4/1273, para. 17; E/CN.4/1318/Add.1, at 28; *UN Commission on*

Much attention has been devoted to the search for more efficient means for management of the Commission's agenda. Two improvements made to streamline the agenda are: items having a significant relationship, such as those concerning Israel or Southern Africa, have been grouped together for purposes of debate and consideration of draft resolutions;<sup>86</sup> and the drafting of conventions or declarations has been dealt with by special working groups.<sup>87</sup> Unfortunately, due to the limited staffs of some member nations, working group meetings often must take place at the expense of regular Commission time. One proposal to streamline the unwieldy agenda requires the Commission to define its areas of competence and eliminate some items.<sup>88</sup> At the present time, there are virtually no topics under the U.N. umbrella which cannot also be included on the agenda. For example, while the rights to peace and life are considered fundamental human rights, by extension, they may incorporate discussions of drug abuse, housing for the poor, or arms sales. To be truly efficient, the Commission's program should not include matters which fall primarily within the competence of other organs. For instance, the right to work falls under the jurisdiction of the International Labor Organization, the right to peace is dealt with by the General Assembly, the Security Council, and the Conference of the Committee on Disarmament, and the right to development is discussed by UNESCO and ECOSOC.<sup>89</sup> To delete consideration of these rights would be tantamount to redefining the function of the Commission in terms of civil and political rights. Unfortunately, given the current positions of various Commission members, such a redefinition would be impossible.

One obvious way for the Commission to complete its agenda would be to extend the duration of its sessions. Several proposals have been made to this effect.<sup>90</sup> One suggestion is that the Commission meet for six to ten weeks each year in two sessions. Various proposals schedule these meetings in February and either September or October, and locate them in either Geneva and New York

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*Human Rights*, *supra* note 58, at 24-28; *UN Commission on Human Rights*, REV. INT'L COMM. JUR. 25 (1977).

86. E/CN.4/1273, para. 17; E/CN.4/1318/Add.1, at 7, 23, 24.

87. E/CN.4/1318/Add.1, at 24.

88. E/CN.4/1273, para. 61; E/CN.4/1318/Add.1, at 24; E/CN.4/SR.1449, para. 41; E/CN.4/SR.1452, para. 43.

89. E/CN.4/1318, at 9; E/CN.4/1320, para. 23; E/CN.4/SR.1489, para. 20.

90. E/CN.4/L.1368; E/CN.4/L.1385; E/CN.4/L.1385/Rev.1; E/CN.4/L.1482, para. 18; E/CN.4/1292, paras. 176, 189; E/CN.4/1318/Add.1, at 24; E/CN.4/SR.1451, para. 64.

or just Geneva. They also require two separate sessions or one session with two sittings so that the prior agenda is not duplicated. The advantage of meeting biennially is that there would be more continuity in the Commission's consideration of human rights problems. The Commission also would be able to react faster to critical situations.<sup>91</sup> Serious objections have been raised, however, to the idea of two sessions on the grounds that such a plan would involve prohibitive additional expenditure for less developed nations and that it would create scheduling difficulties for the United Nations calendar of conferences.<sup>92</sup> There has not been much support for the proposed move to New York because of the international publicity the Commission's activities would receive<sup>93</sup> even though most delegations feel that their offices function more efficiently there.

A suggested alternative solution to the problem of insufficient time to cover agenda items was to extend the single session by one to three weeks,<sup>94</sup> while retaining the concept of a preliminary week of meetings for informal working groups. Resolution 22 extended the Commission's formal session just one week to six weeks each year. This Resolution further notes that "in certain circumstances the Commission may need to hold special sessions in order to complete unfinished business, including . . . the drafting of human rights instruments." No doubt consideration of various human rights conventions will require additional time; but it is unclear whether special sessions will include other agenda items.

At the same time that substantial efforts have been made to enable the Commission to deal with all of the items on its agenda, another change has been made which most likely will neutralize these efforts. In light of the argument that there has been a substantial increase in U.N. membership, it was decided that the membership of the Commission would be expanded from thirty-

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91. E/CN.4/1318, at 12.

92. E/CN.4/1273, para. 54; E/CN.4/1320, para. 31.

93. E/CN.4/L.1482, para. 18.

94. E/CN.4/WG.2/WP.1; E/CN.4/SR.1452, para. 43; E/CN.4/SR.1453, para. 9.

95. E/CN.4/1292, paras. 174, 189; E/CN.4/SR.1452, para. 43; E/CN.4/SR.1453, para. 20; H.R.C. Res. 22 (Sess. 35). The 11 members are to be apportioned on the basis of equitable geographic distribution: 3 African, 3 Asian, 2 Latin American, 2 Western, and 1 Eastern European. The Latin Americans had pushed hardest for the expansion and had hoped for 3 seats, but this was impossible. Eastern Europeans would have preferred an increase of 5 (one for each caucus group), 10 (only one for the West), or 12 (2 Eastern European delegates), but they

two to forty-three.<sup>95</sup> This increase is likely to render the Commission's deliberations more complex and time-consuming.<sup>96</sup> The Commission, as it is now constituted, is a diplomatic forum and most of the contributions by delegates are verbose, highly generalized speeches intended as much for home consumption as for substantive achievements. Moreover, on highly publicized matters each member feels compelled to express its views. Adding eleven seats can only complicate this situation.<sup>97</sup>

There are several other methods which would allow the Commission to operate more efficiently. Until the last week of meetings when it becomes absolutely clear that much work is left to be done, all meetings routinely begin thirty to forty minutes late. Most delegates do not even plan to arrive until thirty minutes after the scheduled start. While such behavior is typical of most legislative forums, this behavior should not continue in light of the expense and difficulty involved in having interpreters work overtime. Secondly, a stricter practice should be followed with regard to the use of time allotted to the various items on the agenda. As a rule, discussion of an agenda item has been allowed to drag on to a seemingly interminable conclusion. After debate on an item is completed, the resulting resolution usually is not produced for several days, and once again the topic is greeted with full-scale debate and explanations of the vote.

There is one final aspect of the Commission's performance which has not been addressed by the preceding discussion. Serious consideration needs to be given to the rule of law within the Commission. As was evidenced at the thirty-fifth session, the majority may callously disregard procedural rules. One of the first acts taken during this session was waiver of Rule 52 of the rules of procedure for the functional commissions of ECOSOC which requires that proposals be discussed or put to a vote no earlier than twenty-four hours after copies have been circulated to all members.<sup>98</sup> The telegram condemning Israel was read orally on the floor and was passed before the Israeli delegate was permitted to counter the accusations. Similarly, the Western group has violated the informal rules of working groups which require that all texts be agreed

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were unsuccessful.

96. E/CN.4/1318/Add.1, at 24.

97. Suter, *supra* note 40, at 294. The Commission Chairman may make occasional pleas for brevity, but this action may be politically sensitive and is in any case rarely heeded by the delegates.

98. ECOSOC RULES OF PROCEDURE OF THE FUNCTIONAL COMMISSIONS 52.

to by consensus before being brought before the full Commission.<sup>99</sup> The first three articles of the "Draft Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief" were brought to the floor and steamrolled through over the vociferous objection of the Eastern European nations. Considering the minority position of the West within the Commission, this precedent might well work to its disadvantage in future working group settings. Such *pro forma* waivers of procedural rules present a grave problem calling into question the Commission's credibility.<sup>100</sup>

## V. CONCLUSION

Despite various challenges to the attention devoted to civil and political rights and the failure of members to approve more effective enforcement mechanisms, the Commission should not be viewed pessimistically. The embodiment of human rights in international documents is basically a Western conception, and the extent to which the developing world has accepted these standards is amazing. Many Western critics who have focused on the fact that this acceptance has been qualified, have failed to appreciate the fact that problems which the developing countries have to face are different and much greater than those of the West.

In the post-colonial United Nations, it must be accepted that the voting power is controlled by the developing states. This does not mean, however, that these members ignore the world's present power structure. When the United States representative speaks, there is silence in the Commission. Members are careful not to prepare resolutions that would strain Western sensibilities too far. For the most part member nations view the Commission's work seriously.

The most substantial problem in dealing with the Commission for political and civil rights is a perceptual one. It is foolish for Western observers to continue to expect that a system of international control acceptable to a world organization would be as effective as a system of national control or even regional control. While the Commission has had a significant impact on the fight against one of the world's major human rights problems, racism in Southern Africa, Westerners have continued to measure the Commission's success in terms of continued strides toward world-wide enforcement mechanisms. The Socialist states of Eastern Europe

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99. E/CN.4/L.1425/Add.2.

100. E/CN.4/L.1425/Add.14.

measure their success in terms of prevention of such measures. Yet, they gain nothing more than the temporary maintenance of the status quo. While a system of international control acceptable to a world organization would not be as effective as a system of national or regional control, the momentum towards the formulation of international standards and the enforcement of civil and political rights is actually gaining strength. Several years ago a Convention on Torture or the discussion of specific human rights violations by various states, even privately, could not have been imagined. The real measure of the Commission's success and promise should be the importance which member states accord to it. Using this barometer it seems to this author that the Commission is now a promising institution.<sup>101</sup> It should not be allowed to totter on the impatience of those who wish to see improvement by the day and not by the year.

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101. E/CN.4/1318/Add.1, 4.