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SYMPOSIUM: INTERNATIONAL HUMAN RIGHTS

UNITED NATIONS RESPONSE TO GROSS VIOLATIONS OF HUMAN RIGHTS: THE 1503 PROCEDURE

M.E. Tardu*

INTRODUCTION

The Charter of the United Nations promises to “the Peoples” effective international action to promote “universal respect for human rights and fundamental freedoms.” Faith in this promise has led millions of victims to petition the United Nations (UN) for redress. A conservative estimate cites as 20,000 the number of complaints received by the United Nations Secretariat in 1971¹ alleging violations of human rights, and this figure should be substantially raised in recent years. It took a quarter of a century—from 1945 to 1970—however, for the United Nations to build an international complaint procedure in response to this quest for justice.

The initial attitude of the Organization was one of utmost timidity. The United Nations Economic and Social Council (ECOSOC) proclaimed in 1947 that the United Nations Commission on Human Rights (Commission) “has no power to take any action in regard to any complaints concerning

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The author gratefully acknowledges the most valuable advice and thorough research of Dr. Thomas E. McCarthy, J.D., University of California at Berkeley; former Director of Studies, International Institute of Human Rights, Strasbourg; Special Assistant to the Director of United Nations Human Rights Division.

1. *United Nations Action in the Field of Human Rights*, U.N. Pub. ST/HR/2, Sales no. E. 74. XIV2, at 183 (1973) [hereinafter *U.N. Action*].

human rights."² Under the rules then adopted, Council resolution 75 of August 1947,³ as amended by resolution 728 F of July 30, 1959,⁴ individual communications which accused specific governments of violating human rights were simply mentioned in a confidential list shown in a private meeting to the Commission on Human Rights. The Commission merely took note of the distribution of the list. While a few human rights scholars, especially Sir Hersch Lauterpacht, Henri Laugier and John Humphrey, strongly protested what they termed a betrayal of trust and a violation of the implied duty of the United Nations to implement the Human Rights provisions of the Charter,⁵ this "no-power" doctrine prevailed at the United Nations from 1947 till the early 1960s.

Yet, from 1965 onwards, aspirations for a meaningful complaint procedure regained strength. An important factor was the demand of the emerging Third World for an effective United Nations machinery against racism and colonialism.⁶ Both the International Convention Against Racial Discrimination (1965) and the Protocol to the International Covenant on Civil and Political Rights (1966) contained optional clauses recognizing the competence of the Committee on the Elimination of Racial Discrimination and the Committee on Human Rights, respectively, to receive and consider petitions from individuals claiming to be victims of a violation of the rights protected by the Convention and the Covenant. In a further development, debates initiated in 1965 at the request of the United Nations Special Committee on Decolonization led to the adoption, by small majorities, of ECOSOC resolutions 1235 of June 6, 1967⁷ and 1503 of May 27, 1970.⁸ The texts

2. Humphrey, *The Right of Petition at the United Nations*, 1971 HUMAN RIGHTS JOURNAL 467; H. LAUTERPACHT, INTERNATIONAL LAW AND HUMAN RIGHTS 221-52 (1950); and 1 M. TARDU, HUMAN RIGHTS: THE INTERNATIONAL PETITION SYSTEM, pt. 2, ch. VI (1979).

3. E.S.C. Res. 75, 5 U.N. ESCOR, (Resolutions) 20, U.N. Doc. E/573 (1947).

4. E.S.C. Res. 728 F, 28 U.N. ESCOR, Supp. (No. 1) 18, 19, U.N. Doc. E/3290 (1959).

5. See H. LAUTERPACHT, *supra* note 2, at 235-37.

6. On this historical development, see, e.g., 1 M. TARDU, *supra* note 2, chs. IA (2), VII.

7. E.S.C. Res. 1235, 42 U.N. ESCOR, Supp. (No. 1) 17, U.N. Doc. E/4393 (1967).

8. The final vote in the Council on resolution 1503 was 14 in favor, 7 against and 6 abstentions. A proposal by Bulgaria and the Sudan to postpone consideration of the matter was defeated only by a tie vote of 12 to 12 with 3 abstentions in the

partly supersede the previous rule of resolution 728, by providing for the substantive examination of complaints which "reveal a consistent pattern of gross and reliably attested violations of human rights and fundamental freedoms" A subsidiary body of the Commission on Human Rights, the Sub-Commission on Prevention of Discrimination and Protection of Minorities (Sub-Commission), in its resolution 1 of August 13, 1971,¹⁰ set forth criteria for admissibility of complaints. The procedure was first applied in 1972.

PURPOSE AND ESSENTIAL CHARACTERISTICS OF THE 1503 PROCEDURE

The system of ECOSOC resolution 1503 encompasses the widest scope of international complaint procedures in the human rights sphere, from three essential viewpoints. First, all states, even those not members of the United Nations, may be the targets of communications against human rights violations. Second, the concept of "human rights" is not restricted in the enabling texts, which allows for maximum flexibility of application *ratione materiae*. Third, anyone, individual or group, may submit complaints under broad conditions of admissibility.

Yet, the 1503 procedure appears, at the same time, as a restrictive one if we consider its purpose. The intent of the resolution is to identify and, it is hoped, eliminate global "situations which appear to reveal a consistent pattern of gross and reliably attested violations of human rights,"¹¹ not to redress individual grievances. Individual complaints are taken essentially as sources of information regarding such "patterns." In this respect, resolution 1503, a "petition-information system," stands in contrast to the "petition-recourse" procedures of the Optional Protocol, the European Convention on Human Rights, and the American Convention (Pact of San Jose), whose aim is to bring redress, if warranted, with

Council's Social Committee. See 48 U.N. ESCOR 215, U.N. Doc. E/SR. 1693; 48 U.N. ESCOR 115, U.N. Doc. E/AC. 7/SR. 637 (1970).

9. E.S.C. Res. 1503 para. 1, 48 U.N. ESCOR, Supp. (No. 1A) 8, U.N. Doc. E/4832/Add.1 (1970). See app. A for full text of resolution.

10. Sub-Comm'n Res. 1, Report of the Sub-Commission on Prevention of Discrimination and Protection of Minorities 50, U.N. Doc. E/CN.4/1070, E/CN.4/Sub.2/323 (1971) (hereinafter cited as 1971 Sub-Comm'n Report).

11. E.S.C. Res. 1503, *supra* note 9, para. 5 (emphasis added).

respect to each admissible complaint.

The aforementioned purpose of the 1503 procedure to eliminate global situations where human rights are violated has the following important consequences: First, since the plaintiff is an information transmitter, he is not required to have been himself a victim. "Direct and reliable knowledge" is sufficient.¹² Second, the plaintiff has no entitlement to have his communication considered in the process of identifying the consistent pattern of violations. However well founded, complaints may be discarded for various reasons, in particular, for not bringing fresh evidence regarding such a pattern. Third, once he has submitted his information, the plaintiff has no right to be personally informed of relevant action by the United Nations. He is in no way a "party" to the procedure, which is exclusively the public concern of the international community.

The search for logical explanations for the practices outlined above should not, however, be carried too far, for such explanations are not forthcoming. It seems that one striking aspect of the procedure is the inequality of rights between the plaintiff who brings the complaint, and the government against which the complaint is submitted. The state concerned, and not the plaintiff, is the party kept informed of decisions taken at various stages. Moreover, at one stage, when the Commission on Human Rights envisions the possibility of an "investigation," the government has a right to veto the establishment of a fact-finding body.¹³

These features of the procedure reveal a deep concern for allaying the governments' fear of undue interference. The Commission on Human Rights gives target-governments many opportunities for "cooperating" with international action, and thus prevent them from appearing as recalcitrants. Such considerations, powerful within the intergovernmental and worldwide framework of the United Nations, may partially explain the emphasis placed on confidentiality. All "actions" are confidential under the 1503 procedure until the advanced stage when the Commission on Human Rights submits recommendations to the Economic and Social Council.¹⁴ Although avoid-

12. Sub-Comm'n Res. 1, *supra* note 10, para. 2(a).

13. See E.S.C. Res. 1503, *supra* note 9, paras. 6(b), 7.

14. *Id.* para. 8.

ing trial by newspapers is regarded as a legitimate concern under all international complaint systems, many other procedures allow for publicity at earlier stages than resolution 1503 does.¹⁵

These aspects of the 1503 procedure appear somewhat reminiscent of some earlier international procedures, for instance, the petition system of the League of Nations Minorities treaties.¹⁶ Yet, it would be inaccurate to assess the 1503 procedure, only on the basis of the written resolutions, as an archaic "chamber of horrors."¹⁷ Since 1971, the practice of United Nations bodies has added considerably to the written norm. One may note, as possibly significant, the Commission's decisions in 1979 to transfer the consideration of the human rights problems in Equatorial Guinea from the confidential framework of resolution 1503 into open meetings under the related procedure of resolution 1235,¹⁸ and to authorize a Spe-

15. For instance, the European Commission on Human Rights and, until very recently, the Inter-American Commission on Human Rights, have published some substantive and procedural information on pending cases at various stages of the proceedings.

See O'Boyle, *Practice and Procedure Under the European Convention on Human Rights*, 20 SANTA CLARA L. REV. 697 (1980); Norris, *Bringing Human Rights Before the Inter-American Commission*, 20 SANTA CLARA L. REV. 733 (1980). The Human Rights Committee under the UN Optional Protocol to the Civil and Political Rights Covenant has likewise disclosed some procedural data regarding ongoing cases. See Report of the Comm'n on Human Rights, 34 U.N. GAOR, Supp. (No. 40) 104-08, U.N. Doc. A/34/40 (1979).

16. See, e.g., De Azcarate, *Protection of National Minorities* (Occasional Paper No. 5, Carnegie Endowment for International Peace); M. MOWKOWITZ, *HUMAN RIGHTS AND WORLD ORDER* 119-30 (1958).

17. For a searching critical analysis of the 1503 procedure at its birth, see F. Newman, *The U.N. Procedures for Human Rights Complaints: Reform, Status Quo, or Chamber of Horrors?*, reprinted in *International Protection of Human Rights: Hearings of the House Subcomm. on International Organizations and Movements of the Comm. on Foreign Affairs*, 93rd Cong., 1st Sess., app. 15 (1973) [hereinafter cited as *1973 Hearings*].

18. Comm'n on Human Rights Dec. 4, 1979 U.N. ESCOR, Supp. (No. 6) 134, U.N. Doc. E/1979/36, E/CN.4/1347. The Commission further decided to declassify the relevant documents. *Id.* para. 218 n.29.

The question of human rights in Equatorial Guinea had been before the United Nations under resolution 1503 since November 14, 1974, when the *Federation Internationale des Droits de l'Homme* submitted a first complaint, followed by some other comments. These were denied by the government by letters of 1975 and 1976. On March 4, 1976, the Commission dismissed this first set of complaints as not substantial enough to reveal a consistent pattern of gross violations. A second set of communications, from "individuals in Switzerland," was sent from June 1975 to January 1976. The government again issued a sweeping denial. On February 23, 1977 and March 3, 1978, the Commission asked the Secretary-General to establish direct confi-

cial Rapporteur to use elaborate investigative methods for the study of this situation.¹⁹ Thus, through United Nations practice, the 1503 procedure might acquire more transparency and effectiveness than was predictable from reading the text of the resolution initially.

OUTLINE OF THE 1503 PROCEDURE: SURVEY OF PRACTICE,
INCLUDING THE CASE OF EQUATORIAL GUINEA

Several stages may be distinguished in this complicated procedure: initial handling by the United Nations' Secretariat; consideration of complaints by a working group of the Sub-Commission; examination of communications by the Sub-Commission itself; consideration of "situations" by the Commission on Human Rights; consideration by higher organs (ECOSOC and the General Assembly); and monitoring of international decisions. No time limit is laid down for completion of the proceedings. Several situations are carried over from one session to the next since no inter-sessional machinery exists.

Secretariat Handling of Communications

Under Council resolution 728 F, any communication al-

dential contacts with the government in order to clarify certain points. There was no positive response from the Macias regime. The Commission, on March 3, 1978, stated its intention to "go public" if more cooperation was not forthcoming. Another communication, dated December 30, 1978, was placed before the Commission. On March 8, 1979, the Commission did "go public" on this case and appointed a Special Rapporteur to make a thorough study. In September 1979, the Macias regime was toppled. The new government gave its consent to an "on the spot" visit by the Special Rapporteur in October 1979.

Dr. Volio Jimenez from Costa Rica, the Special Rapporteur, spent two weeks in Equatorial Guinea in November 1979 hearing a number of persons confidentially and visiting some detention centers. He submitted to the Commission a report critical of both the old and the new regimes and proposed far-reaching democratic reforms. Report of the Special Rapporteur, U.N. Doc. E/CN.4/1371 (1979). On March 11, 1980, the Commission adopted by consensus a resolution which requested the Secretary-General to appoint an individual expert "with a view to assisting the Government of that country in taking the action necessary for the full restoration of human rights and fundamental freedoms, keeping in mind the recommendations of the Special Rapporteur and the economical, political and social realities of that country." Comm'n on Human Rights Res. 33, 1980 U.N. ESCOR, Supp. (No. 3) 194, 195, U.N. Doc. E/1980/13, E/CN.4/1408.

19. Resolution 15 of the Commission of Human Rights, adopted on March 13, 1979 by 20 votes to 3 with 9 abstentions. The proposal came from Canada. See text in 1979 U.N. ESCOR, Supp. (No. 6) 122, U.N. Doc. E/1979/36, E/CN.4/1347.

leging a violation of human rights by any state and received by any body or department of the United Nations Organization²⁰ is, as a rule, summarized by the United Nations Secretariat in a confidential list.²¹ This list is circulated each month to the members of the bodies concerned, the Commission on Human Rights and its Sub-Commission on Prevention of Discrimination and Protection of Minorities. The identity of the author of a communication alleging a violation of human rights is not revealed, except when the plaintiff states that he has already divulged or intends to divulge his name or has no objection to his name being revealed.

A copy of each communication placed on the list is then sent to the state concerned, subject to concealment of the author's identity, as mentioned above. The state's comments are

20. Resolution 728 F refers to communications, "however addressed." According to the U.N. Secretariat's analysis of existing U.N. complaint procedures, the words "however addressed" in council resolution 728 F have been understood as meaning that, provided the communication is intended for the United Nations, it is receivable, irrespective of its form and the name of the addressee. It may be addressed to the United Nations or to any United Nations body, the Secretary-General or to any offices within the Secretariat. A communication may emanate from any author who identifies himself and relate to any State, both Member States of the United Nations and non-member States, the only common element of all communications being that they contain an allegation of violation of human rights. In practical terms, this exhausts the general criteria for receivability applied by the Secretariat to communications channelled through Council resolution 728 F (XXVIII) into the procedure governed mainly by Council resolution 1503 (XLVIII).

Report of the Secretary-General 1, U.N. Doc. E/CN.4/1317 (1979).

21. The only instances where the UN Secretariat is legally obliged by resolutions to submit human rights communications to procedures other than those laid down in resolution 728 and 1503 are as follows:

in accordance with resolutions 277 (X) and 474 A (XV) of the Economic and Social Council, communications containing allegations of infringements of trade union rights received from Governments or trade unions or employers' organizations against member States of the International Labour Organization are to be forwarded by the Secretary-General to the Governing Body of the International Labour Organization for its consideration as to referral to the Fact-Finding and Conciliation. . . . In accordance with Economic and Social Council resolution 607 (XXI) of May 1, 1956, the Secretary-General transmits any information received on forced labour to the Director-General of the International Labour Office.

Id. at 13, paras. 41-42.

The Secretariat has made suggestions on the preliminary screening of communications as between the 728-1503 procedure and the complaint procedure of the Optional Protocol to the Civil and Political Rights Covenant in order to avoid duplication. *Id.* at 11-12, paras. 30-36.

circulated, in summary form or in full, according to the wish of the government concerned, to the members of the Commission and Sub-Commission in a confidential monthly compilation.

Another function of the Secretariat is to send authors of communications an acknowledgement. This operates to inform authors that their communications will be handled in accordance with the applicable procedure, and to furnish them with copies of the relevant resolutions. Correspondence with the plaintiffs, as a rule, ends here, although subsequent communications from the same author may, as appropriate, be dealt with as new complaints.²²

Timing is a further consideration in the initial lodging of complaints with the Secretary General. The time needed for translating and processing the relevant documents and for awaiting state replies makes, in practice, to ensure consideration by the working group of the Sub-Commission (the next steps in the process) of the complaints received less than three months before that group's annual meeting.

Consideration of Admissibility and Preliminary Judgment on Substance by the Working Group of the Sub-Commission

The complaints, together with government replies, are first considered by a working group of the Sub-Commission. The working group meets for no more than ten days before the Sub-Commission's annual session, usually held in August and September in Geneva. The members of this working group (as well as those of the working group of the Commission on Human Rights) may, on request, consult the original of any of the complaints listed, subject to the rule protecting the identity of the author.²³

The Sub-Commission, a subsidiary organ of the United Nations Commission on Human Rights, has twenty-six members elected by the Commission. These members are experts acting in their personal capacity and not as representatives of their respective governments. Members of the Sub-Commission are elected according to the following geographical pattern: seven from African states; five from Asian states; five from Latin American states; six from Western European and

22. *Id.* at 4, para. 8.

23. See E.S.C. Res. 1503, *supra* note 9, at 8, para. 4(b).

other states; and three from Eastern European states. The Sub-Commission's working group is composed of no more than five members who are selected by the Sub-Commission with due regard to geographical distribution. One member originates from each of the following areas: Africa, Asia, Eastern Europe, Western Europe, other states, and Latin America. The working group applies admissibility criteria set forth in Sub-Commission resolution 1 and described briefly below.

Human rights protected. The terms "human rights and fundamental freedoms, including policies of racial discrimination and segregation and of apartheid"²⁴ describe the scope *ratione materiae* of the 1503 procedure. What these terms mean to the Commission on Human Rights can be deduced from the recent practical application of the 1503 procedure to the Equatorial Guinea situation. In his "thorough study" on Equatorial Guinea under paragraph 6(a) of resolution 1503 and resolution 1235, the Special Rapporteur referred to the Charter, the Universal Declaration, the two Covenants on Human Rights "and other instruments of similar import and universal scope"²⁵ as sources for recognized human rights. These UN documents no doubt promote economic, social and cultural rights²⁶ as well as civil and political rights. The references in Commission resolution 8 and ECOSOC resolution 1235 of 1967 to policies of "racial discrimination" and "apartheid," as violations of human rights, especially in "colonial and other dependent countries and peoples," are illustrative but not restrictive of the human rights these two resolutions cover. The right to self-determination is another important human right promoted by the UN. It is recognized in article I of both Covenants and in other instruments.²⁷ In addition, some emerging international standards defined in

24. See Comm'n on Human Rights Res. 8, 42 U.N. ESCOR, Supp. (No. 6) 131, U.N. Doc. E/4322, E/CN.4/940 (1967); E.S.C. Res. 1235, *supra* note 7.

25. Report of the Special Rapporteur, *supra* note 18, para. 229. See texts of the main relevant instruments of the UN on human rights in *Human Rights, A Compilation of International Instruments*, U.N. Pub. ST/HR/1, Sales no. E. 78. XIV.2 (1973).

26. The Commission on Human Rights decided that "the Commission, which has so far concerned itself mainly with violations of civil and political rights, should also study violations of economic, social and cultural rights." Res. 5, 62 U.N. ESCOR, Supp. (No. 6) 76, U.N. Doc. E/5927, E/CN.4/1257 (1977).

27. Some of the complaints against Equatorial Guinea alleged, *inter alia*, violation of the right to self-determination, and the Special Rapporteur referred to this right in his recommendations.

response to modern problems of population growth, development²⁸ and environment, may in the future be included in this open-ended concept of "human rights."

States complained against. "[A]ny country, including colonial and other dependent countries and peoples,"²⁹ may be the target of complaints under resolution 1503. This clearly includes any state, member or non-member of the United Nations. For example, in 1978 and 1979 the Commission had under consideration the Republic of Korea, a non-member of the United Nations.³⁰

Jurisdiction ratione temporis. The relevant texts do not expressly bar consideration of facts which had allegedly occurred before adoption of the resolutions. However, as noted below, Sub-Commission resolution 1 requires that complaints be lodged "within a reasonable time after the exhaustion of the domestic remedies."³¹

Who may submit a communication? Communications are admissible if they originate from: (i) A *person or group of persons* who, "it can be reasonably presumed, are *victims* of the violations;"³² (ii) Any *person or group of persons* who have *direct and reliable* knowledge of the violations. A communication is not inadmissible solely because the author's knowledge is second-hand, if it is accompanied by "clear evidence."³³ However, a communication is inadmissible if it appears to be based exclusively on reports disseminated by mass media; (iii) *Non-governmental organizations* having *direct and reliable knowledge* of the violations, provided the organization is "acting in good faith in accordance with recognized principles of human rights," and "not resorting to politically motivated stands contrary to the provisions of the Charter of the United Nations."³⁴ The proviso allowing "second-hand

28. See, e.g., G.A. Res. 34/36, U.N. Doc. A/Res/34/36 (1979), recognizing, in paragraph 8, the "right to development" as a human right, and the study of the U.N. Comm'n on Human Rights on this subject, U.N. Doc. E/CN.4/1334 (1979).

29. Sub-Comm'n Res. 1, *supra* note 10, at para. 2(a). See also E.S.C. Res. 1235, *supra* note 7, para. 1.

30. 1978 ESCOR, Supp. (No. 4) 47, para. 208, U.N. Doc. E/1978/34, E/CN.4/1292; 1979 U.N. ESCOR, Supp. (No. 6) 54, para. 218, U.N. Doc. E/1979/36, E/CN.4/1347.

31. Sub-Comm'n Res. 1, *supra* note 10, para. 5.

32. *Id.* para. 2(b) (emphasis added).

33. *Id.* para. 2(c).

34. *Id.* para. 2(a).

clear evidence" does not extend to non-governmental organizations. These entities are, thus, subjected to less liberal conditions than individuals and informal groups.

These flexible criteria contrast with the requirement set forth in all "petition-recourse" instruments such as the Optional Protocol and the European Convention, that the plaintiff be the "victim" of the alleged violation. The 1503 system falls short, however, of permitting *actio popularis*.

These rules would appear to allow an attorney, as a person having "direct and reliable knowledge," to write and perhaps even sign a complaint on behalf of the plaintiff, or to assist him in preparing the case. Resolution 1503, however, provides for no international legal aid scheme.

Anonymous communications are not admissible. The identity of the author, however, on his request, is concealed from everyone except the Secretariat. In practice, this places upon the Secretariat the responsibility of filtering out anonymous communications.

No requirements exist regarding connections between the plaintiff and the state concerned. Proposals requiring that individual authors be nationals of the state complained against and that non-governmental organizations have members or branches in that country were not accepted. This contrasts with the Optional Protocol which provides that petitioners must be, at the time of the alleged facts, under the jurisdiction and within the territory of the state concerned.

Time limit for submission of complaints. Communications must be submitted within "a reasonable time after the exhaustion of the domestic remedies."³⁵ Such remedies must be exhausted "unless it appears that [they] would be ineffective or unreasonably prolonged."³⁶ The working group decides what is a reasonable time in each case. Here again, the 1503 procedure is more liberal than the European and American conventions, which do not permit their respective commissions to deal with petitions until six months after the exhaustion of domestic remedies.

Conditions as to the form and language of petitions. There are no restrictions as to the tongue in which allegations may be couched. The Secretariat translates communications

35. *Id.* para. 5.

36. *Id.* para. 4(b).

from plaintiffs into the working language of the United Nations. As for substance, communications must contain "a description of the facts and must indicate the purpose of the petition and the rights that have been violated."³⁷

Another condition is that complaints are inadmissible if their language is "essentially abusive" and in particular, if they contain insulting references to the state concerned; however, such communications may be considered after deletion of the abusive language.³⁸

Compatibility with basic texts and absence of political motives. Sub-Commission resolution 1 states that the object of the communication "must not be inconsistent with the relevant principles of the Charter, of the Universal Declaration of Human Rights and other applicable instruments in the field of human rights."³⁹ It also states that "a communication shall be inadmissible if it has manifestly political motivations and its subject is contrary to the provisions of the Charter of the United Nations."⁴⁰

Concerning the references to the principles of the United Nations Charter and the Universal Declaration, Mr. Antonio Cassese, who was a member of the Sub-Commission when these provisions were adopted, stated that they "should be taken to mean that communications are inadmissible if their authors complain of restrictions of substantive rights which are actually justified by the need to prevent rights and freedoms from being used contrary to the purposes and principles of the United Nations."⁴¹ This concept of abusive or distorted exercise of human rights is included, for instance, in articles 29 and 30 of the Universal Declaration.

The term "manifestly political motivations" has been criticized as exceedingly vague. However, its application is limited, since the substitution of the word "and" for "or" before adoption indicates that, for the complaint to be inadmissible, both elements, "manifest political motivation," and a subject "contrary to the United Nations Charter" must be present.

37. *Id.* para. 3(c).

38. *Id.* para. 3(b).

39. *Id.* para. 1(a).

40. *Id.* para. 3(c).

41. Antonio Cassese, *The Admissibility of Communications to the United Nations on Human Rights Violations*, 5 HUMAN RIGHTS J. 378-81 (1972).

Exhaustion of domestic remedies. Resolution 1, paragraph 4(b) provides that domestic remedies must be exhausted for a communication to be admissible. This does not apply if "it appears that such remedies would be ineffective or unreasonably prolonged. The paragraph further states, "any failure to exhaust remedies should be satisfactorily established."⁴²

These provisions appear to interpret rather liberally the requirement of "exhaustion of domestic remedies," especially with regard to the burden of proof. The Sub-Commission, specifically, did not adopt proposals demanding "clear proof" of exhaustion of domestic remedies.⁴³ Thus, it appears that a communication would not be inadmissible solely on the ground that it failed to prove conclusively the exhaustion of remedies. The rule, however, is not clear as to what kind of evidence is required from the plaintiff.

Effect on admissibility of the existence of competing international procedures. Paragraph 4(a) of the Sub-Commission's resolution states that complaints are inadmissible if their consideration would "prejudice the functions of the specialized agencies of the United Nations system."⁴⁴ The Sub-Commission, in adopting this paragraph, made particular reference to not prejudicing the International Labor Organization's (ILO) procedure concerning alleged violations of trade union rights against states members of that agency.

On the other hand, proposals which would have made admissibility depend on the exhaustion of "regional or other international remedies" were not adopted.⁴⁵ Thus, no rule of admissibility appears to prevent dual examination of the same matter under resolution 1503 and other procedures of the UN Organization itself such as the system of the Optional Protocol and various procedures on decolonization and racial discrimination. Regional complaint procedures of the Western European and Inter-American systems also appear to be in competition, at the admissibility stage, with the 1503 system

42. Sub-Comm'n Res. 1, *supra* note 10, para. 4(b).

43. See 1971 Sub-Comm'n Report, *supra* note 10, at 9-11, 25, 39; Report of the Sub-Comm'n on Prevention of Discrimination and Protection of Minorities 39, 44, U.N. Doc. E/CN.4 Sub.2/SR.627 (1971).

44. Sub-Comm'n Res. 1, *supra* note 10, at para. 4(a).

45. See Moroccan and French amendments in 48 U.N. ESCOR, Supp. (No. 5) 36-37, paras. 140, 142, U.N. Doc. E/4816, E/CN.4/1039 (1970).

as a means of dealing with alleged human rights violations.

Preliminary judgement on substance. Having applied the admissibility tests, the Working Group of the Sub-Commission must determine whether there are "reasonable grounds to believe that they [the communications] may reveal a consistent pattern of gross and reliably attested violations of human rights and fundamental freedoms."⁴⁶

Procedures of the Working Group. Resolution 1 does not specifically prohibit the Working Group from requesting additional information either from the government or from the author of a communication in order to reach its decisions on admissibility and substance.

Decisions of the Working Group are made by a majority vote of its members. The voting is carried out in private meetings but not by secret ballot. The Sub-Commission at one time proposed that the rules of procedure be amended to provide that the Sub-Commission and its Working Group, unless they decide otherwise, would take decisions under resolution 1503 by secret ballot.

The Working Group transmits its recommendations, as well as the texts of the communications and the states' replies to the Sub-Commission in confidential reports.

Consideration of complaints by the Sub-Commission

The Sub-Commission meets every year for one session of several weeks, generally in August and September in Geneva. When it is examining communications, its meetings are confidential. Paragraph 5 of resolution 1503 calls upon the Sub-Commission to consider those communications and government replies brought to its attention by its Working Group, as well as other "relevant information," with a view to deciding whether to refer to the Commission on Human Rights "particular situations which appear to reveal a consistent pattern of gross and reliably attested violations of human rights requiring consideration by the Commission."⁴⁷

It is at the stage of transmittal from the Sub-Commission to the Commission that the "globalizing" process takes place. That is, international scrutiny focuses no longer on "communications" but on whole "situations." As alternatives to decid-

46. Sub-Comm'n Res. 1, *supra* note 10, at para. 1(a).

47. E.S.C. Res. 1503, *supra* note 9, para. 5.

ing whether a situation, on its merits, calls for transmittal to the Commission, or before taking such a step, the Sub-Commission may: 1) hold over complaints for further consideration at a future session; or 2) ask its Working Group to re-examine certain communications. The Sub-Commission took the latter course in 1972, when it requested the Working Group to again consider the complaints singled out in its confidential report in the light of replies of governments, if any.⁴⁸ Such referrals back to the Working Group may concern either issues of admissibility or the Group's preliminary judgment on substance.

Once it decides to transmit a situation to the Commission, the Sub-Commission forwards to the Commission a confidential written report to which relevant materials are attached. It also informs the state which is the target of the communication about the decision to refer a "situation" to the Commission,⁴⁹ and invites that government to make written comments to the Commission. However, neither the plaintiff nor any other person or institution is informed of the Sub-Commission's decision.

Consideration of "Situations" by the Commission on Human Rights

The Commission on Human Rights is a subsidiary organ of the ECOSOC and is composed of government representatives. This is in contrast with the Sub-Commission, which consists of experts acting in a personal capacity. The forty-three states which are members of the Commission are elected by the Council in accordance with the following geographical pattern: African states, eleven members; Asian states, nine members; Eastern European socialist states, five members; Latin American states, eight members; and Western European and other states, ten members.

The Commission meets for one six-week session annually in February and March in Geneva. When considering situations in accordance with the 1503 procedure, the Commission meets in private. It refers the reports of the Sub-Commission, together with any comments of the governments affected, to a

48. Report of the Sub-Comm'n on the Prevention of Discrimination and Protection of Minorities 25, U.N. Doc. E/CN.4/1101, E/CN.4/Sub.2/332 (1972) [hereinafter cited as 1972 Sub-Comm'n Report].

49. 56 U.N. ESCOR, Supp. (No. 5) 57, U.N. Doc. E/5464, E/CN.4/1154 (1974).

working group of five of its members—one from each region, appointed each year by the Chairman. This working group is not a permanent body, but the Commission has decided each year to establish it, and ECOSOC has always approved its decisions. The group meets privately for five working days prior to the annual session of the Commission. It submits recommendations to the Commission in a confidential written report and communicates these proposals to the state directly concerned.⁵⁰

The practice of the Commission is to invite those states directly implicated in the "situation" being considered under the 1503 procedure to send a representative to address the Commission and answer any questions put by members.⁵¹ The Commission also invites the Chairman/Rapporteur of the Sub-Commission's working group to be present during the Commission's debates and to take the floor if he wishes.⁵² The Sub-Commission and the working group have access to the records of confidential meetings of the Commission.⁵³ The petitioners, on the other hand, are not associated in any way with the Commission's debates on "situations."

As a result of its examination of a "situation" and in accordance with the introductory phrase of paragraph 6 of resolution 1503, the Commission may take a variety of decisions, some of which are outlined below.

Types of Decisions Reached by the Commission on Human Rights. The Commission may discontinue consideration of a "situation" under resolution 1503. Such a decision may be based on a substantive finding that does not reveal "a consistent pattern of gross violations." Another ground that prevents the Commission from continuing consideration of a matter is that the complaint has not met the Commission's admissibility requirements. The Commission could, alternatively, decide that circumstances are not appropriate for continued examination of the case.

Finally, the Commission may feel that it would be more fruitful to subject the "situation" to another procedure. Such a situation arose in 1977 when someone on the Commission

50. 1979 U.N. ESCOR, Supp. (No. 6) 137, U.N. Doc. E/1979/36, E/CN.4/1347.

51. Comm'n on Human Rights Dec. 5, 1978 U.N. ESCOR, Supp. (No. 4) 136-37, U.N. Doc. E/1978/34, E/CN.4/1292.

52. *Id.* Dec. 3.

53. *Id.* Dec. 4.

proposed, under resolution 1503, that the case of Uganda be discussed no longer *in camera* but in public meetings.⁵⁴ Although the move did not succeed at that time, in 1979 the Commission did decide, under resolution 1503, to discontinue consideration of the situation of Equatorial Guinea *in camera*, and to take it up in public meetings under resolution 1235.⁵⁵ This decision appears to have been motivated in part by a lack of cooperation from the government of Equatorial Guinea.⁵⁶

The Commission may postpone a decision pending receipt of further data or clarification. For instance, at earlier stages (1977 and 1978) of the case of Equatorial Guinea, the Commission wished to obtain clarification of certain aspects of the government's comments relating to the complaints. To this end, it chose to contact the government through the Secretary-General before acting on the case.⁵⁷ Another objective of the Commission in postponing a decision might be to determine whether the government would give consent to an investigation by an *ad hoc* committee, under paragraph 6(b) of resolution 1503.

The Commission may decide to undertake a "thorough study" in accordance with resolution 1503, paragraph 6(a), and resolution 1235, paragraph 3. The Commission apparently chose the term "thorough study" in 1967 as a relatively non-threatening concept, designed to reassure governments that they were not at risk of an unduly searching "investigation." One essential aspect of a "thorough study" is that it does not require the consent of the state concerned.

The Commission enjoys wide discretion in determining the manner in which a "thorough study" should be carried out. It may choose to appoint a Special Rapporteur, as was done in the case of Equatorial Guinea in 1979.⁵⁸ The report of the study conducted by Mr. Volio Jimenez of Costa Rica, the Special Rapporteur of the Commission on Equatorial

54. 62 U.N. ESCOR, Supp. (No. 6) 17-18, U.N. Doc. E/5927, E/CN.4/1257 (1977).

55. Study of the Human Rights Situation in Equatorial Guinea by the Comm'n on Human Rights 1, U.N. Doc. E/CN.4/1371 (1980) [hereinafter 1980 Comm'n on Human Rights Study].

56. *Id.* at 6.

57. *Id.* Annex I.

58. Comm'n on Human Rights Res. 15, *supra* note 19, para. 1.

Guinea,⁵⁹ has just been published.⁶⁰ It may prove to be of great significance for the procedural evolution of the 1503 complaint system. One of the most important aspects of his study, from the viewpoint of this article, is its public character. The Commission's decision to declassify Mr. Volio's report, as well as other materials in this case,⁶¹ appears as a major exception to the secrecy rule of resolution 1503 because from the language of paragraph 8 it would seem that both the texts of "thorough studies" and their consideration by the Commission were meant to be confidential under resolution 1503.

The procedures undertaken by the Special Rapporteur in carrying out the thorough study of Equatorial Guinea have implications which are equally far-reaching. Mr. Volio Jimenez was given the mandate under Commission resolution 15, to base the study "on such information as he may deem relevant."⁶² In carrying out the mandate his first step, through the Secretary-General, was to seek, on September 11, 1979, the consent of the new government of Equatorial Guinea for a trip to that country in order to obtain first-hand information and to visit detention centers.⁶³ Mr. Volio, on October 17, 1979, requested credentials to guarantee his own safety, freedom of movement and unhampered access to relevant sources of information. He set, among further conditions, that his interviews be private and without hindrance and that no one "be subjected to coercion, sanctions, punishment or judicial proceedings" for having been in contact with the Special Rapporteur or his staff.⁶⁴ On the same day, the government agreed to his visit, giving general assurances, but not specific guarantees as to the facilities afforded to the Mission.⁶⁵

During his stay in Equatorial Guinea (November 1-15, 1979) the Special Rapporteur encountered difficulties, partially due to what appears to be a "lack of interest" and a

59. Professor Fernando Volio Jimenez has been for a long time closely associated with the United Nations and the Organization of American States (OAS) in the human rights field.

60. 1980 Comm'n on Human Rights Study, *supra* note 55.

61. *Id.* Annex I.

62. Comm'n on Human Rights Res. 15, *supra* note 19, para. 1.

63. 1980 Comm'n on Human Rights Study, *supra* note 55, at 8.

64. *Id.* at 9.

65. *Id.*

“lack of cooperation” from members of the government.⁶⁶ Thus, Mr. Volio expressed serious doubts as to whether his radio communique announcing his visit and informing the public of his mandate had actually been broadcast.⁶⁷ Regrets are also expressed in the report that the government did not grant him formal credentials,⁶⁸ that meetings with public officials were aborted⁶⁹ and that the government failed to facilitate visits to detention centers.⁷⁰

In his study, the Special Rapporteur criticized both the old and the new regimes of Equatorial Guinea. He proposed a far-reaching program of cooperation between the United Nations and that country designed to assist the government in fully restoring human rights.

On March 11, 1980, the Commission on Human Rights adopted, by consensus, a resolution on Equatorial Guinea⁷¹ which noted “with appreciation” both Mr. Volio’s study and “the interest of the Government of Equatorial Guinea in the co-operation of the United Nations in order to ensure the effective enjoyment of fundamental rights by the citizens of Equatorial Guinea.”⁷² The Commission proposed to its parent body, the Economic and Social Council, that the Secretary-General be asked, “in response to the request from the Government of Equatorial Guinea . . . to appoint, as an expert in his individual capacity, a person with wide experience of the situation in Equatorial Guinea, in particular with a view to assisting the Government of that country in taking the action necessary for the full restoration of human rights and fundamental freedoms, keeping in mind the recommendations of the Special Rapporteur and the economical, political and social realities of that country.”⁷³ The Secretary-General, after consulting with the expert, would provide further assistance to that end. The report of the expert should be submitted to the thirty-seventh session of the Commission in February 1981.

66. *Id.* at 18-19.

67. *Id.* at 22.

68. *Id.* at 20-21.

69. *Id.* at 19-20.

70. *Id.* at 21-22.

71. Comm’n on Human Rights Res. 33, 1980 U.N. ESCOR, Supp. (No. 3) 194, U.N. Doc. E/1980/13, E/CN.4/1408.

72. *Id.* at 195.

73. *Id.* para. 1.

The Commission may decide to appoint an ad hoc committee of investigation under paragraph 6(b) of resolution 1503. The paragraph states that such an investigation (unlike the "thorough study") may be undertaken only with the "express consent" of the state concerned.⁷⁴ It also states that the investigation shall be conducted in constant cooperation with that state and under conditions determined by agreement with it. Paragraph 7(a) even stipulates that the investigative committee members' appointment "shall be subject to the consent of the government concerned."⁷⁵

In addition, an investigation by an *ad hoc* committee can be undertaken only if "all available means at the national level have been resorted to and exhausted,"⁷⁶ and it is also made conditional upon a finding that:

The situation does not relate to a matter which is being dealt with under other procedures prescribed in the constituent instruments of, or conventions adopted by, the United Nations and the specialized agencies, or in regional conventions, or which the State concerned wishes to submit to other procedures in accordance with general or special international agreements to which it is a party.⁷⁷

The 1503 procedure also impowers the Committee to "receive communications and hear witnesses, as necessary."⁷⁸ It states that the procedures of the Committee shall be confidential and its meetings held in private.⁷⁹ Furthermore, the resolution emphasizes "friendly solutions" which should be sought "before, during and even after the investigation."⁸⁰

Extent of Publicity Given to Commission's Decisions. The Commission's consideration of "thorough studies" and of the reports of *ad hoc* investigation committees should, under paragraph 8, be carried out in private meetings and the reports themselves should be confidential. As noted above, however, a striking exception for full publicity was made with regard to the "thorough study" on Equatorial Guinea. Because

74. E.S.C. Res. 1503, *supra* note 9, para. 6(b).

75. *Id.* para. 7(a).

76. *Id.* para. 6(b)(i).

77. *Id.* para. 6(b)(ii).

78. *Id.* para. 7(b).

79. *Id.* para. 7(c).

80. *Id.* para. 7(d).

the decision to "go public" on Equatorial Guinea was made in a closed meeting, it is not easy to ascertain the rationale for the Commission's action. Possibly the Commission considered that the rather unclear reference to resolution 1235, in paragraph 6(a) of resolution 1503, justified the public character of the thorough study. Paragraph 6(a) points to paragraph 3 of resolution 1235 which also authorizes a thorough study but which does not mention confidentiality.

Other exceptions to the secrecy rule, albeit of smaller import, were made recently when the Chairman of the Commission publicly announced the names of those countries on which the Commission was said to have reached "decisions." The first exception occurred at the thirty-fourth session in 1978, when the Chairman officially announced that confidential decisions had been taken under the 1503 procedure regarding Bolivia, Equatorial Guinea, Ethiopia, Indonesia, Malawi, Paraguay, the Republic of Korea, Uganda, and Uruguay. He also announced an agreement according to which the situations in those countries should not be discussed in public meeting, but he explained that the agreement applied only to that session.⁸¹

The second exception arose in 1979 when the Chairman again announced that confidential decisions, the nature of which was again not revealed, had been taken regarding Bolivia, Burma, Ethiopia, Indonesia, Malawi, Paraguay, the Republic of Korea, Uganda, and Uruguay. He stated that, in accordance with paragraph 8 of resolution 1503, the members could not refer in public debate to those decisions or to any confidential material relating thereto.⁸²

Again, at the thirty-sixth session, on March 7, 1980, the Chairman publicly stated that "situations have been examined" in closed meetings regarding Argentina, Bolivia, the Central African Republic, Ethiopia, Indonesia, Paraguay, the Republic of Korea, Uganda, and Uruguay.⁸³

Here again, the fact that the decisions to reveal names were taken *in camera* renders any interpretation difficult. Possibly, the Commission adopted, as a basis for its decisions, a strict construction of paragraph 8 of resolution 1503. This

81. 1978 U.N. ESCOR, Supp. (No. 4) 47, U.N. Doc. E/1978/34, E/CN.4/1292.

82. 1979 U.N. ESCOR, Supp. (No. 6) 54, U.N. Doc. E/1979/36, E/CN.4/1347.

83. 1980 U.N. ESCOR, Supp. (No. 3) 84, U.N. Doc. E/1980/13, E/CN.4/1408.

clause forbids disclosure of any "action," a term which might be regarded as not barring the mere announcement of countries' names. Frank Newman's suggestion, however, that the word "action" in paragraph 8 should be interpreted to mean only "positive" measures (such as a decision to refer a situation to the Commission) seems very much *de lege ferenda*.⁸⁴

Infringements of the secrecy rule have taken place from time to time, when non-governmental organizations, scholars and newspapers have spread unofficial reports on countries allegedly discussed under resolution 1503.⁸⁵ The complaint presented in 1972 by several non-governmental organizations against the Colonel's regime in Greece was well publicized in this unofficial manner.⁸⁶ United Nations organs have occasionally expressed strong protests against what they termed "breaches of confidentiality,"⁸⁷ but such incidents did not have an inhibiting effect upon the Commission's policy of official announcements described above. At any rate, the cloak of secrecy is totally removed at the ultimate state of the Commission's work, when it decides to make recommendations to the Economic and Social Council.

Recommendations by the Commission to the Economic and Social Council. Only once, so far, did the Commission submit public "recommendations" to the Council under paragraph 8 of resolution 1503. This action took place at the thirty-sixth session in March 1980.

By decision 10, the Commission "deplored" that, in spite of repeated requests, no observations had been received from the Government of Malawi on complaints submitted in 1975 concerning the alleged persecution of Jehovah's Witnesses in that country.⁸⁸ The Commission considered, however, that "since the events complained of are said to have occurred between 1972 and 1975 and as no further allegations indicating the continuation of the situation have reached the Commission within the framework of Council resolution 1503 since

84. See F. Newman, *supra* note 17.

85. See, e.g., New York Times, September 21, 1972; Sunday Times, September 24, 1973.

86. See F. Newman, *supra* note 17.

87. E.S.C. Res. 1919, 58 U.N. ESCOR, Supp. (No. 1) 8-9, U.N. Doc. E/5683 (1975).

88. Comm'n on Human Rights Dec. 10, 1980 U.N. ESCOR Supp. (No. 3) 202, U.N. Doc. E/1980/13, E/CN.4/1408.

the Commission's thirty-third session in 1977, there are reasons to believe that the situation no longer persists."⁸⁹ In the circumstances, the Commission recommended that ECOSOC should

regret the failure of the Government of Malawi to co-operate with the Commission on Human Rights in the examination of a situation said to have deprived thousands of Jehovah's Witnesses in Malawi of their basic human rights and fundamental freedoms between 1972 and 1975 and which failure constrains the Economic and Social Council to publicize the matter [and] express the hope that the human rights of all citizens of Malawi have been fully restored and, in particular, that adequate measures have been taken to provide remedy to those who may have suffered injustices.⁹⁰

The Economic and Social Council endorsed this draft resolution in May, at its first regular session of 1980.

Consideration by the UN Economic and Social Council and the General Assembly

After considering the reports and recommendations of the Commission, ECOSOC is free, under article 62 of the UN Charter, to adopt its own recommendations on the "situations" referred to it, or to propose a draft recommendation for adoption by the General Assembly. It is not required that the Council's debate be held in private, nor that its recommendation be kept confidential. The Council, under other procedures, has publicly dealt with concrete human rights situations involving specific countries, for instance trade union rights and related matters in South Africa, Namibia, and Rhodesia.

In addition, the General Assembly is fully empowered under articles 10 and 13 of the UN Charter to discuss and make recommendations on any matter arising out of the application of resolution 1503, once such a matter has ceased to be confidential after transmittal of the Commission's report to ECOSOC. The General Assembly has, under other procedures, adopted resolutions on a vast number of specific human rights

89. *Id.* at 203.

90. Comm'n on Human Rights Draft Res. IV, 1980 U.N. ESCOR, Supp. (No. 3) 3, U.N. Doc. E/1980/13, E/CN.4/1408.

situations, including South Africa, the Israeli-occupied territories, Chile, and Nicaragua.

Monitoring of Observance of International Decisions

The relevant texts do not expressly refer to monitoring of international decisions, but the practice of the Commission on Human Rights has developed important monitoring or follow-up features. For example, with regard to Equatorial Guinea, the Commission has asserted its competence to keep the situation "under review." Furthermore, by resolution 15 of March 7, 1978, the Commission has asked the Secretary-General between sessions to submit to it a full report, on a quarterly basis, on the implementation of its decisions.⁹¹

TOPICAL ISSUES AND NEW DIRECTIONS

What Is a "Consistent Pattern of Gross Violations of Human Rights" and How Can It Be Established?

The key words "consistent pattern" and "gross violations" have never been defined in UN decisions. They first appeared in Commission resolution 8 of March 1967,⁹² and the term has been carried over from one resolution to the next. The general intent in using these words was a restrictive one. After its initial enthusiasm, in 1966, to put a stop to "violations of human rights" in an unqualified manner,⁹³ the Organization limited its goal to combating "gross" violations and imposed the further requirement of proving a "consistent pattern."

Many states did not admit the concept of UN scrutiny for every single breach of human rights in the absence of specific treaty commitment to this effect. In their view, article 2, paragraph 7, of the UN Charter, prohibiting intervention in domestic affairs, ruled out the establishment of such an all-embracing procedure by way of a mere resolution. Only when, over a period of time, a systematic policy of violations reached a high degree of seriousness, could these states allow the United Nations to set aside article 2(7).

91. Comm'n on Human Rights Res. 15, 1978 U.N. ESCOR Supp. (No. 4) 120, U.N. Doc. E/1978/34, E/CN.4/1392 (1978).

92. Comm'n on Human Rights Res. 8, *supra* note 24, paras. 4, 5.

93. G.A. Res. 2144, 21 U.N. GSOR, Supp. (No. 16) 46-47, U.N. Doc. A/6316 (1966).

This doctrine was to a certain extent comparable to the nineteenth-century theory of humanitarian intervention in respect of acts which "shock the conscience of mankind," and to the post-war concept of "crime against humanity." What the majority of delegates had in mind was:

the policy of apartheid as practised [sic] in the Republic of South Africa and in the Territory of South West Africa under the direct responsibility of the United Nations and now illegally occupied by the Government of South Africa, and to racial discrimination as practised [sic] notably in Southern Rhodesia. . . .⁹⁴

These two situations are singled out as "examples" in resolution 1235.⁹⁵ The desire of the Third World, and especially African states, for effective weapons against these policies greatly contributed to the birth of the UN's current system of scrutinizing alleged human rights violations.

In fact, pressure from the Third World was almost overwhelming. In 1968, some Third World delegates made formal amendments to the effect that resolution 1235 should be applied only to policies of racial discrimination and apartheid.⁹⁶ The proposals were withdrawn, however, and the majority decision was to keep the reference to these policies "exemplary" but not limitative.⁹⁷

Apart from these indications regarding geographical examples of consistent patterns of gross violations only broad guidance in defining these terms is to be found in the debates.⁹⁸ The debates indicate that a "consistent pattern of violations" cannot easily involve a single victim. A certain number of breaches is required, to be spread over a minimum period. Furthermore, several delegates had in mind an element of planning or of sustained will on the part of the perpetrator. Finally, some people felt that a qualitative test, focusing upon the inhuman or degrading character inherent in the

94. E.S.C. Res. 1235, *supra* note 7, para. 2.

95. *Id.*

96. See, e.g., amendment by Tanzania, 44 U.N. ESCOR, Supp. (No. 4) 61, U.N. Doc. E/CN.4/L.991/Rev.1 (1968).

97. See 24 U.N. Comm'n on Human Rights, (vol. 1) 231-98, U.N. Doc. E/CN.4/SR.942-968 (1968); (vol. 2) 9-76, U.N. Doc. E/CN.4/SR.969-992 (1968).

98. See 23 U.N. Comm'n on Human Rights, (vol. 1) 153-61, U.N. Doc. E/CN.4/SR.993-1012 (1967); 25 U.N. Comm'n on Human Rights, (vol. 3) 23-72, U.N. Doc. E/CN.4/SR.1030-1045 (1969); 26 U.N. Comm'n on Human Rights, (vol. 1) 219-73, U.N. Doc. E/CN.4/SR.1046-1071 (1970).

violation, needs to be applied cumulatively or as an alternative to some of the preceding quantitative tests, in order to ascertain the "gross" character of violations. The "examples" of the policies of apartheid and racial discrimination in Southern Africa may also be useful in relation to this qualitative aspect. At its first session in 1972, the Sub-Commission's Working Group reported that it had tried to introduce shades of meaning between "gross" and "serious" violations,⁹⁹ but this attempt does not seem to have been endorsed by higher bodies.

The *Greek case*, submitted to the UN in 1972 under Resolution 1503, was widely recognized as meeting all the criteria suggested above.¹⁰⁰

The decision to treat Equatorial Guinea under the rubric of a consistent pattern of gross violations. The first set of complaints against Equatorial Guinea—a letter of the "Federation Internationale des Droits de l'homme," dated November 14, 1974¹⁰¹ and a communication dated February 21, 1975 from the "Union Bubi de Fernando Po"—was considered by the Commission, in the light of the Government's reply,¹⁰² as not "sufficient to justify the conclusion that flagrant and systematic violations had been committed."¹⁰³

Later on, having considered the second communication, from "individuals in Switzerland" dated June 14, 1975,¹⁰⁴ and the State's comments,¹⁰⁵ the Commission decided to keep the situation "under review."¹⁰⁶ Ultimately, after the government of Equatorial Guinea had declined to receive a representative of the Secretary-General¹⁰⁷ and after the receipt by the Commission of a further complaint dated December 30, 1978 from the University Exchange Fund,¹⁰⁸ the Commission decided to "go public" on this case¹⁰⁹ and to undertake a "thorough

99. See F. Newman, *supra* note 17, at 717.

100. See F. Newman, *The Greek Case before the U.N.*, reprinted in 1973 Hearings, *supra* note 17, app. 16.

101. U.N. Doc. E/CN.4/R.12/Add.1 (1974).

102. U.N. Doc. E/CN.4/GR.74 and R.13 (1975).

103. 1980 Comm'n on Human Rights Study, *supra* note 55, at 2.

104. U.N. Doc. E/CN.4/R.15/Add.2 (1975).

105. U.N. Doc. E/CN.4/GR.76 (1975).

106. 1980 Comm'n on Human Rights Study, *supra* note 55, at 4.

107. *Id.* at 5-6.

108. *Id.* at 6. This complaint was published by the author.

109. 1979 U.N. ESCOR, Supp. (No. 6) 54, para. 218, U.N. Doc. E/1979/36, E/CN.4/1347.

study" through a Special Rapporteur.¹¹⁰

Mr. Volio, the Special Rapporteur, stated in his conclusions that the study appeared to confirm most of the complaints concerning "violations of human rights which are repugnant to the conscience of civilized man."¹¹¹ The Commission took note, with appreciation, of Mr. Volio's study.

Did any substantive differences exist between the two sets of complaints against Equatorial Guinea to explain the change of attitude of the Commission? Qualitatively, the facts alleged in all those complaints could well be characterized under the term "gross" violations. For instance, the complaints alleged abolition of political liberties, arbitrary arrest, torture and murder of opponents, forced labor practices, and the breakdown of the judicial system. The main difference between the two categories of petitions was that the earlier complaints were fairly general or referred to only a few individual examples, while the latter ones contained an abundance of specific data tending to prove the existence of quantitative elements as to the number of victims and the frequency and duration of breaches. For example, one finds in the February 1975 complaint a list of 487 persons alleged to have been murdered by the Macias police, and in the 1978 communication an eighty-seven page report by an anthropologist who had interviewed people in Equatorial Guinea on various aspects of the situation. Such data may well have been regarded by the Sub-Commission and the Commission as constituting, *prima facie*, "clear evidence" of a "consistent pattern" of gross violations.

Of equal relevance to explain the Commission's decision to consider Equatorial Guinea under the 1503 procedure was the vagueness of the Macias Government's denials. It claimed "new-colonialist" motivations, without meeting the majority of the specific accusations brought against it.

The third element which may explain the Commission's choice of this situation was Macias' refusal to give the desired clarification through direct confidential contacts with the Secretary-General.

110. Comm'n on Human Rights Res. 15, *supra* note 19, para. 1.

111. 1980 Comm'n on Human Rights Study, *supra* note 55, at 60.

May Complaints Be Lodged Against Entities Other Than States?

Could non-state entities, such as international organizations and transnational corporations, be the subject of complaints under the 1503 system? The question may appear utopian to classical jurists. Let us note, however, that nothing in the wording of resolution 1503 expressly restricts the scope of the procedure to states. Moreover, in accordance with other procedures, the United Nations has sometimes concerned itself with human rights in regard to entities which were not "states" under international law. For example, the Free Territory of Trieste under Allied military government and the Saar Territory prior to its incorporation into the Federal Republic of Germany, as well as the Smith regime of Rhodesia, were respondents before ECOSOC with respect to complaints of violations of trade union rights.¹¹² In addition, individuals and organizations as distinct from states were found guilty of international offenses by the Nuremberg Tribunal on War Crimes after World War II.

In light of the legislative history, however, the 1503 procedure would not seem to lend itself easily to such an expansion. The framers of the resolution had in mind, essentially, states as respondents. This policy may change in the future, since the traditional doctrine making states the sole subjects, active and passive, of international law is retreating nowadays.

A relevant question is whether the 1503 procedure could be made directly applicable against entities over which no effective state control is exercised. Certainly, to apply the procedure in this manner would be in harmony with General Assembly resolution 2144 of 1966 calling for the establishment of procedures to eliminate human rights violations "wherever they might occur."¹¹³ Possibly, one field for studying the applicability of 1503 to nonstate entities might be the administrative law of international organizations, binding on staff members, which is not appealable before domestic courts.¹¹⁴

112. *U.N. Action, supra* note 1, at 187.

113. 21 GAOR, Supp. (No. 16) 46, U.N. Doc. A/6316 (1966).

114. *See, e.g.,* 1 M. TARDU, *supra* note 2, at 16, 17.

Effect of a Change of Government on the 1503 Procedure

On many occasions over a long period of time, the question has arisen as to what effect a change of government may have on consideration of alleged violations of human rights. The earlier tendency of United Nations organs was, on the whole, to discontinue their investigations after the accused regime had fallen. Such decisions were taken, for instance, in regard to trust territories upon accession to independence,¹¹⁵ and with respect to a 1963 UN inquiry into alleged violations of human rights in South Vietnam.¹¹⁶

Recently, however, in connection with human rights debates in public meetings on Democratic Kampuchea and Nicaragua, the Commission and the Sub-Commission appear to have laid down as a broad policy that:

human rights situations under consideration in United Nations human rights organs may need continued examination even if changes occur in those exercising authority over such situations, in order to ascertain the nature and extent of the violations committed, determining the root causes, and helping government concerned to deal with the situation and to take measures to avoid such violations in the future.¹¹⁷

More directly relevant to our subject is Commission resolution 15, calling for a thorough study of the human rights situation in Equatorial Guinea, without expressly restricting the scope of the decision to the Macias-dominated period. Mr. Volio's study, in fact, contains conclusions and recommendations of concern to the new government.¹¹⁸

At its thirty-sixth session in 1980, the Commission appears to have confirmed its policy of keeping situations "under review" even after a change of government. The Commission sought from ECOSOC authorization to appoint an Expert on Equatorial Guinea to "assist" the new government in restoring human rights.¹¹⁹

115. 2 *id.* ch. III.

116. *U.N. Action*, *supra* note 1, at 189.

117. Sub-Comm'n Res. 4 B, C, Report of the Comm'n on Human Rights 47-48, U.N. Doc. E/CN.4/1350, E/CN.4/Sub.2/435 (1979). These situations were not considered under Resolution 1503, but in public meetings.

118. See text accompanying notes 58-73 *supra*.

119. Comm'n on Human Rights Res. 33, *supra* note 71, at para. 1.

What "Other Relevant Information" May Be Used by UN Bodies Resolution 1503?

The Sub-Commission, and presumably also the Commission, may consider not only "communications" or "situations" brought to light by complaints and governments' replies, but also "other relevant information." This provision flows from a British amendment which received good support, on the ground that individual complaints "oftentimes did not give the complete picture."¹²⁰ In discussing this amendment, reference was made to the public procedure on violations under Commission resolution 8 and Council resolution 1235, which authorizes the use by the Sub-Commission of "all information available." This clause was presented by the sponsors as covering information from:

Governments of Member States, the Secretary-General, the Special Committee on the Situation with Regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples, the Special Committee on the Policies of Apartheid of the Government of the Republic of South Africa, the specialized agencies, regional inter-governmental organizations, non-governmental organizations, the writings of recognized scholars and scientists and "observation or investigation upon the request of the government whose territory is concerned."¹²¹

Some representatives felt that the Sub-Commission's report should be based exclusively on official sources, but other speakers strongly maintained the view that "no limitation whatsoever should be placed upon the sources to be used by the Sub-Commission"¹²² in the preparation of its report under Commission resolution 8.

In his study on Equatorial Guinea, Mr. Volio mentioned, in addition to the 1503 complaints, that he was relying on information on that country submitted to another UN body, the Sub-Commission's Working Group on Slavery.¹²³

It may perhaps be debated whether the intent and scope

120. Report of the Comm'n on Human Rights, 46 U.N. ESCOR 145, para. 430, U.N. Doc. E/4621, E/CN.4/1007 (1969).

121. 42 U.N. ESCOR, Supp. (No. 6) 119, para. 327, U.N. Doc. E/4322, E/CN.4/940 (1967).

122. *Id.*

123. Report of the Special Rapporteur, *supra* note 18, paras. 24-26.

of the public procedure under resolutions 8 and 1235 are identical to those of the 1503 complaint system. If identity or close similarity were admitted between the two procedures concerning sources of information, then the clause on "other relevant information" might open far-reaching possibilities. Nothing would seem to prevent the Sub-Commission and the Commission from using this proviso to ask for additional data or comments from the state concerned or from the plaintiff.

Another important point is that nothing precludes expressly the gathering of "relevant information" through oral testimony. This is what Mr. Volio was trying to accomplish in Equatorial Guinea.

Relationship with Other International Complaint Procedures

Issues arising out of the coexistence of many international complaint procedures on human rights are among the most complex topical problems of international law. They have not yet been fully understood and they remain largely unsolved by the bodies concerned. The author has tried to analyze such problems in other publications.¹²⁴

The treatment of coexistence issues in the relevant resolutions under the 1503 procedure is particularly unclear. Rules vary from one stage of the 1503 procedure to the next, for no apparent logical reason.

At the initial stage of processing by the Secretariat, the only written directives concern petitions from employers' or workers' associations on trade union rights against states members of the ILO, and communications regarding forced labor. By virtue of Council resolutions, these two kinds of complaints must be forwarded by the Secretariat directly to the ILO without submission to any UN bodies.

The Secretariat receives no official guidance as to the channeling of complaints which appear to be receivable under both the 1503 procedure and other U.N. systems, such as the procedures of the Trusteeship Council, the UN Special Committee on Decolonization, the UN Special Committee against Apartheid, several *ad hoc* human rights investigation machineries, and the procedure of the Optional Protocol to

124. Tardu, *The Protocol to the U.N. Covenant on Civil and Political Rights and the Inter-American System: A Study of Co-Existing Petition Procedures*, 70 AM. J. INT'L L. 778-800 (1976).

the UN Covenant on Civil and Political Rights.

The Secretariat has made detailed suggestions to the Commission on Human Rights concerning its preliminary screening of complaints with a view to minimizing duplication between the 1503 procedure and the Protocol system.¹²⁵ The goal of these suggestions is to channel the largest possible number of complaints towards the Human Rights Committee under the Protocol, considering the more elaborate character of the Protocol procedure.

At the second stage, when the working group of the Sub-Commission applies the admissibility tests, it is bound by a provision of resolution 1 which excludes complaints "if their admission would prejudice the functions of the specialized agencies of the United Nations system."¹²⁶

As noted by Mr. Cassese,¹²⁷ this rule, taken literally, would be very restrictive of the 1503 procedure. It might be interpreted to mean that the UN should declare a complaint inadmissible because of the mere possibility that its subject matter would be examined one day by a specialized agency. Furthermore, the rule could be interpreted as applying not only to specialized agencies' procedures initiated by individuals or private groups such as the ILO Constitution procedures, the ILO "freedom of association" procedures, and the new UNESCO system, but also to inter-state complaint procedures of the agencies and to the examination of cases *ex-officio* by the specialized agencies. Since inter-state complaint procedures and *ex-officio* investigation are seldom utilized, the clause would mean in effect that a wide range of human rights cases could be left without any international monitoring whatsoever.

With a view to avoiding such a situation, Mr. Cassese suggests that:

The [UN] Working Group . . . could adopt a restrictive construction of the provision under consideration [i.e., the provision of resolution 1]. In order to make this provision as least paralyzing for the functioning of the ECOSOC [1503] procedure as possible, it could be taken to cover only procedures of the specialized agencies working on

125. Report of the Secretary-General, *supra* note 20, paras. 30-36.

126. Sub-Comm'n Res. 1, *supra* note 10, para. 4(a).

127. Cassese, *supra* note 41, at 384.

the same level as the ECOSOC procedure, i.e. on the basis of petitions of individuals or private groups. Should this construction be acceptable, the resolution could be taken to refer only to some of the supervisory procedures existing within ILO.¹²⁸

At present, the new UNESCO system of individual and group petitions must be added.

In contrast with this clause protective of the specialized agencies, no provision, at the admissibility stage, governs the relationship between the 1503 procedure and other complaint systems of the UN Organization proper, among others, the decolonization machinery, the Committee on Elimination of Racial Discrimination (CERD) and the Optional Protocol. Regarding the latter procedure, it should be noted that the Human Rights Committee, the body which considers individual petitions under the Protocol, has determined that the 1503 procedure, focusing on "consistent patterns of gross violations" rather than on individual cases, was not a procedure of international investigation and settlement comparable to the Protocol system. Therefore, the Committee considered that simultaneous consideration of the same matter by it under the Protocol and by the Sub-Commission under the 1503 resolution is permissible.¹²⁹ Similarly, no rules provide for coordination, at the admissibility stage, between 1503 and the complaint procedures of the European and Inter-American systems.

The next stage of the 1503 procedure is consideration by the Sub-Commission and then the Commission. Neither the Sub-Commission nor the Commission up to the time when it decides to undertake a "thorough study" or an "ad hoc investigation" are bound by coordination clauses. The "thorough study," by virtue of an explicit reference to ECOSOC resolution 1235, must be conducted:

without prejudice to the functions and powers of organs already in existence or which may be established within the framework of measures of implementation included in international covenants and conventions on the protection of human rights and fundamental freedoms.¹³⁰

128. *Id.*

129. 33 U.N. GAOR, Supp. (No. 40) 99-101, paras. 580-86, U.N. Doc. A/33/40 (1978).

130. E.S.C. Res. 1235, *supra* note 7, para. 1.

These words are unclear, but they appear to give strong protection to the competing procedures established by treaties, such as the Protocol, CERD, the ILO Constitution procedures and the system of the European and American Conventions, but not to those set up by resolutions. Thus, the ILO "freedom of association" procedure, the new UNESCO complaint system, and the Inter-American procedure for states not parties to the Pact of San Jose would seem to be left in a state of "free competition" with the 1503 mechanism.

As to the undertaking of an investigation by an "ad hoc committee" under paragraph 6(b), we find yet another variant, apparently broader, under which the situation considered under the 1503 procedure should not:

relate to a matter which is being dealt with under other procedures prescribed in the constituent instruments of, or conventions adopted by, the United Nations and the specialized agencies, or in regional conventions, or which the State concerned wishes to submit to other procedures in accordance with general or special international agreements to which it is a party.¹³¹

One risk involved in the application of these confusing clauses is that of contradictory decisions on substance. This risk is often mitigated because international bodies, for instance in the cases of Greece and Chile, are normally at some stage made aware of the conclusions of competing organs,¹³² and usually try to avoid glaring contradictions. Another danger, less frequently perceived, is that of denial of international justice if all the organs concerned declare themselves incompetent or if only the least effective body asserts its jurisdiction.

Considering the difficulty for plaintiffs to pass stringent admissibility tests, it is of importance that true victims should have as many avenues of international redress as possible. To carry out such a policy, the continued coexistence of 1503 and several other procedures would be useful. If more orderly coordination rules are devised in the future, they must take all of the above considerations into account.¹³³

131. E.S.C. Res. 1503, *supra* note 9, para. 6(b)(ii).

132. For instance, the European Commission findings on Greece were before the competent U.N. bodies. See F. Newman, *supra* note 17.

133. On these considerations, see Tardu, *supra* note 124.

Coordination with the Procedure of Public Debates on Violations Established by Resolution 1235

ECOSOC resolution 1235 of 1967 authorizes the Commission and the Sub-Commission to consider each year "the question of violation of human rights" and to examine the information relating to gross violations contained in the communications listed under resolution 728 F.¹³⁴ The 1235 resolution further authorizes the Commission to make a thorough study of situations which reveal a consistent pattern of violations of human rights. All these powers were apparently meant to be exercised in public meetings. The aspect of confidentiality was introduced later in resolution 1503, which superseded resolution 1235 only in part. The combined result is an odd one. Side by side with the confidential proceedings devoted to the scrutiny of private complaints under resolution 1503, the Commission and the Sub-Commission discuss concrete instances of human rights violations in public meetings under resolution 1235. The main difference is that, in public debates, accusations appear to be initiated or endorsed by members of the Commission and the Sub-Commission and do not normally involve references to private complaints submitted under resolution 1503.

The impact of public UN debates and recommendations on violations may be considerable. The media has spread news of United Nations action on human rights under resolution 1235 or under similarly public procedures in such countries and territories as South Africa, the Israeli-occupied areas, Chile, Cyprus, Democratic Kampuchea, Western Sahara, and Nicaragua. The main problems raised by these public debates are, for the victims, uncertainty as to the degree of support of sponsoring delegations, which act fully at their discretion; and the absence of quasi-judicial features in the discussion.¹³⁵

The Commission on Human Rights discussed the question of interference between the 1503 and 1235 procedures and the Secretariat has analyzed it.¹³⁶ Some delegates stressed that if a situation relating to a particular country was being

134. E.S.C. Res. 1235, *supra* note 7, paras. 1, 2.

135. However, delegates of the states concerned are consistently allowed by the Sub-Commission and the Commission, on request, to submit their views, orally as well as in writing.

136. Report by the Secretary-General, U.N. Doc. E/CN.4/1273/Add.1 (1978).

considered under the confidential procedure of resolution 1503, such a situation or events related to it could not at the same time be the object of public discussion under the item on violation of human rights in the 1235 resolution. These delegates felt that consideration of such a situation in public meetings would be a violation of the rules established by the Council and could create a dangerous precedent which would be politically exploited to the prejudice of international understanding. A related view was that the Commission, having considered a situation in private meetings under resolution 1503 and having taken a decision on it, should not decide anew on the same situation in a public meeting.

On the other hand, some representatives maintained that, by adopting resolution 1503, the Council had not wished to limit the means of action available to the Commission but to expand them. Consequently, in their view, the Commission should apply both methods of examination, public and private. The confidentiality of the procedure governed by Council resolution 1503 could be respected, they urged, if the members of the Commission refrained from mentioning in the public debate the views expressed and decisions taken under the confidential procedure. In 1975 a dual consideration did occur when the Commission set up an *ad hoc* working group to inquire into the situation of human rights in Chile and also examined communications of a confidential nature against that country in closed session.

One compromise view was that, even if the Commission adopted the principle that a situation considered under resolution 1503 could not at the same time be the subject of complaints by states in public debates, such a situation should only be excluded from public consideration if the Commission had already adopted one of the measures envisaged in paragraph 6(a) and (b) of resolution 1503, a thorough study or investigation. According to another opinion in favor of dual consideration, the Commission was not precluded, at any rate, from considering in public meetings events which had taken place subsequent to those described in the communications dealt with under the confidential procedure.

Commission actions regarding Equatorial Guinea in 1979 injected a new element of great relevance into the debate. The Commission decided to discontinue its private meetings on Equatorial Guinea under resolution 1503 and to examine the

question henceforth in public debates under resolution 1235, on the basis of declassified documents.¹³⁷ This decision reflected a clear criticism of the Macias government for having failed to respond to the Commission's offer of confidential contacts, a failure which made the continued application of resolution 1503 futile. Whether this signals a new test for the appropriateness of resolution 1235, public consideration of a situation that was first considered in private under resolution 1503, is unclear. Future Commission actions will reveal whether the Equatorial Guinea situation set a precedent.

A Passing Thought for the Victim

The inequality of arms to the prejudice of the plaintiff, built into resolution 1503, has not been directly redressed by UN practice. Some indirect improvement is conceivable however through the effects of UN policies. For example, any progress the Commission makes in publicizing the situation under consideration increases the chances of the plaintiff to be involved in the proceedings. Many, if not most, authors of communications have friends or representatives who follow UN debates and quickly notice any public statements concerning the application of the 1503 procedure. Even the mere mention by the Chairman of the Commission of the names of countries under scrutiny, as happened in 1978, 1979, and 1980 may help petitioners.

Once he is alerted that the situation which was the object of his complaint is under active consideration, the author, or another plaintiff on the same matter is free to stress certain facts and bring to the Commission's attention fresh elements in a new communication. Nothing in resolution 1503 prevents the submission of complaints similar to those under UN consideration, and the Secretariat does process all human rights complaints in the same manner, however repetitious they may be. Equatorial Guinea was such a multiple-complaint case.

The initial complaint of June 14, 1975 from "individuals in Switzerland" against Equatorial Guinea was supplemented by letters of July and November 1975 and January 1976. After it was publicly confirmed at the 1978 Commission that Equatorial Guinea was under scrutiny, the International University

137. 1979 ESCOR, Supp. (No. 6) 54, para. 218, U.N. Doc. E/1979/36, E/CN.4/1347.

Exchange Fund then sent details about the situation. An interesting sidelight to the case is the fact that this latter complaint, or its summary, appears to have been examined directly by the Commission, without passing through the Sub-Commission. This action might brighten the hopes of petitioners that once a certain stage is reached in the proceedings, the Commission would assert its power to accelerate the pace and to have more immediate contacts with plaintiffs.

Opportunities for plaintiff's participation were maximized in the Equatorial Guinea case after the Commission's decision to "go public." The Special Rapporteur in conducting the thorough study sought oral and written testimony through a radio communique in that country and several of the co-authors or alleged victims may have seized this opportunity to explain their complaints further.

The Potential Impact of "Thorough Studies"

The ponderous term "thorough study" had a restrictive meaning in the 1235 and 1503 resolutions because of the Commission's dilemma of providing for some sort of international action without any visible risk of criticism of the state concerned. The words had a reassuring tone, in light of the fact that UN programs of "studies" on human rights had been carried out since 1954 with no embarrassment for states.¹³⁸ It was in this spirit that the "thorough study" clause was adopted in resolution 8 of 1967 without condition of state consent.¹³⁹ The "thorough study" clause stands in direct contrast to the "investigation by an *ad hoc* committee" phrase of paragraph 6(b). The 1503 investigation can only be undertaken with the express consent of the state concerned.

Thanks to the "go public" decision on Equatorial Guinea, we can now assess the first known application of the clause on thorough studies. The following facts stand out: 1) In resolution 15, the Commission left the Special Rapporteur discre-

138. The program of studies of the Sub-Commission was launched by that body on January 15, 1954. Report of the Sub-Commission on Prevention of Discrimination and Protection of Minorities 34-38, para. 97, U.N. Doc. E/CN.4/703, E/CN.4/Sub.2/157 (1954). The Commission's program was initiated at its 12th session. 22 U.N. ESCOR, Supp. (No. 3) 8-9, para. 49, U.N. Doc. E/2844, E/CN.4/731 (1956). They resulted in the adoption of the "general" recommendations, meaning that the criticism of the policies of individual states was excluded.

139. Comm'n on Human Rights Res. 8, *supra* note 24, para. 5.

tion to use "such information as he may deem relevant"; 2) Mr. Volio sought, and obtained, the Government's consent for on-the-spot inquiries; 3) While in Equatorial Guinea, he tried to seek relevant information through radio broadcasting of his mandate; 4) He requested authorization to interview public officials and limited authorization was granted, and he traveled extensively in order to "speak to as many people as possible from all walks of life," sometimes "in the markets and on the street," and to visit detention centers;¹⁴⁰ 5) Many of Mr. Volio's conclusions and recommendations were specific in nature.

It is noteworthy that the Special Rapporteur appears to have regarded these far-reaching requests addressed to a sovereign state as inherent in the concept of a "thorough study" under Council resolutions 1235 and 1503. Even more important is the reported attitude of the government, which does not seem to have objected to these demands, in principle, as being *ultra vires* under resolution 1503.

Let us now turn to some features of the UN investigations on human rights conducted, on an *ad hoc* basis, with respect to Southern Africa,¹⁴¹ the Israeli-occupied territories,¹⁴² and Chile.¹⁴³ The organs concerned were different; most of the time they have been bodies of experts instead of a single rapporteur, but this difference is immaterial for the purpose of our study. Firstly, all had wide discretion in their mandates to use any methods of inquiry and draw upon any sources of information they would deem appropriate. Secondly, the investigations all sought the consent of the state concerned for on-the-spot visits, although only the Chile group was granted permission for such a trip. Thirdly, those in charge tried to seek relevant information through publicizing their mandates and writing to governments and associations concerned. Fourthly, the Chile Group, during its on-the-spot trip, was able to hear a number of persons as witnesses and to visit various places. The other bodies, while barred from the territories of the states directly concerned, heard as witnesses many refugees in other countries and sometimes vis-

140. Report of the Special Rapporteur, *supra* note 18, paras. 59, 63.

141. See 2 M. TARDU, *supra* note 2, ch. XIII.

142. *Id.* ch. XIV.

143. 1 *id.* at ch. IB (2).

ited relevant sites¹⁴⁴ at the border of the area under investigation. Finally, the conclusions and recommendations of those organs were often specific in nature.

It can be seen that the foregoing elements of the "thorough study" and the "investigation" appear similar. Let us be wary, however of premature comparisons: there is no assurance yet that the case of Equatorial Guinea will become a precedent.

CONCLUSION

To some jurists, the 1503 procedure appears as inchoate as its parent organization. It could not have been otherwise, since it was laid open, at birth, to the political storms of 140 member states. The vagueness and illogicality of 1503 stand in contrast to the architecture of many sectoral or regional machineries, for example, the ILO and the European systems.

Some ten years after its birth, however, one may wish to have another look at resolution 1503. Its original "sins" of vagueness and ambiguity were not, after all, signs of hopeless retardation. Rather, in some ways, they may have made easier the growth of the procedure through practice. As was noted, for example, uncertainties as to the meaning of some clauses in resolution 1503 might have proved useful to the Commission in framing its policies to reveal names of countries under examination and to publicize the case of Equatorial Guinea in full.

Looking at this decade of change, the student of international systems may feel tempted to compare 1503 with the development of other complaint procedures through case law. One may refer, for instance, to the ILO "freedom of association" procedure. In the initial version of the procedure adopted in 1950, the Governing Body Committee on Freedom of Association had only to determine, *prima facie*, whether the allegations were worthy of full enquiries by a Fact-Finding and Conciliation Commission, subject to the agreement of states concerned. As the procedure developed, however, the state's consent was rarely sought and the Commission was sel-

144. For instance, the UN *Ad Hoc* Group on Southern Africa, in 1968, visited a military hospital, in Guinea, of the liberation movement of Guinea Bissau. The U.N. Special Committee on Israeli-occupied territories visited the town of Quneitra and returned to Syria after the military disengagement accord with Israel.

dom activated while the Committee on Freedom of Association made a thorough examination of each case, resulting in the publication of reports with observations and suggestions to governments.¹⁴⁵ Also, the procedure of the Inter-American Commission on Human Rights, through practice, underwent a significant evolution on the basis of a rather narrow mandate.¹⁴⁶

It is, of course, too early to predict any comparable development in respect to the 1503 procedure. One must be aware of the psychological mobility of United Nations' bodies and of their sensitivity to political change. The 1503 procedure is inherently a fragile construction. The whole machinery could be wiped out by a simple majority of states abrogating the resolution in the Economic and Social Council. At any time, any delegation may start a process to activate the clause of paragraph 10 under which "the procedure set out in the present resolution for dealing with communications relating to violations of human rights and fundamental freedoms should be reviewed if any new organ entitled to deal with such communications should be established within the United Nations or by international agreement."¹⁴⁷

Powerful trends, however, seem to make any major setback less likely every year: the increased publicity being given by the media to alleged violations and international complaint systems; the mechanism of inter-state rivalry, creating pressures to extend the scope of investigations from one target to another; and, above all, the growing awareness among peoples of human rights problems and their demand for becoming guardians of their own rights on the international plane.

145. See C. W. JENKS, *THE INTERNATIONAL PROTECTION OF TRADE UNION FREEDOM* (1957); Vol Potobsky, *Protection of Trade Union Rights*, 105 INT'L LAB. REV. 512 (1972).

146. See Buergenthal, *The Revised OAS Charter and the Protection of Human Rights*, 69 AM. J. INT'L L. 828 (1976); H. GROS-ESPIELL, *LE SYSTEME INTERAMERICAIN, RECUEIL DES COURS, ACADEMIE DE DROIT INTERNATIONAL*, (1975); K. VASAK, *LA COMMISSION INTERAMERICAINE DES DROITS DE L'HOMME*, (1968).

147. E.S.C. Res. 1503, *supra* note 9, para. 10.

APPENDIX A

1503 (XLVIII). Procedure for dealing with communications relating to violations of human rights and fundamental freedoms¹

The Economic and Social Council,

Noting resolutions 7 (XXVI) and 17 (XXV) of the Commission on Human Rights and resolution 2 (XXI) of the Sub-Commission on Prevention of Discrimination and Protection of Minorities,

1. *Authorizes* the Sub-Commission on Prevention of Discrimination and Protection of Minorities to appoint a working group consisting of not more than five of its members, with due regard to geographical distribution, to meet once a year in private meetings for a period not exceeding ten days immediately before the sessions of the Sub-Commission to consider all communications, including replies of Governments thereon, received by the Secretary-General under Council resolution 728 F (XXVIII) of 30 July 1959 with a view to bringing to the attention of the Sub-Commission those communications, together with replies of Governments, if any, which appear to reveal a consistent pattern of gross and reliably attested violations of human rights and fundamental freedoms within the terms of reference of the Sub-Commission;

2. *Decides* that the Sub-Commission on Prevention of Discrimination and Protection of Minorities should, as the first stage in the implementation of the present resolution, devise at its twenty-third session appropriate procedures for dealing with the question of admissibility of communications received by the Secretary-General under Council resolution 728 F (XXVIII) and in accordance with Council resolution 1235 (XLII) of 6 June 1967;

3. *Requests* the Secretary-General to prepare a document on the question of admissibility of communications for the Sub-Commission's consideration at its twenty-third session;

4. *Further requests* the Secretary-General:

(a) To furnish to the members of the Sub-Commission every month a list of communications prepared by him in accordance with Council resolution 728 F (XXVIII) and a brief description of them, together with the text of any replies received from Governments;

(b) To make available to the members of the working group at their meetings the originals of such communications listed as they may request, having due regard to the provisions of paragraph 2 (b) of Council resolution 728 F (XXVIII) concerning the divulging of the identity of the authors of communications;

(c) To circulate to the members of the Sub-Commission, in the working languages, the originals of such communications as are referred to the Sub-Commission by the working group;

5. *Requests* the Sub-Commission on Prevention of Discrimination and Protection of Minorities to consider in private meetings in accordance with paragraph 1 above, the communications brought before it in accordance with the decision of a majority of the members of the working group and any replies of Governments relating thereto and other relevant information, with a view to determining whether to refer to the Commission on Human Rights particular situations which appear to reveal a consistent pattern of gross and reliably attested violation of human rights requiring consideration by the Commission;

6. *Requests* the Commission on Human Rights after it has examined any situation referred to it by the Sub-Commission to determine:

(a) Whether it requires a thorough study by the Commission and a report and recommendations thereon to the Council in accordance with paragraph 3 of Council resolution 1235 (XLII);

1. 48 U.N. ESCOR, Supp. (No. 1A) 8, U.N. Doc. E/4832/Add. 1 (1970).

(b) Whether it may be a subject of an investigation by an *ad hoc* committee to be appointed by the Commission which shall be undertaken only with the express consent of the State concerned and shall be conducted in constant co-operation with that State and under conditions determined by agreement with it. In any event, the investigation may be undertaken only if:

- (i) All available means at the national level have been resorted to and exhausted;
- (ii) The situation does not relate to a matter which is being dealt with under other procedures prescribed in the constituent instruments of, or conventions adopted by, the United Nations and the specialized agencies, or in regional conventions, or which the State concerned wishes to submit to other procedures in accordance with general or special international agreements to which it is a party.

7. *Decides* that if the Commission on Human Rights appoints an *ad hoc* committee to carry on an investigation with the consent of the State concerned:

(a) The composition of the committee shall be determined by the Commission. The members of the committee shall be independent persons whose competence and impartiality is beyond question. Their appointment shall be subject to the consent of the Government concerned;

(b) The committee shall establish its own rules of procedure. It shall be subject to the quorum rule. It shall have authority to receive communications and hear witnesses, as necessary. The investigation shall be conducted in co-operation with the Government concerned;

(c) The committee's procedure shall be confidential, its proceedings shall be conducted in private meetings and its communications shall not be publicized in any way;

(d) The committee shall strive for friendly solutions before, during and even after the investigation;

(e) The committee shall report to the Commission on Human Rights with such observations and suggestions as it may deem appropriate;

8. *Decides* that all actions envisaged in the implementation of the present resolution by the Sub-Commission on Prevention of Discrimination and Protection of Minorities or the Commission on Human Rights shall remain confidential until such time as the Commission may decide to make recommendations to the Economic and Social Council;

9. *Decides* to authorize the Secretary-General to provide all facilities which may be required to carry out the present resolution, making use of the existing staff of the Division of Human Rights of the United Nations Secretariat;

10. *Decides* that the procedure set out in the present resolution for dealing with communications relating to violations of human rights and fundamental freedoms should be reviewed if any new organ entitled to deal with such communications should be established within the United Nations or by international agreement.

1693rd plenary meeting, 27 May 1970.

