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# The United Nations High Commissioner for Human Rights: Challenges and Opportunities

JANET E. LORD\*

## I. INTRODUCTION

The United Nations General Assembly adopted Resolution 48/141 to create the post of High Commissioner for the Promotion and Protection of All Human Rights.<sup>1</sup> The adoption of Resolution 48/141 marks another significant step toward the implementation of the human rights provisions set forth in the United Nations Charter, the Universal Declaration of Human Rights, and other international instruments containing human rights norms. Resolution 48/141 also fulfills one of the stated goals of the Vienna Declaration and Programme of Action, adopted by the World Conference on Human Rights in June 1993.<sup>2</sup>

The establishment of a High Commissioner for Human Rights brings to fruition a proposal that has appeared in many different guises since the early days of the United Nations. It also fulfills the desire of those who would like the world community to demonstrate concern for human rights and fundamental freedoms in a concrete and effective manner. This Article discusses the history of the efforts to create the Office of High Commissioner for Human Rights, the currents that prevented an earlier accep-

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1. G.A. Res. 48/141, U.N. GAOR, 48th Sess., Agenda Item 114(b), at 1, U.N. Doc. A/RES/48/141 (1994).

2. See *Vienna Declaration and Programme of Action, Report of the World Conference on Human Rights*, U.N. GAOR World Conf. on Hum. Rts., pt. I, at 20, U.N. Doc. A/CONF.157/24 (1993) [hereinafter *Vienna Declaration*].

tance of the post, and the anticipated role of the High Commissioner in a world community where human rights abuses are a global epidemic.

## II. ORIGIN OF HIGH COMMISSIONER FOR HUMAN RIGHTS OFFICE

The earliest attempt to create a United Nations High Commissioner for Human Rights occurred in 1947.<sup>3</sup> Professor Rene Cassin, the French delegate on the United Nations Human Rights Commission, suggested that a United Nations Attorney-General be appointed to act on behalf of individuals and groups in appellate proceedings before an international human rights court.<sup>4</sup> The proposal anticipated the formation of a new tribunal or a human rights chamber tied to the international court of justice for the adjudication of human rights cases.<sup>5</sup> Petitions of groups and individuals were to be handled by a special commission.<sup>6</sup> Professor Cassin's plan was not seriously considered at the time of its submission.

Subsequent proposals for a human rights commissioner stressed the need to create institutions that would give hard content to the human rights precepts set forth in the United Nations Charter, the Universal Declaration and other international instruments yet to be negotiated under the auspices of the United Nations. In 1949, the Consultative Council of Jewish Organizations, a non-governmental body with consultative status at the United Nations and devoted to the enhancement of human rights for all people, submitted a memorandum to the Commission on Human Rights regarding the earlier Cassin proposal.<sup>7</sup> The statement acknowledged the role that a commissioner could play

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3. *Letter from the Representative of France to the Chairman of the Working Party on Implementation of Human Rights*, U.N. ESCOR Hum. Rts. Comm., 2d Sess., at 2, U.N. Doc. E/CN.4/AC.4/1 (1947) [hereinafter *Letter from the Representative of France*].

4. *Id.* See also *Statement by Mr. Rene Cassin, Representative of France, on the Implementation of Human Rights*, U.N. ESCOR, Hum. Rts. Comm., 3d Sess., at 9, U.N. Doc. E/CN.4/147 (1948) [hereinafter *Statement by Mr. Rene Cassin*].

5. *Letter from the Representative of France*, *supra* note 3, at 1. *Statement by Mr. Rene Cassin*, *supra* note 4, at 3-5.

6. *Letter from the Representative of France*, *supra* note 3, at 2.

7. *Proposal for a United Nations Attorney General for Human Rights: Summary of a Statement Submitted by the Consultative Council of Jewish Organizations, a Non-Governmental Organization in Category B Consultative Status*, U.N. ESCOR Hum. Rts. Comm., U.N. Doc. E/CN.4/NGO/6 (1950).

in the implementation of human rights norms and suggested that such an office could be instrumental, even in the absence of an international human rights court.<sup>8</sup>

In 1950, a Uruguayan plan advocating the creation of a United Nations Attorney-General for Human Rights was put before the fifth session of the General Assembly.<sup>9</sup> This proposal was intended to provide a means of implementing the Covenant on Civil and Political Rights which was being drafted at that time.<sup>10</sup> The central function of the United Nations Attorney-General for Human Rights under the plan was to receive and review petitions from individuals and groups and to present complaints on their behalf before a proposed Human Rights Committee.<sup>11</sup>

The Uruguayan plan received some attention and was adopted with minimal modifications by the Consultative Council of Jewish Organizations. The Council's delegate, Moses Moskowitz, characterized the proposal as a necessary challenge to antiquated notions of state sovereignty and the denial of the individual as a legitimate subject of international law:

The form of internationalism which accepts the state not only as the sole unit of international organization but as its only concern, is a barren internationalism. Like the attorney-general in national legal systems who pleads in the name of the state, the United Nations Attorney-General would represent the conscience of the international community in upholding the integrity of the covenant.<sup>12</sup>

Like the earlier proposals, the Uruguayan plan did not elicit significant support.<sup>13</sup> Those who opposed the creation of the post during the discussions on the implementation of the Draft

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8. *Id.* at 2-3.

9. *Draft First International Covenant on Human Rights and Measures of Implementation; Uruguay: Addition to the Joint Draft Resolution Submitted by Brazil, Turkey and the United States of America (A/C.3/L.76)*, U.N. GAOR 3d Comm., 5th Sess., Agenda Item 63, at 1, U.N. Doc. A/C.3/L.93 (1950) [hereinafter *Uruguayan Proposal*]. For a more detailed look at the Uruguayan proposal, see *Bases of the Proposal to Establish a United Nations Attorney-General for Human Rights: Memorandum Submitted by Uruguay*, U.N. GAOR 3d Comm., 6th Sess., Annex, Agenda Item 29, at 9, U.N. Doc. A/C.3/564 (1951).

10. *Uruguayan Proposal, supra* note 9, at 1.

11. *Id.*

12. MOSES MOSKOWITZ, *HUMAN RIGHTS AND WORLD ORDER: THE STRUGGLE FOR HUMAN RIGHTS IN THE UNITED NATIONS* 144 (1958).

13. See *Annotations on the Text of the Draft International Covenants on Human Rights*, U.N. GAOR, 10th Sess., pt. 2, Annexes, Agenda Item 28, at 84-85, U.N. Doc. A/2929 (1955).

International Covenant on Civil and Political Rights dismissed the plan as unworkable and premature.<sup>14</sup>

Another drive for the creation of a United Nations post, specifically for the protection of human rights, was initiated in 1963.<sup>15</sup> Jacob Blaustein, speaker for the Dag Hammarskjöld Memorial Lecture, called for the appointment of an independent officer to assume the role of United Nations High Commissioner for Human Rights.<sup>16</sup> Mr. Blaustein envisioned that the post could be used to facilitate the promotion and protection of human rights.<sup>17</sup> To this end, the proposed High Commissioner could, *inter alia*:

[L]end his good offices to governments and be available at their request to investigate situations where there have been alleged violations of human rights; he could assist underdeveloped countries in the organization of various institutions for the promotion of human rights . . . and he could assist the Commission on Human Rights in its review of the periodic reports from governments on human rights . . . .<sup>18</sup>

In response to Blaustein's proposal, the United Nations representative for Costa Rica made a formal appeal for the creation of a High Commissioner for Human Rights to the General Assembly.<sup>19</sup> The Costa Rican representative also asked the Commission on Human Rights to place the subject on its agenda during the Commission's twenty-first session in 1965.<sup>20</sup> The plan envisaged that the General Assembly would appoint a High Commissioner for Human Rights for a term of five years.<sup>21</sup> The Commissioner's proposed functions included, *inter alia*, the advancement of human rights, seeking the observance of the

14. *Id.*

15. Jacob Blaustein, *Human Rights: A Challenge to the United Nations and to Our Generation*, in *THE QUEST FOR PEACE: THE DAG HAMMARSKJÖLD MEMORIAL LECTURES 315* (Andrew W. Cordier & Wilder Foote eds., 1965).

16. *Id.* at 328-29.

17. *Id.*

18. *Id.* at 329.

19. See generally *Report of the Commission of Human Rights: Letter Addressed to the President of the Council by the Permanent Representative of Costa Rica*, U.N. ESCOR, 39th Sess., Agenda Item 25, U.N. Doc. E/L.1080 (1965).

20. See *Election of a United Nations High Commissioner for Human Rights: Communication from the Permanent Representative of Costa Rica to the United Nations*, U.N. ESCOR Hum. Rts. Comm., 21st Sess., U.N. Doc. E/CN.4/879/Add.2 (1965).

21. *Creation of Post of United Nations High Commissioner for Human Rights*, 1965 Y.B. on H.R. 494, 495, U.N. Sales No. 66.I.1 [hereinafter *Creation of Post (1965)*].

Universal Declaration of Human Rights, advising and assisting the Commission of Human Rights and other United Nations bodies on the periodic reports and communications of governments relating to human rights, reporting to the General Assembly through the Economic and Social Council, and preparing special reports upon request by any organ of the United Nations in the case of an urgent situation.<sup>22</sup> The Commission's preliminary discussion reflects the sharp ideological divisions that existed between Member States—divisions that shaped all developments within the international legal system throughout the Cold War era.<sup>23</sup>

During the 1966 discussions of the Commission, the Soviet Union representative criticized the Costa Rican plan.<sup>24</sup> The Soviet Union representative dismissed the plan as an outright affront to state sovereignty, which, in his view, was the bedrock of the international legal system.<sup>25</sup> He also rejected as empty idealism, the implicit notion of the proposal that one person in the guise of High Commissioner for Human Rights could resolve all questions pertaining to human rights that might arise under the numerous legal, philosophical and religious systems extant throughout the community of nations.<sup>26</sup> Mr. Nedbailo, representative of the Ukrainian Soviet Socialist Republic, characterized the Costa Rican model as "a kind of investigator enjoying extraterritorial privileges," which he deemed "contrary to the principles of sovereignty of States and of non-intervention in their internal affairs, which were the very foundation on which the United Nations rested and which Article 55 of the Charter considered the basis of the whole international equilibrium."<sup>27</sup>

Other responses to the proposal were generally favorable with respect to the creation of a High Commissioner for Human Rights. Opinions were, however, at odds regarding the purposes and

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22. *Id.* at 495.

23. For the Commission's preliminary discussions regarding the Costa Rican proposal, see U.N. ESCOR Hum. Rts. Comm., 22d Sess., 876th mtg., U.N. Doc. E/CN.4/SR.876 (1966) through U.N. ESCOR Hum. Rts. Comm., 22d Sess., 883d mtg., U.N. Doc. E/CN.4/SR.883 (1966). For a summary of the work of the General Assembly and the Economic and Social Council on the creation of a High Commissioner for Human Rights, see *Creation of Post (1965)*, *supra* note 21, at 494.

24. *Summary Record of the Eight Hundred and Eighty-first Meeting*, U.N. ESCOR Hum. Rts. Comm., 22d Sess., 881st mtg., at 6-7, U.N. Doc. E/CN.4/SR.881 (1966).

25. *Id.* at 7.

26. *Id.* at 7-8.

27. *Id.* at 7.

functions of such a post.<sup>28</sup> Mr. Juvigny, representative of France, for example, expressed some concern that the control of the implementation of human rights entails responsibilities that should be assigned to a collective body as opposed to an individual person.<sup>29</sup> Henceforth, he envisaged the creation of a new post narrowly defined to address human rights issues that were not reachable by established procedures or to remedy abuses in states to which existing procedures did not apply.<sup>30</sup>

The majority of the Commission voted to create a working group to undertake a study of questions pertaining to the creation of a human rights commissioner.<sup>31</sup> The working group was formed in 1966 and produced a study and a report on the matter.<sup>32</sup> Following the completion of the working group's study, the Human Rights Commission adopted the Costa Rican proposal.<sup>33</sup> The Commission directed the Economic and Social Council to submit its draft resolution to create a United Nations High Commissioner's Office for Human Rights to the General Assembly.<sup>34</sup> The draft resolution stated that "the Office [should] be so organized within the framework of the United Nations that the High Commissioner will possess a degree of independence and prestige required for the performance of his functions under the

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28. See generally *Summary Record of the Eight Hundred and Eightieth Meeting*, U.N. ESCOR Hum. Rts. Comm., 22d Sess., 880th mtg., U.N. Doc. E/CN.4/SR.880 (1966).

29. *Id.* at 7-9.

30. *Id.* at 8.

31. The Economic and Social Council unanimously adopted a resolution informing the General Assembly of the Commission's consideration of the proposed post and its establishment of a working group on the matter. See E.S.C. Res. 1163, U.N. ESCOR, 41st Sess., Supp. No. 1, 1445th plen. mtg., at 25-26, U.N. Doc. E/4261 (1966). The draft of the Resolution was sponsored by Canada, Dahomey, Pakistan, the Philippines, and Sweden, and was adopted by the Social Committee. See *Report of the Commission on Human Rights*, U.N. ESCOR Social Comm., 41st Sess., Agenda Item 21, U.N. Doc. E/AC.7/L.504 (1966). See also *Report of the Social Committee*, U.N. ESCOR, 41st Sess., Agenda Item 21, U.N. Doc. E/4261 (1966).

32. *Analytical and Technical Study Prepared by the Secretary-General under Paragraph 3 of Resolution 4 (XXII) of the Commission on Human Rights*, U.N. ESCOR Hum. Rts. Comm., U.N. Doc. E/CN.4/AC.21/L.1 (1966); *Report of the Working Group to Study the Proposal to Create the Institution of a United Nations High Commissioner for Human Rights*, U.N. ESCOR Hum Rts. Comm., 23d Sess., Provisional Agenda Item 5, U.N. Doc. E/CN.4/934 (1967).

33. The Human Rights Commission adopted the proposal by resolution. See E.S.C. Res. 14, U.N. ESCOR Hum. Rts. Comm., 23d Sess., reported in U.N. ESCOR, 42d Sess., Supp. No. 6, at 172, U.N. Doc. E/CN.4/940 (E/4322) (1967).

34. *Id.* at 172.

authority of the General Assembly.”<sup>35</sup> The Economic and Social Council considered the request and voted to transmit the Commission’s draft resolution to the General Assembly during its twenty-second session in 1967.<sup>36</sup> This vote came in the face of continued objections by a number of socialist states as well as doubts expressed by some African and Asian states.<sup>37</sup> The main grievance of India, Tanzania, and the U.S.S.R. was the failure to consider alternatives to the creation of a High Commissioner for Human Rights and the appropriateness of other means of implementing human rights.<sup>38</sup>

In 1968, in anticipation of the convening of the United Nations Conference in Tehran, the Commission to Study the Organization of Peace (“CSOP”) issued its Eighteenth Report, which was devoted exclusively to the protection of human rights within the United Nations system.<sup>39</sup> The Eighteenth Report called for the creation of a High Commissioner for Human Rights.<sup>40</sup> The CSOP, an organization of eminent international lawyers and experts on international organization, continued to press for the establishment of the office in its Twentieth Report in 1970.<sup>41</sup> Step 59 of the Twentieth Report regarding international measures of implementation for human rights reads:

The United Nations should establish the office of a United Nations High Commissioner for Human Rights to consider human rights problems on a global scale on the basis of reports of national committees, to render assistance to States which request his help, to receive communications from individuals and to discuss them with the governments concerned, and to present to the United Nations an annual report both on areas

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35. *Id.* at 195.

36. E.S.C. Res. 1237, U.N. ESCOR, 42d Sess., Supp. No. 1, at 18, U.N. Doc. E/4393 (1967).

37. A proposal submitted by India, Tanzania, and several socialist bloc countries was considered and rejected during debates in the Economic and Social Council. This proposal sought to place the consideration of alternatives to international mechanism for the implementation of human rights norms with a working group. See U.N. Doc. E/AC.7/L.516/Rev.1 (1967).

38. *Id.*

39. THE UNITED NATIONS AND HUMAN RIGHTS: EIGHTEENTH REPORT OF THE COMMISSION TO STUDY THE ORGANIZATION OF PEACE (1968).

40. *Id.* at 8.

41. THE UNITED NATIONS, THE NEXT TWENTY-FIVE YEARS: TWENTIETH REPORT OF THE COMMISSION TO STUDY THE ORGANIZATION OF PEACE 46 (1970).



in which progress has been achieved and on areas in which difficulties have been encountered.<sup>42</sup>

In 1967, the Economic and Social Council recommended that the General Assembly establish the post of High Commissioner, but each year the Assembly postponed a decision regarding the recommendation.<sup>43</sup> In 1970, at its twenty-fifth session, the Third Committee of the General Assembly held an extensive debate on the issue.<sup>44</sup> Again, a wide divergence of opinions existed regarding the establishment of the proposed office.<sup>45</sup> Opponents of the plan had two central points of contention: (1) the possibility that the post would duplicate the work of existing United Nations bodies in the human rights field, and (2) the potential for unwarranted interference in the internal affairs of sovereign states.<sup>46</sup> The single result which emerged from the debate was that the matter should be adjourned to the following session.<sup>47</sup> In 1971, the whole subject on the creation of the new human rights post

42. *Id.*

43. The General Assembly was unable to consider the proposal at its twenty-second session in 1967 and decided to discuss the matter at its next session. See G.A. Res 2437, U.N. GAOR, 23d Sess., Supp. No. 18, at 46, U.N. Doc. A/7218 (1969). In 1968, the Assembly again had to defer its consideration of the matter to its following session. *Id.* In Resolution 2437, the Assembly decided to give high priority to the consideration of the creation of the new office and requested the Secretary-General to provide the Assembly with all relevant information prepared in conformity with previous resolution of the Assembly, the Economic and Social Council, and the Commission on Human Rights. *Id.* at 46-47. For a summary of the work of the General Assembly on the matter during 1968, see *Question of Creation of Post of United Nations High Commissioner for Human Rights*, 1968 U.N.Y.B. 599-600, U.N. Sales No. E.70.I.1. In 1969, at its twenty-fourth session, the Assembly adopted Resolution 2595, which stated that the proposal would be taken up at its twenty-fifth session in 1970. See G.A. Res. 2595, U.N. GAOR, 24th Sess., Supp. No. 30, at 62, U.N. Doc. A/7630 (1970). Resolution 2595 also requested that the Secretary-General prepare an analytical study on the matter. *Id.* For a summary of the work of the General Assembly on the creation of a High Commissioner during 1969, see *Question of Creation of Post of United Nations High Commissioner for Human Rights*, 1969 U.N.Y.B. 545, U.N. Sales No. E.71.I.1.

44. For a summary of work of the General Assembly on the creation of a High Commissioner during 1970, see *Question of Creation of Post of High Commissioner for Human Rights*, 1970 U.N.Y.B. 565-66, U.N. Sales No. E.72.I.1 [hereinafter *Question of Creation of Post (1970)*]. In that year the Secretary-General submitted an analytical study on the issue to the Assembly. See *Report of the Secretary-General on the Work of the Organization*, U.N. GAOR, 25th Sess., Supp. No. 1, at 115, U.N. Doc. A/8001 (1970).

45. *Question of Creation of Post (1970)*, *supra* note 44, at 566.

46. *Id.*

47. *Id.*

was again deferred because no agreement could be reached on the matter.<sup>48</sup>

By its twenty-eighth session in 1973, the General Assembly again faced the question of the proposed High Commissioner in addition to related proposals calling for changes to existing human rights mechanisms, submitted as early as 1967, that were never addressed.<sup>49</sup> In addition, the Assembly had three new proposals to consider.<sup>50</sup> One of the new proposals was submitted to the General Assembly by Costa Rica, Sweden, and Uruguay.<sup>51</sup> The proposal was a three-power draft resolution, which gave the Assembly the authority to establish a High Commissioner for Human Rights to promote the universal protection of human rights. One function of the resolution was to create a right of access to communications concerning human rights in order to bring these matters to the attention of the governments or states concerned.<sup>52</sup> The principal objection among those speaking

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48. For a summary of the work of the General Assembly and the Economic and Social Council on the creation of a High Commissioner during 1971, see *Creation of Post of United Nations High Commissioner for Human Rights*, 1971 U.N.Y.B. 436-37, U.N. Sales No. E.73.I.1.

49. These earlier proposals included the text of the draft resolution recommended by the Economic and Social Council in 1967; amendments to that resolution submitted by Tanzania; the text of a ten-power draft resolution submitted to the Assembly in 1969 by Afghanistan, Canada, Costa Rica, Iran, Lesotho, Madagascar, the Netherlands, the Philippines, Sweden, and Uruguay; and texts of two draft resolutions submitted by Saudi Arabia in 1969. *Creation of Post of United Nations High Commissioner for Human Rights: Amendments to Council Resolution 1237(XLII) proposed by United Republic of Tanzania*, U.N. GAOR 28th Sess., Annexes II-IV, Prelim. List Item 57, U.N. Doc. A/9074 (1973).

50. The first of the three new proposals was a draft resolution submitted by Costa Rica, Sweden, and Uruguay. See *Costa Rica and Sweden: Draft Resolution*, U.N. GAOR 3d Comm., 28th Sess., Agenda Item 57, U.N. Doc. A/C.3/L.2075 (1973). For the financial and administrative implications of this draft resolution and a Note by the Secretary-General on the three-power draft text, see *Administrative and Financial Implications of the Draft Resolution Contained in Document A/C.3/L.2075*, U.N. GAOR 28th Sess., Agenda Item 57, U.N. Doc. A/C.3/L.2081 (1973). The second proposal was a text sponsored by Bulgaria and Democratic Yemen. See *Bulgaria and Democratic Yemen: Draft Resolution*, U.N. GAOR 3d Comm., 28th Sess., Agenda Item 57, U.N. Doc. A/C.3/L.2092 (1973). The last of the new proposals was a draft resolution, sponsored by Ireland, that was approved by the Third Committee on December 4, 1973, after Iraq made revisions and an amendment. See *Ireland: Draft Resolution*, U.N. GAOR 3d Comm., 28th Sess., Agenda Item 57, U.N. Docs. A/C.3/L.2079 and A/C.3/L.2079/Rev.1 (1973); *Iraq: Amendments to the Draft Resolution Contained in Document A/C.3/L.2079/Rev.1*, U.N. GAOR 3d Comm., 28th Sess., Agenda Item 57, U.N. Doc. A/C.3.L.2093/Rev.1 (1973).

51. *Costa Rica and Sweden: Draft Resolution*, *supra* note 50, at 1.

52. *Id.* at 2.

against the proposed draft, and the new office in general, was the fear of compromise of the doctrine of state sovereignty.<sup>53</sup>

Indeed, one of the proposed texts, if adopted, would have ended any further consideration by the General Assembly of a High Commissioner for Human Rights.<sup>54</sup> Opposing states relied upon Article 2(7) of the U.N. Charter for legal support.<sup>55</sup> Article 2(7) protects states from external interference in their internal affairs.<sup>56</sup> Other reactions centered on the perceived inability of such an official to have any effect on the implementation of international human rights norms, as well as the prohibitive costs of the post.<sup>57</sup>

During the 1973 Assembly debates on the creation of a High Commissioner for Human Rights, those states in favor of the proposal pointed to the advances made in the protection of human rights and the need to continue to press for improvements where human rights problems persisted.<sup>58</sup> Moreover, these states argued that a High Commissioner could constitute a moral authority and could exercise the functions of the office in an independent and impartial manner.<sup>59</sup>

The third proposal, an Irish text,<sup>60</sup> was approved by the Third Committee after several amendments and revisions and was subsequently adopted by the General Assembly in Resolution 3136.<sup>61</sup> In the Resolution, the Assembly undertook "to keep under its review the consideration of alternative approaches and ways and means within the United Nations system for improving the effective enjoyment of human rights and fundamental freedoms" and placed this specific formulation of the matter on its

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53. The debate in the Third Committee took place during meetings 2047-2049. *Creation of Post of United Nations High Commissioner for Human Rights*, 1973 U.N.Y.B. 564, 577, U.N. Sales No. E.75.I.1 [hereinafter *Creation of Human Rights Post (1973)*]. For a summary of those discussions, see *id.* at 564-66. For further elaboration, see *Report of the Third Committee*, U.N. GAOR 3rd Comm., 28th Sess., Agenda Item 57, U.N. Doc. A/9393 (1973).

54. See *Bulgaria and Democratic Yemen: Draft Resolution*, *supra* note 50, at 1.

55. U.N. CHARTER art. 2, ¶ 7. See also *Creation of Human Rights Post (1973)*, *supra* note 53, at 565.

56. U.N. CHARTER art. 2, ¶ 7.

57. *Creation of Human Rights Post (1973)*, *supra* note 53, at 565-66.

58. *Id.* at 566.

59. *Id.*

60. *Ireland: Draft Resolution*, *supra* note 50, at 1.

61. G.A. Res. 3136, U.N. GAOR, 28th Sess., Supp. No. 30, at 80, U.N. Doc. A/9030 (1974).

provisional agenda item for the next session.<sup>62</sup> There was, however, no express mention in the Resolution of the creation of a High Commissioner for Human Rights.

At its twenty-ninth session in 1974, the General Assembly adopted a resolution concerning the improvement of the effective enjoyment of fundamental human rights and freedoms.<sup>63</sup> Resolution 3221 requested the Secretary-General to solicit the views of Member States, specialized agencies, and regional inter-governmental organizations on alternative approaches for advancing the cause of human rights in the international community.<sup>64</sup> In addition, non-governmental groups with consultative status in the Economic and Social Council were invited to submit relevant material to the Secretary-General, provided that "such material will not be politically motivated contrary to the principles of the Charter of the United Nations."<sup>65</sup> Resolution 3221 therefore signified a shift in the focus of furthering the implementation of human rights through the creation of a High Commissioner. The Assembly chose to address the issue of advancing human rights in broad terms without specifying its preferred approach. The Assembly made no implicit suggestion regarding its chosen method to improve the protection of human rights in the international community.

The reports received pursuant to Resolution 3221 came before the General Assembly at its thirty-second session in 1977.<sup>66</sup> The replies of Member States, specialized agencies, regional inter-

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62. *Id.*

63. G.A. Res. 3221, U.N. GAOR, 29th Sess., Supp. No. 31, at 84, U.N. Doc. A/9631 (1974). The draft resolution was proposed in the Third Committee by the United Kingdom. The proposal was approved by consensus on October 28, 1974, with amendments drafted by the sponsor and the Soviet Union and an oral amendment by Saudi Arabia. See U.N. GAOR, 3d Comm., U.N. Docs. A/C.3/L.2111, A/C.3/L.2111/Rev.1, and A/C.3/L.2111/Rev.1/Corr.1. See also *Report of the Third Committee (part 1) on the Report of the Economic and Social Council, Draft Resolution IV*, U.N. GAOR, 3d Comm., U.N. Docs. A/9829 and A/9829/Corr.1. For a summary of the work of the General Assembly on the creation of a High Commissioner during 1974, see *Effective Enjoyment of Human Rights and Fundamental Freedoms*, 1974 U.N.Y.B. 680, U.N. Sales No. E.76.I.1.

64. See G.A. Res. 3221, *supra* note 63, at 84.

65. This clause was added as an oral amendment by Saudi Arabia. See *Effective Enjoyment of Human Rights and Fundamental Freedoms*, *supra* note 63, at 680.

66. See *Alternative Approaches and Ways and Means Within the United Nations System for Improving the Effective Enjoyment of Human Rights and Fundamental Freedoms: Report of the Secretary-General*, U.N. GAOR, 32d Sess., Provisional Agenda Item 76, U.N. Doc. A/32/178 (1977).

governmental organizations, and non-governmental organizations concerned the broad range of subjects encompassed under the heading ("Alternative Approaches and Ways to Improve the Effective Enjoyment of Human Rights and Fundamental Freedoms.")<sup>67</sup> Their responses indicated that there was some interest in the creation of a High Commissioner for Human Rights.<sup>68</sup> During the thirty-second session, the General Assembly did not address the matter of establishing a High Commissioner in any detail, but instead continued to encourage the advancement of human rights in the international community in extremely broad terms.<sup>69</sup> The Assembly requested that the Commission on Human Rights undertake an analysis of the alternative approaches to improve the effective enjoyment of human rights at its next session.<sup>70</sup> There was a draft resolution before the Third Committee sponsored by twenty-four States that called on the General Assembly to establish a High Commissioner for Human Rights, and enumerated the functions to be entrusted to that office.<sup>71</sup> The text and all of its accompanying documents, however, were ultimately transmitted to the Commission for consideration as a proposed draft at the Assembly's next session.<sup>72</sup> This decision was made notwithstanding the terms of the Resolution, which required the Assembly to ensure that the new office would not prejudice existing human rights machinery and would not present problems of coordination of activities with other United Nations bodies.<sup>73</sup> Views concerning the creation of the office of High Commissioner, therefore, remained widely divergent and some states even urged deferment of the entire matter until such time as

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67. *Id.* at 5.

68. *Id.* at 24-25.

69. For a summary of the work of the General Assembly on the creation of a High Commissioner during 1977, see *Alternative Approaches and Ways to Improve the Effective Enjoyment of Human Rights and Fundamental Freedoms*, 1977 U.N.Y.B. 722-24, U.N. Sales No. E.79.I.1 [hereinafter *Alternative Approaches* (1977)].

70. See G.A. Res. 32/130, U.N. GAOR, 32d Sess., Supp. No. 45, at 150, U.N. Doc. A/32/45 (1977).

71. For the 24-power draft resolution proposing that the General Assembly establish a High Commissioner for Human Rights, which was debated in the Third Committee, see *Alternative Approaches and Ways and Means Within the United Nations System for Improving the Effective Enjoyment of Human Rights and Fundamental Freedoms: Revised Draft Resolution*, U.N. GAOR 3d Comm., 32d Sess., Agenda Item 76, U.N. Doc. A/C.3/32/L.25/Rev.1 (1977).

72. See *Alternative Approaches* (1977), *supra* note 69, at 724.

73. G.A. Res. 32/130, *supra* note 70, at 150.

the Secretary-General deemed there to be a more receptive atmosphere in the General Assembly regarding the proposal.<sup>74</sup>

The Commission on Human Rights and the Third Committee of the General Assembly turned to the proposal to create a High Commissioner once more in 1979.<sup>75</sup> Although the Third Committee considered the matter, no agreement could be reached and the General Assembly resolved to defer the discussion of the establishment of a High Commissioner until the following session.<sup>76</sup>

During the Third Committee debate in 1979, supporters of the creation of the human rights post argued that a High Commissioner would play a useful role based upon principles of conciliation and mutual cooperation, in contrast to the argument that a High Commissioner would be interfering in the domestic affairs of States.<sup>77</sup> A Canadian proposal suggested that the Secretary-General have the power to appoint a Special Representative for Human Rights and Humanitarian Affairs, at the level of Under-Secretary-General.<sup>78</sup> Good-offices functions would be assigned to the Special Representative by the Secretary-General.<sup>79</sup> This, the Canadian representative argued, would pose no problem of interference in the domestic affairs of states as the assigned duties would not exceed the competence of the Secretary-General.<sup>80</sup> In

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74. See, e.g., *German Democratic Republic and Madagascar: Amendments to Draft Resolution A/C.3/32/L.25/Rev.1*, U.N. GAOR 3d. Comm., 32d Sess., Agenda Item 76, U.N. Docs. A/C.3/32/L.35 and A/C.3/32/L.35/Rev.1 (1977). See also amendments and revised amendments submitted by *Angola, Benin, Bulgaria, Burundi, Mongolia, and Ukrainian Soviet Socialist Republic: Amendments to the Resolution Contained in Document A/C.3/32/L.25/Rev.1*, U.N. GAOR 3d. Comm., 32d Sess., Agenda Item 76, U.N. Docs. A/C.3/32/L.36 and A/C.3/32/L.36/Rev.1 (1977).

75. For a summary of the work of the General Assembly and the Commission of Human Rights during 1979, see *Proposal for High Commissioner for Human Rights, 1979* U.N.Y.B. 851-52, U.N. Sales No. E.81.I.1 [hereinafter *Proposal for Human Rights Commissioner (1979)*].

76. See G.A. Res. 34/38, U.N. GAOR 3d. Comm., 34th Sess., U.N. Doc. A/34/704 (1979).

77. See *Proposal for Human Rights Commissioner (1979)*, *supra* note 75, at 851.

78. See *Canada: Draft Resolution*, U.N. GAOR 3d. Comm., 34th Sess., Agenda Item 87, U.N. Doc. A/C.3/34/L.18 (1979). For amendments to the Canadian draft resolution, see *Bulgaria and German Democratic Republic: Amendments to the Canadian Draft A/C.3/34/L.18*, U.N. GAOR 3d. Comm., 34th Sess., U.N. Doc. A/C.3/34/L.23 (1979). For administrative and financial implications of the Canadian draft resolution and for a statement by the Secretary-General, see U.N. GAOR 3d Comm., 34th Sess., Agenda Items 87 and 98, U.N. Doc. No. A/C.3/34/L.26 (1979).

79. See *Canada: Draft Resolution*, *supra* note 78, at 1.

80. See *Proposal for Human Rights Commissioner (1979)*, *supra* note 75, at 852.

view of the weak support for the plan, Canada withdrew its proposal.<sup>81</sup>

The constellation of ideas supporting the creation of a High Commissioner for Human Rights remained dormant throughout the 1970s despite repeated efforts to advance the matter to the forefront of the General Assembly and the Economic and Social Council agendas. In 1980, the General Assembly once again directed the Commission on Human Rights to discuss at its next session the establishment of a United Nations High Commissioner for Human Rights.<sup>82</sup> The General Assembly requested that the Commission submit a report on its work regarding the creation of such a post.<sup>83</sup> This marked the beginning of fourteen long years of renewed discussion and study about the prospect of designating a High Commissioner for Human Rights to take the lead in protecting human rights in the United Nations system.

When the Commission resumed its discussion on the creation of a High Commissioner during the 1980s, it encountered the same reluctance and lack of consensus surrounding the issue that had been evident in previous years.<sup>84</sup> The Commission was unable to reach a decision regarding the establishment of the proposed new office during its thirty-seventh session.<sup>85</sup>

The General Assembly responded to this unsatisfactory result at its next session by requesting that the Commission consider the question of the proposed post "with the attention it deserve[s]" and submit a report on its deliberations and conclusions to the thirty-seventh session of the General Assembly.<sup>86</sup> The Third Committee severely scrutinized the draft resolution concerning the request.<sup>87</sup> A number of countries criticized the creation of a High

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81. *Id.*

82. *See Further Promotion and Encouragement of Human Rights and Fundamental Freedoms*, 1980 Y.B. on Hum. Rts. 256, U.N. Sales No. E.85.XIV.8.

83. *Id.* at 257.

84. For a summary of the work of the Commission on the proposed High Commissioner during 1980, see *id.* at 256-57.

85. *Report of the Commission on Human Rights*, U.N. ESCOR, 37th Sess., Supp. No. 5, at 224, U.N. Doc. E/1981/25 (1981).

86. *Proposal for a U.N. High Commissioner for Human Rights*, 1981 U.N.Y.B. 929, 930, U.N. Sales No. E.84.I.1. For a summary of the work of the General Assembly, the Commission, and the Sub-Commission on the creation of a High Commissioner in 1981, see *id.* at 929-32.

87. For the debates concerning the draft resolution in the Third Committee of the General Assembly, see *Summary Record of the 35th Meeting*, U.N. GAOR 3d Comm., 36th Sess., 35th Mtg., at 3-4, U.N. Doc. A/C.3/36/SR.35 (1981); *Summary Record of the 37th*

Commissioner for Human Rights because they feared it would create the opportunity for interference in the domestic affairs of states.<sup>88</sup> The Soviet Union took the view that the proposed office would divert the attention of the international community away from more urgent human rights problems in South Africa and in the territories occupied by Israel.<sup>89</sup> Other speakers believed that existing human rights machinery was adequate or that improvements should be made to the existing regime before adding to it.<sup>90</sup>

Notwithstanding the reticence of some speakers toward continued consideration of the creation of a new High Commissioner, there was enough support to enable passage of a strongly worded resolution that urged the Commission to continue work on the proposal.<sup>91</sup> Costa Rica took the view that an independent High Commissioner with expertise in the human rights field could improve the response of the international community to human rights abuses.<sup>92</sup> Other representatives argued that the post would complement existing machinery.<sup>93</sup> One representative stated that activities of the High Commissioner should not be considered an infringement on the sovereignty of states.<sup>94</sup> The General Assembly resolved to renew discussion of the matter during the next session.<sup>95</sup>

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*Meeting*, U.N. GAOR 3d Comm., 36th Sess., 37th Mtg., at 9-16, U.N. Doc. A/C.3/36/SR.37 (1981); *Summary Record of the 38th Meeting*, U.N. GAOR 3d Comm., 36th Sess., 38th Mtg., at 5, 8-11, U.N. Doc. A/C.3/36/SR.38 (1981); *Summary Record of the 39th Meeting*, U.N. GAOR 3d Comm., 36th Sess., 39th Mtg., *passim*, U.N. Doc. A/C.3/36/SR.39 (1981); *Summary Record of the 40th Meeting*, U.N. GAOR 3d Comm., 36th Sess., 40th Mtg., *passim*, U.N. Doc. A/C.3/36/SR.40 (1981); *Summary Record of the 42d Meeting*, U.N. GAOR 3d Comm., 36th Sess., 42d Mtg., at 1-3, U.N. Doc. A/C.3/36/SR.42 (1981); *Summary Record of the 43d Meeting*, U.N. GAOR 3d Comm., 36th Sess., 43d Mtg., at 2-7, U.N. Doc. A/C.3/36/SR.43 (1981); *Summary Record of the 55th Meeting*, U.N. GAOR 3d Comm., 36th Sess., 55th Mtg., at 16-28, U.N. Doc. A/C.3/36/SR.55 (1981); *Summary Record of the 64th Meeting*, U.N. GAOR 3d Comm., 36th Sess., 64th Mtg., at 9-13, U.N. Doc. A/C.3/36/SR.64 (1981); *Provisional Verbatim Record of the Ninety-Seventh Meeting*, U.N. GAOR, 36th Sess., 97th Mtg., U.N. Doc. A/36/PV.97 (1981).

88. See, e.g., *Summary Record of the 37th Meeting*, *supra* note 87, at 9-11, 13; *Summary Record of the 39th Meeting*, *supra* note 87, at 3, 8-9.

89. See, e.g., *Summary Record of the 39th Meeting*, *supra* note 87, at 6-7.

90. See *id.* at 11-13, 14. See also *Summary Record of the 40th Meeting*, *supra* note 87, at 5-6.

91. See *Summary Record of the 64th Meeting*, *supra* note 87, at 10.

92. See *Summary Record of the 55th Meeting*, *supra* note 342, at 20.

93. See *Summary Record of the 37th Meeting*, *supra* note 87, at 14-16.

94. *Id.* at 13-14.

95. See *Summary Record of the 64th Meeting*, *supra* note 87, at 10.



In 1981, the Commission on Human Rights decided to inform the General Assembly, through the Economic and Social Council, that it was unable to reach a decision on the creation of the proposed post.<sup>96</sup> The Sub-Commission on the Prevention of Discrimination and the Protection of Minorities was more enthusiastic in its response to the proposals than the Commission on Human Rights.<sup>97</sup> By its Resolution of September 10, 1981, the Sub-Commission decided to consider at its next session the beneficial role that such an office could play in the worldwide advancement of human rights.<sup>98</sup> Moreover, the Sub-Commission resolved to inform the Commission of its certitude that the establishment of a High Commissioner for Human Rights was highly desirable and that such a position could play a significant role in the United Nations system.<sup>99</sup>

In 1982, at its thirty-eighth session, the Commission on Human Rights decided to establish a working group to continue assessment of the proposal for a new human rights post.<sup>100</sup> The Commission also requested that the Sub-Commission submit a first study outlining the possible parameters for the mandate of a human rights commissioner.<sup>101</sup>

The Sub-Commission responded to the Commission's request by submitting a report of its working group that enumerated the possible terms of reference for a High Commissioner.<sup>102</sup> The

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96. *Report of the Commission on Human Rights, supra* note 85, at 224.

97. For a summary of the work of the Sub-Commission on the creation of a High Commissioner during 1981, see *Creation of a Post of High Commissioner for Human Rights*, 1981 Y.B. on Hum. Rts. 285, U.N. Sales No. E.88.XIV.5.

98. *Id.* See also *E.S.C. Sub-Comm. Res. 12, Report of the Sub-Commission on Prevention of Discrimination and Protection of Minorities at Its Thirty-Fourth Session*, U.N. ESCOR Hum. Rts. Comm., 34th Sess., at 86, U.N. Doc. E/CN.4/1512 (E/CN.4/Sub.2/495) (1981).

99. See *E.S.C. Sub-Comm. Decision 3, Report of the Sub-Commission on Prevention of Discrimination and Protection of Minorities at Its Thirty-Fourth Session*, U.N. ESCOR Hum. Rts. Comm., 34th Sess., at 95, U.N. Doc. E/CN.4/1512 (E/CN.4/Sub.2/495) (1981).

100. For a summary of the work of the Commission, Sub-Commission, and General Assembly on the creation of a High Commissioner during 1982, see *Proposed Post of U.N. High Commissioner for Human Rights*, 1982 U.N.Y.B. 1099, 1101, U.N. Sales No. E.85.I.1. See also *Creation of a Post of High Commissioner for Human Rights*, 1982 Y.B. on Hum. Rts. 258, U.N. Sales No. E.88.XIV.6.

101. *Proposed Post of U.N. High Commissioner for Human Rights (1982)*, *supra* note 100, at 1101.

102. *Report of the Informal Working Group on the Question of the Establishment of a United Nations High Commissioner for Human Rights*, U.N. ESCOR Hum. Rts. Comm., 35th Sess., Agenda Item 4, at 1-11, U.N. Doc. No. E/CN.4/Sub.2/1982/36 (1982). The Sub-

functions and responsibilities to be accorded to a human rights commissioner as set forth in the report are to promote and protect human rights; to give special attention to ensuring civil, political, economic, social, cultural, and other rights recognized by the U.N. Charter and the General Assembly; to initiate contacts with governments to safeguard or assist in restoring human rights, especially during emergencies; and to keep under consideration, as subjects of particular concern, egregious violations such as apartheid, racism, racial discrimination, colonial domination, foreign domination, and alien subjugation.<sup>103</sup>

Other responsibilities set forth in the report of the Sub-Commission included consulting with governments regarding gross violations of human rights and establishing dialogue between the High Commissioner, the Centre for Human Rights, and other U.N. bodies.<sup>104</sup> The Sub-Commission suggested that a temporary inter-agency taskforce be established to facilitate coordinated action amongst the various bodies concerned with human rights violations.<sup>105</sup>

The recommendations of the Sub-Commission also included procedural guidelines for the post of High Commissioner, such as annual reporting by the office to the General Assembly, the Economic and Social Council, and the Commission.<sup>106</sup> Officers of the Commission were to be designated as an advisory committee to the High Commissioner.<sup>107</sup> The officers would be nominated by the Secretary-General and elected by the General Assembly for a period of five years with the possibility of serving for no more than two consecutive terms.<sup>108</sup>

In 1983, the Commission on Human Rights discussed the creation of a High Commissioner for Human Rights again at its thirty-ninth session.<sup>109</sup> A resolution of the Commission during

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Commission established an informal working group to prepare the report on the proposed terms of reference for the new office, and the working group submitted its report to the Sub-Commission. *Id.* at 1.

103. *Id.* at 7.

104. *Id.* at 5.

105. *Id.* at 3.

106. *Id.* at 9-10.

107. *Id.* at 9.

108. *Id.*

109. For a summary of the work of the Commission and the Sub-Commission on the proposed High Commissioner during 1983, see *Proposed U.N. High Commissioner for Human Rights*, 1983 U.N.Y.B. 867, U.N. Sales No. E.86.I.1. See also *Creation of a Post*

that year took note of the Sub-Commission's previous proposals concerning the terms of reference for the High Commissioner and invited the Sub-Commission to resubmit those suggestions during the next session.<sup>110</sup> The Commission also noted in its resolution that differing views on the creation of the post were expressed during the discussions of the working group.<sup>111</sup> The Sub-Commission discussed the issue and adopted a resolution setting forth arrangements for the proposed office of High Commissioner.<sup>112</sup>

At its session in 1984, the Commission on Human Rights considered two specific proposals on the creation of a High Commissioner for Human Rights.<sup>113</sup> One draft resolution, sponsored by Columbia, Costa Rica, and Peru, consisted of a recommendation for the creation of the office and included a list of functions, responsibilities, and administrative arrangements for the post.<sup>114</sup> A proposal by Brazil advocated the establishment of an open-ended working group of the Commission to continue to follow the proposal.<sup>115</sup> No decision was taken regarding the draft resolutions and, following a motion by Yugoslavia, the Commission adjourned the debate until its next session.<sup>116</sup>

In subsequent years the General Assembly continued to consider the question of the protection of human rights under the agenda item entitled "Alternative Approaches and Ways and

*of High Commissioner for Human Rights*, 1983 Y.B. on Hum. Rts. 262, U.N. Sales No. E.88.XIV.7.

110. See *Proposed U.N. High Commission for Human Rights (1983)*, *supra*, note 110, at 867.

111. *Id.*

112. See *Report of the Sub-Commission on Prevention of Discrimination and Protection of Minorities on Its Thirty-Sixth Session*, U.N. ESCOR Hum. Rts. Comm., 36th Sess., at 11-14, U.N. Doc. E/CN.4/1984/3 (E/CN.4/Sub.2/1983/43) (1984).

113. The two proposals were *Costa Rica: Draft Resolution*, U.N. ESCOR Hum. Rts. Comm., 40th Sess., Agenda Item 11, U.N. Doc. E/CN.4/1984/L.23 (1984) and *Brazil: Draft Resolution*, U.N. ESCOR Hum. Rts. Comm., 40th Sess., Agenda Item 11, U.N. Doc. E/CN.4/1984/L.89 (1984). For a summary of the work by the Commission and Sub-Commission on the proposed High Commissioner for Human Rights during 1984, see *Proposed U.N. High Commissioner for Human Rights*, 1984 U.N.Y.B. 843, U.N. Sales No. E.87.I.1 [hereinafter *Proposed Human Rights Commissioner (1984)*].

114. See *Costa Rica: Draft Resolution*, *supra* note 113, at 1-3. Amendments to the draft were proposed by Cuba and the German Democratic Republic. See *Cuba: Amendments to Draft Resolution E/CN.4/1984/L.23*, U.N. ESCOR Hum. Rts. Comm., 40th Sess., Agenda Item 11, at 1, U.N. Doc. No. E/CN.4/1984/L.102 (1984) and *German Democratic Republic: Amendments to Draft Resolution E/CN.4/1984/L.23*, U.N. ESCOR Hum. Rts. Comm., 40th Sess., Agenda Item 11, at 1-2, U.N. Doc. No. E/CN.4/1984/L.90 (1984).

115. See *Brazil: Draft Resolution*, *supra* note 113, at 2.

116. See *Proposed Human Rights Commissioner (1984)*, *supra* note 113, at 843.

Means Within the United Nations System for Improving the Effective Enjoyment of Human Rights and Fundamental Freedoms.”<sup>117</sup> The General Assembly, on the recommendation of the Third Committee, adopted resolutions in successive sessions that highlighted the human rights activities of the United Nations.<sup>118</sup> Yet the General Assembly did not deal directly with specific ways to improve human rights protection and the role the United Nations with respect to human rights violations throughout the world.<sup>119</sup> The resolutions that the General Assembly adopted in order to strengthen U.N. human rights mechanisms did not reflect the desire among some states to adopt proposals that would strengthen and further develop existing organs to ensure the protection of human rights.<sup>120</sup> Vague concepts concerning the international framework for the promotion of human rights inserted into the resolutions were void of meaningful substance.<sup>121</sup> The weakly worded resolutions reaffirmed the need for the international community to take further measures to ensure the implementation of civil, political, economic, social, and cultural rights, including the right to development.<sup>122</sup> The resolutions did not, however, include substantive measures that would improve implementation. Rather, their hortatory language called for international cooperation in the sphere of human rights with a commitment to consider the matter again during the following years.<sup>123</sup> This pattern repeated itself until a fresh impetus pushed

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117. For a summary of General Assembly action on the Agenda Item, see *Advancement of Human Rights (1985)*, 1985 U.N.Y.B. 882-85, U.N. Sales No. E.89.I.1.; *Advancement of Human Rights (1986)*, 1986 U.N.Y.B. 725-28, U.N. Sales No. E.90.I.1.; *Advancement of Human Rights (1987)*, 1987 U.N.Y.B. 778-80, U.N. Sales No. E.91.I.1.

118. See, e.g., G.A. Res. 40/124, U.N. GAOR 3d Comm., 40th Sess., Agenda Item 107, at 1, U.N. Doc. A/C.3/40/L.40 (1985); G.A. Res. 41/131, U.N. GAOR 3d Comm., 41st Sess., Agenda Item 101, at 1, U.N. Doc. A/C.3.41/L.41/Rev.1 (1986); G.A. Res. 42/119, U.N. GAOR 3d Comm., 42d Sess., Agenda Item 105, U.N. Doc. A/C.3/42/L.58/Rev.1 (1987).

119. See *Advancement of Human Rights (1985)*, *supra* note 117, at 885; *Advancement of Human Rights (1986)*, *supra* note 117, at 727; *Advancement of Human Rights (1987)*, *supra* note 117, at 780.

120. *Id.*

121. See, e.g., G.A. Res. 40/124, *supra* note 118, at ¶¶ 2, 7, 9, 15, 16; *Advancement of Human Rights (1985)*, *supra* note 117, at 885.

122. *Id.*

123. See, e.g., G.A. Res. 45/96, U.N. GAOR, 45th Sess., Supp. No. 49, at 313, U.N. Doc. A/45/49 (1990); G.A. Res. 46/117, U.N. GAOR, 46th Sess., Supp. No. 49, at 319, U.N. Doc. A/46/49 (1991); G.A. Res. 47/137, U.N. GAOR, 47th Sess., Supp. No. 49, at 370, U.N. Doc. A/47/49 (1992); G.A. Res. 48/123, U.N. GAOR, 48th Sess., Supp. No. 49, at 376, U.N. Doc. A/48/49 (1993).

the consideration of human rights issues to the forefront of the agenda of the world community.

### III. CREATION OF THE OFFICE OF HIGH COMMISSIONER FOR THE PROMOTION AND PROTECTION OF ALL HUMAN RIGHTS

In recent years, the General Assembly has expressed a renewed interest in the establishment of a High Commissioner for Human Rights. The end of the Cold War and the continuing democratization of Eastern Europe have helped to create an atmosphere far more amenable to the creation of an office endowed with overseeing the implementation of human rights obligations. In addition to its concern for the implementation of human rights norms and recommendations to strengthen the monitoring capacities of the United Nations system vis-a-vis human rights abuses, the Vienna Declaration and Programme of Action calls on the General Assembly to consider creating a High Commissioner for Human Rights.<sup>124</sup> The recommendations set forth in the Vienna Declaration and Programme of Action provided the impetus for the General Assembly's rejuvenation of the proposal to create a new human rights post.

The Vienna Declaration and Programme of Action is derived from many sources, namely, three regional declarations adopted during United Nations regional meetings in Tunis, San Jose and Bangkok,<sup>125</sup> three preparatory meetings hosted by the United Nations in Geneva,<sup>126</sup> as well as contributions from governments,

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124. See *Vienna Declaration*, *supra* note 2, at 33-34.

125. The United Nations Member states held regional meetings to exchange views and voice their concerns regarding human rights situations around the world. Representatives of African states met at Tunis from November 2-6, 1992. *Report of the Regional Meeting for Africa of the World Conference on Human Rights*, U.N. GAOR World Conf. on Hum. Rts., at 1, U.N. Doc. A/CONF.157/AFRM/14 (A/CONF.157/PC/157) (1992) [hereinafter *African Report*]. The representatives of the Latin American and Caribbean states held a regional meeting in San Jose, Costa Rica from January 18-22, 1993. See *Recommendations to Ensure the Effective Enjoyment of All Human Rights and Improve the Coordination of the Mechanisms of the United Nations and Regional Systems, As Well As the Relationship Between Them, As Appropriate*, U.N. GAOR World Conf. on Hum. Rts., Regional Mtg. for Latin American and the Caribbean, Provisional Agenda Item 11, at 1, U.N. Doc. A/CONF.157/LACRM/8 (1992). The representatives of Asian States met in Bangkok from March 29 to April 2, 1993. See *Adoption of the Report of the Regional Meeting*, U.N. GAOR World Conf. on Hum. Rts., Regional Mtg. for Asia, Agenda Item 8, at 1, U.N. Doc. A/CONF.157/ASRM/4 (1993).

126. Four Preparatory Committees [hereinafter *PrepComs*] met in Geneva prior to the Vienna Conference. The *PrepComs* were held on Sept. 9-13, 1991; Mar. 30-Apr. 10, 1992;

inter-governmental and non-governmental organizations, and studies prepared by independent experts. Central to many of the proposals submitted at Vienna Conference preparatory meetings was the recommendation that a High Commissioner for Human Rights or equivalent post be established within the United Nations to oversee the protection of human rights and fundamental freedoms throughout the world.<sup>127</sup>

The San Jose Declaration on Human Rights ("San Jose Declaration") was formulated by representatives of Latin-American and Caribbean countries as part of their preparation for the World Conference on Human Rights.<sup>128</sup> The San Jose Declaration was one of the three regional declarations<sup>129</sup> and called on the World Conference to "consider the possibility of asking the General Assembly to study the feasibility of establishing a United Nations Permanent Commissioner for Human Rights."<sup>130</sup> This

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Sept. 14-18, 1992, and Apr. 19-May 8, 1993. See *Agenda, Rules of Procedure, Dates, Duration, Venue of and Participation at the World Conference*, U.N. GAOR World Conf. on Hum. Rts. Preparatory Comm., 1st Sess., Provisional Agenda Items 5, 6 & 7, at 2, U.N. Doc. A/CONF.157/PC/6/Add.4 (1991).

127. See, e.g., *Status of Preparation of Publications, Studies and Documents for the World Conference (Note Verbale dated 23 April 1993 from the Permanent Mission of Denmark to the United Nations Office at Geneva)*, U.N. GAOR World Conf. on Hum. Rts. Preparatory Comm., 4th Sess., Agenda Items 5 and 9, at 11, U.N. Doc. A/CONF.157/PC/87 (1993) [hereinafter *Note Verbale from the Permanent Mission of Denmark*] (urging that the post of Director of the Center for Human Rights be upgraded to a High Commissioner for Human Rights); *Reports on Other Meetings and Activities (Contribution by the Council of Europe)*, U.N. GAOR World Conf. on Hum. Rts. Preparatory Comm., 4th Sess., Provisional Agenda Item 6, at 47, U.N. Doc. A/CONF.157/PC/66 (1993) (stating that the time had arrived to create a High or Special Commissioner for Human Rights); *Report on other Meetings and Activities (contribution Submitted by the Romanian Institute for Human Rights)*, U.N. GAOR World Conf. on Hum. Rts. Preparatory Comm., 4th Sess., Agenda Item 6, at 2, U.N. Doc. A/CONF.157/PC/42/Add.8 (1993) [hereinafter *The Bucharest Symposium*] (expressing the hope that the U.N. Centre for Human Rights be given greater authority and be directed by a High Commissioner for Human Rights).

128. *Final Declaration of the Regional Meeting for Latin American and the Caribbean of the World Conference on Human Rights*, U.N. ESCOR, World Conf. on Hum. Rts., at 3, U.N. Doc. A/CONF.157/LACRM/15 (A/CONF.157/PC/58) (1993) [hereinafter *San Jose Declaration*]. For declarations submitted by the two other regional meetings, see *Final Declaration of the Regional Meeting for Africa of the World Conference on Human Rights, cited in African Report, supra* note 125, at 1 [hereinafter *Tunis Declaration*]; *Report of the Regional Meeting for Asia of the World Conference on Human Rights*, U.N. GAOR World Conf. on Hum. Rts., at 2, U.N. Doc. A/CONF.157/PC/59 (1993) [hereinafter *Bangkok Declaration*].

129. See *San Jose Declaration, supra* note 128, 128. See also *Tunis Declaration* and *Bangkok Declaration, supra* note 129.

130. See *San Jose Declaration, supra* note 128, 128, at 7.

was a poorly worded provision in contrast to some of the recommendations of other interested organizations.<sup>131</sup>

Representatives from regional inter-governmental organizations as well as specific U.N. bodies contributed to the preparations for the Vienna Conference and submitted proposals and recommendations for the consideration of the Conference. Thus, the Human Rights Committee advocated the consideration of creating a High Commissioner for Human Rights.<sup>132</sup> The Council of Europe, in their report entitled *Human Rights at the Dawn of the 21st Century*, recommended the establishment of a High or Special Commissioner for Human Rights mandated "to take investigating initiatives in situations of emergency as well as coordinating all of the U.N.'s human rights activities such as peace-keeping and peace-building."<sup>133</sup> The Permanent Mission of Denmark to the United Nations Office at Geneva, on behalf of the European Community and its Member States, submitted a Position Paper to the fourth session of the Preparatory Committee calling for an enhanced role for the United Nations in the human rights field.<sup>134</sup> The paper advocated the upgrading of the post of Director of the Centre for Human Rights to that of "Undersecretary General for Human Rights/High Commissioner for Human Rights" and proposed that the Conference should invite the Secretary-General and the competent U.N. bodies to address the matter.<sup>135</sup>

Among the proposals of non-governmental organizations submitted to the Vienna Conference preparatory process was a

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131. Compare language of *San Jose Declaration*, *supra* note 129, with *Contribution by the Council of Europe*, *supra* note 127, and *Note Verbale from the Permanent Mission of Denmark*, *supra* note 127.

132. See, e.g., *Agenda, Rules of Procedure, Dates, Duration, Venue of and Participation at the World Conference, (Recommendations on the World Conference on Human Rights and Its Preparation Submitted Pursuant to Paragraph 10 of General Assembly Resolution 45/155)*, U.N. GAOR World Conf. on Hum. Rts. Preparatory Comm., 1st Sess., Items 5, 6 and 7 of the Provisional Agenda, at 2, U.N. Doc. A/CONF.157/PC/6/Add.4 (1991) (recommending that the preparatory process for the Vienna Conference explore, *inter alia*, "[t]he feasibility and desirability of creating new structures within the United Nations human rights system, such as an Office of High Commissioner for Human Rights, and International Court of Rights or a Human Rights Institute."). *Id.* at 2.

133. *Human Rights at the Dawn of the 21st Century: Report from the Council of Europe, cited in Report on Other Meetings and Activities (contribution by the Council of Europe)*, *supra* note 127, at 47.

134. See *Note Verbale from the Permanent Mission of Denmark*, *supra* note 127, at 10.

135. *Id.* at 11.

paper by Amnesty International calling on U.N. Member States to establish a Special Commissioner for Human Rights.<sup>136</sup> Under the Amnesty International proposal, the Special Commissioner for Human Rights would function:

[A]s a new high-level political authority with the capacity for speedy and independent action in urgent situations, able to coordinate the U.N.'s human rights activities and integrate human rights fully into other areas of the U.N.'s work, and generally give greater weight and profile to the human rights program within the U.N. system.<sup>137</sup>

On January 14-15, 1993, the Carter Center of Emory University, in collaboration with the United Nations and non-governmental organizations, convened an international colloquium to formulate proposals for strengthening the U.N. human rights system.<sup>138</sup> The participants proposed that the United Nations establish an office of a Special Commissioner for Human Rights "empowered to act promptly to prevent or check human rights violations, to coordinate human rights aspects of all U.N. programs, and to ensure that objective reporting on the human rights situation in all countries is placed before the responsible human rights bodies."<sup>139</sup>

Other non-governmental organizations and groups of independent experts in the human rights field submitted recommendations, often in the form of joint statements, to the regional preparatory meetings. Many of these initiatives called for the establishment of a High Commissioner for Human Rights within the United Nations.<sup>140</sup>

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136. AMNESTY INTERNATIONAL, WORLD CONFERENCE ON HUMAN RIGHTS (FACING UP TO THE FAILURE: PROPOSALS FOR IMPROVING THE PROTECTION OF HUMAN RIGHTS BY THE UNITED NATIONS) (1992). See also Pierre Sane, Secretary General, Amnesty International, *Summary Comments at the Conclusion of the World Conference on Human Rights* (June 25, 1993) (summarizing the Amnesty International position regarding the Vienna Conference and arguing, *inter alia*, that the Conference should have attached to the Final Declaration a firm undertaking to establish the office of High Commissioner.).

137. AMNESTY INTERNATIONAL, *supra* note 136, at ii.

138. See *Consideration of the Final Outcome of the World Conference, Taking into Consideration the Preparatory Work and the Conclusions of the Regional Meetings (Contribution from the Carter Center of Emory University)*, U.N. GAOR World Conf. on Hum. Rts. Preparatory Comm., 4th Sess., U.N. Doc. No. A/CONF.157/PC/71 (1993) [hereinafter *The Atlantic Statement*].

139. *Id.* ¶ 4.

140. See, e.g., *Adoption of the Report of the Regional Meetings (Summary of Bangkok NGO Declaration)*, U.N. GAOR World Conf. on Hum. Rts., Regional Mtg. for Asia,



The initiative of the Vienna Conference regarding the establishment of a High Commissioner for Human Rights helped to refocus the General Assembly on the proposal as a matter of priority.

Included in the agenda of the Assembly's forty-eighth session in 1993 was the item entitled "Human Rights Questions, Including Alternative Approaches for the Effective Enjoyment of Human Rights and Fundamental Freedoms."<sup>141</sup> This agenda item was allocated to the Third Committee, which decided to establish an open-ended working group "to undertake as a matter of priority the consideration of the question of the establishment of a High Commissioner for Human Rights for the promotion and protection of all human rights" and to "consider other aspects of the implementation of the recommendations of the Vienna Declaration and Programme of Action."<sup>142</sup>

Among the proposals submitted to the General Assembly at its forty-eighth session was a draft resolution from the United

Agenda Item 8, at 4, U.N. Doc. A/CONF.157/ASRM/4 (1993) (calling for "[t]he establishment within the U.N. of a Special Commissioner for Human Rights"); *Recommendations to the World Conference on Human Rights adopted at the Fifth Human Rights Conference of the International Academy for Development in Freedom*, U.N. GAOR World Conf. on Hum. Rts., Regional Mtg. for Latin America and the Caribbean, Provisional Agenda Item 11, at 2, U.N. Doc. A/CONF.157/LACRM/8 (1992) (recommending that the Conference establish the post of Special Commissioner on Human Rights). See also *Report on Other Meetings and Activities (Report from the Ninth Nordic Seminar on Human Rights)*, U.N. GAOR World Conf. on Hum. Rts., Preparatory Comm., Provisional Agenda Item 6, at 4, U.N. Doc. A/CONF/157/PC/78 (1993) (calling for the coordination of all U.N. activities in the human rights field under the charge of one office, be it a High Commissioner, Special Commissioner, or head of the Centre for Human Rights); *Report on other Meetings and Activities, Contribution from the Washington NGO Coalition*, U.N. GAOR World Conf. on Hum. Rts., Preparatory Comm., 4th Sess., Provisional Agenda Item 6, at 2, U.N. Doc. A/CONF.157/PC/81 (1993) (calling for the creation of a "U.N. Special Commissioner for Human Rights"); *Written Statements Submitted by Non-Governmental Organizations in Consultative Status with the Economic and Social Council and by Other Non-Governmental Organizations (Statement by Liberal International, Recommendations Addressed to the World Conference on Human Rights)*, U.N. GAOR World Conf. on Hum. Rts., Regional Mtg. for Latin American and the Caribbean, Agenda Items 7, 8, 11, and 12, at 10, U.N. Doc. A/CONF.157/LACRM/14 (1993) (urgently calling for the creation of a commissioner of human rights and minorities); *The Bucharest Symposium*, *supra* note 127, at 2 (expressing the hope that the U.N. Centre for Human Rights "will be directed by a High Commissioner for Human Rights, who could in particular take steps in emergency cases.").

141. *Report of the Chairman of the Working Group of the Third Committee*, U.N. GAOR, 48th Sess., Agenda Item 114(b), at 1, U.N. Doc. A/C.3/48/L.85 (1993).

142. *Id.* at 1. The Working Group held meetings during the months of November and December, 1993. *Id.* at 2.

States representative reaffirming the objectives of the Vienna Declaration and Programme of Action and calling for the creation of the Office of High Commissioner for Human Rights.<sup>143</sup> A framework for the selection and operation of the High Commissioner was annexed to the draft resolution.<sup>144</sup> The representative of Malaysia submitted amendments to the United States draft resolution.<sup>145</sup> The representatives of the United States and Malaysia withdrew their proposals following the completion of the working group's consideration of the matter, which took into account the draft resolution and amendments.<sup>146</sup> The working group, under the direction of Chairman Jose Ayala Lasso, submitted a report<sup>147</sup> and a draft resolution<sup>148</sup> calling for the

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143. See *United States of America: Draft Resolution*, U.N. GAOR 3d. Comm., 48th Sess., Annex, Agenda Item 114(b), at 2, U.N. Doc. A/C.3/48/L.59 (1993). For amendments to this draft, see *Malaysia: Proposed Amendments to Draft Resolution A/C.3/48/L.59*, U.N. GAOR 3d Comm., 48th Sess., Agenda Item 114(b), U.N. Doc. A/C.3/48/L.79 (1993).

The United States submitted a recommendation to the fourth session of the Vienna Conference Preparatory Committee entitled *Draft Plan of Action for Human Rights*. See *Letter Dated 5 May 1993 from the Ambassador of the United States to the Secretary-General of the World Conference on Human Rights*, U.N. GAOR World Conf. on Hum. Rts., Preparatory Comm., 4th Sess., Agenda Items 5 and 9, at 2, U.N. Doc. A/CONF.157/PC/94 (1993). The first concern of the plan was the establishment of a High Commissioner for Human Rights. *Id.* The plan proposed the establishment of the post "in order to energize U.N. programs on human rights and ensure human rights takes its proper place as one of the key pillars of the United Nations system as set out in its Charter." *Id.* The functions of the High Commissioner as set forth in the United States draft plan included promoting human rights; overseeing the implementation of decisions of all U.N. human rights bodies; assuming responsibility for human rights issues in peacekeeping, peacemaking, and humanitarian assistance; coordinating all U.N. human rights programs; bringing serious violations of human rights to the attention of the Security Council, which the High Commissioner believes may threaten international peace and security; and dispatching special envoys on fact-finding missions. *Id.* Other governments made similar recommendations. See, e.g., *Letter Dated 3 November 1993 From the Permanent Representative of Slovenia to the United Nations Addressed to the Secretary-General*, U.N. GAOR 3d Comm., 48th Sess., Annex, Agenda Item 114(b), at 2, U.N. Doc. A/C.3/48/8 (1993).

144. See *United States of America: Draft Resolution*, *supra* note 143, at 2.

145. See *Malaysia: Proposed Amendment to Draft Resolution A/C.3/48/L.59*, *supra* note 143, at 1-5. The Malaysian amendments consisted of additions to the preambular paragraphs and an overall reworking of the substantive parts of the operative paragraphs. *Id.* at 1-2. The rationale of the proposal remained the same. *Id.* It is interesting to note that one of the proposed amendments included a specific reference to respect for "the sovereignty, territorial integrity and domestic jurisdiction of States" as one of the guiding principles of the High Commissioner. *Id.* at 3.

146. *Report of the Third Committee (Part V)*, U.N. GAOR, 48th Sess., Agenda Item 114(b), at 10, U.N. Doc. A/48/632/Add.4 (1993).

147. *Report of the Chairman of the Working Group of the Third Committee*, *supra* note 141, at 1-2.

establishment of a "High Commissioner for the Promotion and Protection of All Human Rights" to the Third Committee for its consideration on December 13, 1993.<sup>149</sup> The proposed draft resolution prepared by the working group incorporated the substantive points set forth in the original submissions by the United States and the amendments to that text by Malaysia.<sup>150</sup> The Third Committee recommended the adoption of a draft resolution calling for the creation of a High Commissioner to the General Assembly.<sup>151</sup>

In 1994, the General Assembly responded to this challenge by passing Resolution 48/141.<sup>152</sup> On February 1, 1994, the United Nations Secretary-General nominated Ecuador's representative, José Ayala Lasso, to be the first High Commissioner for Human Rights.<sup>153</sup>

#### IV. FUNCTIONS ENTRUSTED TO THE OFFICE OF THE HIGH COMMISSIONER

The human rights obligations set forth in the United Nations Charter, particularly in Articles 55 and 56, are generally-worded provisions.<sup>154</sup> As such, the provisions are not particularly helpful in redressing a specific human rights problem in a given state. The machinery that has evolved within the United Nations system to tackle particular human rights violations gives substance to the general obligations set forth in the U.N. Charter. Accordingly, the Economic and Social Council, as mandated under Article 68 of the U.N. Charter, created the Commission on Human Rights in

148. *Id.* at 2. The draft resolution was orally revised by the addition of a clause in the preambular paragraph which reaffirmed the notion that "the right to development is a universal and inalienable right which is a fundamental part of the rights of the human person." *Summary Record of the 57th Meeting*, U.N. GAOR 3d Comm., 48th Sess., Agenda Item 114, at 2, U.N. Doc. A/C.3/48/SR.57 (1993). After the adoption of the revised draft resolution, state representatives and the chairman of the working group were given the opportunity to make statements concerning the proposal. *Id.* at 3-6. *See also Summary Record of the 58th Meeting*, U.N. GAOR 3d Comm., 48th Sess., Agenda Item 114, at 2-3, U.N. Doc. A/C.3/48/SR.58 (1993).

149. *See Report of the Third Committee (Part V)*, *supra* note 146, at 10.

150. *Id.*

151. *Id.* at 11.

152. *See* G.A. Res. 48/141, *supra* note 1, at 1.

153. *See* Paul Lewis, *Ecuadorian is Nominated to Head U.N.'s New Human Rights Post*, N.Y. TIMES, Feb. 2, 1994, at A-8.

154. U.N. CHARTER arts. 55 and 56.

1946.<sup>155</sup> The Commission, in turn, has established numerous programs within the United Nations for the promotion of human rights as well as mechanisms to address violations of human rights including special rapporteurs, working groups to study specific problems, and substantive procedures for the receipt by U.N. bodies of communications regarding gross violations of human rights.<sup>156</sup>

Other inter-governmental groups have made arrangements for the strengthening of measures aimed at promoting the protection of human rights on a regional basis. One such example is the establishment of the office of a High Commissioner on National Minorities by the Conference on Security and Cooperation in Europe ("CSCE"). The responsibility of the High Commissioner is to facilitate the process of preventive diplomacy<sup>157</sup> by providing operative "early warning" and "early action" measures in the context of national minority tensions which have the potential to develop into a conflict within the CSCE area.<sup>158</sup> Thus, the primary emphasis of the office is to encourage the resolution of disputes between the disputing parties.<sup>159</sup> To this end, the assistance of the High Commissioner who is external to the dispute needs to take place at an early stage.<sup>160</sup> In the words of Max van der Stoep, the CSCE High Commissioner on National Minorities, the involvement of the office "should be early, impartial, and with

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155. U.N. CHARTER art. 68.

156. For a review of the mechanism created under E.S.C. Resolution 1503 of May 27, 1980, which establishes a procedure for the review of communications concerning gross violations of human rights, see M.E. Tardu, *United Nations Response to Gross Violations of Human Rights: the 1503 Procedure*, 20 SANTA CLARA L. REV. 559 (1980).

157. For an explanation of U.N. objectives based upon preventing conflict through diplomacy, see *An Agenda for Peace: Preventive Diplomacy, Peacemaking and Peace-Keeping: Report of the Secretary-General Pursuant to the Statement Adopted by the Summit Meeting of the Security Council on 31 January, 1992*, U.N. GAOR, 47th Sess., Preliminary List Item 10, at 5, U.N. Doc. A/47/277 (S/24111) (1992). This document is also published in pamphlet form.

158. See COMMISSION ON SECURITY AND COOPERATION IN EUROPE, CSCE HELSINKI DOCUMENT 1992: THE CHALLENGES OF CHANGE (1992), adopted by the Helsinki Summit Meeting on July 10, 1992, at pt. II, ¶¶ 3-30 [hereinafter CSCE HELSINKI DOCUMENT 1992]. For an excellent collection of essays regarding the future role of the CSCE in Europe, see THE CSCE AND THE TURBULENT NEW EUROPE: RECORD OF A CONFERENCE ORGANIZED BY THE INTERNATIONAL RULE OF LAW INSTITUTE OF THE GEORGE WASHINGTON UNIVERSITY (Louis B. Sohn ed., 1993) [hereinafter THE CSCE AND THE TURBULENT NEW EUROPE].

159. See CSCE HELSINKI DOCUMENT 1992, *supra* note 158, at pt. II, ¶¶ 3-30.

160. *Id.*

the aim of promoting a process of confidence-building and reconciliation."<sup>161</sup>

By appointing a United Nations official to the post of High Commissioner for Human Rights and endowing that office with the "principal responsibility for United Nations human rights activities,"<sup>162</sup> the United Nations has taken a major step forward in bringing human rights concerns to the forefront of United Nations activities. The hope is that the creation of offices whose principal purposes are the protection of human rights, such as the U.N. High Commissioner and the CSCE High Commissioner on National Minorities, will enable the advancement of human rights to be made in a cooperative atmosphere.

Paragraph 3 of Resolution 48/141 defines the structural parameters of the new High Commissioner's office.<sup>163</sup> Under its terms, the Commissioner must "function within the framework of the Charter of the United Nations, the Universal Declaration of Human Rights, other international instruments of human rights, and international law. . . ."<sup>164</sup> The High Commissioner is directed:

[T]o respect the sovereignty, territorial integrity and domestic jurisdiction of States and to promote the universal respect for and observance of all human rights, in the recognition that, in the framework of the purposes and principles of the Charter, the promotion and protection of all human rights is a legitimate concern of the international community.<sup>165</sup>

The High Commissioner must, therefore, seek to achieve an acceptable balance between these conflicting obligations. While the mandate expressly recognizes that human rights are indeed a matter of international concern not to be veiled behind the principle of non-intervention, the inclusion of respect for the "sovereignty, territorial integrity and domestic jurisdiction"<sup>166</sup> of states circumscribes the role of the High Commissioner. It will be up to that office to find an acceptable balance between the need to protect and promote human rights and the principle of state

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161. Max van der Stoep, *Prevention of Minority Conflicts*, in *THE CSCE AND THE TURBULENT NEW EUROPE*, *supra* note 158, at 147, 154.

162. G.A. Res. 48/141, *supra* note 1, ¶ 4.

163. *Id.* ¶ 3(a).

164. *Id.*

165. *Id.*

166. *Id.*

sovereignty. The danger is that the activities of the High Commissioner will be rendered ineffective due to the tenacity of classical international law principles, which have all too frequently shielded government-sponsored human rights violations from the world public eye.

A further general guideline for the High Commissioner appears in the resolution's assertion that "all human rights—civil, cultural, economic, political and social—are universal, indivisible, interdependent and interrelated."<sup>167</sup> Resolution 48/141 also recognizes that it is the duty of all states to promote and protect all human rights.<sup>168</sup> There is some concession given to developing countries in the statement that the High Commissioner must "recognize the importance of promoting a balanced and sustainable development for all people,"<sup>169</sup> which demonstrates an implicit acknowledgement of the special challenges that confront such countries in the human rights arena. The repeated reference to "all human rights"<sup>170</sup> and the absence of any differentiation between human rights norms is significant. Such breadth suggests that the High Commissioner will have the necessary latitude to decide the focus of his or her office without the constraints of hierarchical prescriptions as to the importance of one human right over another. The High Commissioner's challenge lies, therefore, in deciding which matters should be addressed out of all the human rights issues requiring the urgent attention of the world community.

The list of specific responsibilities for the Office of High Commissioner begins with the charge "to promote and protect the effective enjoyment by all of all civil, cultural, economic, political and social rights."<sup>171</sup> Resolution 48/141 also calls on the High Commissioner to carry out tasks assigned to him or her by competent United Nations bodies and to make recommendations to these agencies to improve the protection of human rights.<sup>172</sup> Implicit in the broad mandate to promote and protect all human rights is the High Commissioner's authority to conduct investigations and studies on particular human rights abuses. This function

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167. *Id.* ¶ 3(b).

168. *Id.*

169. *Id.* ¶ 3(c).

170. *See, e.g., id.* ¶¶ 3(a), 3(b).

171. *Id.* ¶ 4(a).

172. *Id.* ¶ 4(b).

is circumscribed to the extent that the High Commissioner must function within the parameters of the Charter of the United Nations "including the obligations . . . to respect the sovereignty, territorial integrity and domestic jurisdiction of States."<sup>173</sup> As noted before, the Resolution explicitly recognizes that the human rights issues are matters which are essentially within the domestic jurisdiction of any state under Article 2(7) of the United Nations Charter.<sup>174</sup>

The High Commissioner has the duty to provide advisory services and technical and financial assistance at the request of States or regional human rights organizations, in order to support human rights activities and programs.<sup>175</sup> This advisory service is to be channelled through the Centre for Human Rights of the Secretariat and other "appropriate institutions."<sup>176</sup>

Protection of human rights is integrally linked to democracy.<sup>177</sup> In view of the current democratization of Eastern Europe and other countries, and the emerging recognition by the world community that democracy is the preferred form of government, the High Commissioner has a vital role to play in using the advisory function to help build the necessary foundations for democratic government. This role is of paramount significance for countries seeking assistance and the necessary tools to create a system of government that takes cognizance of human rights and fundamental freedoms.

The High Commissioner is also mandated "to coordinate relevant United Nations education and public information programs in the field of human rights."<sup>178</sup> The challenge for the High Commissioner will be to ensure that those who are in greatest need of information and education will be reached by human rights agencies throughout the world. This mandate is especially necessary in war-torn developing countries. There are crucial lessons to be learned from the experiences in Cambodia, Afghanistan, Angola and many other countries where the unlawful

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173. *Id.* ¶ 3(a).

174. *Id.*

175. *Id.* ¶ 4(d).

176. *Id.*

177. The Vienna Declaration and Programme of Action makes repeated references to democracy and its link to the implementation of human rights. See *Vienna Declaration*, *supra* note 2, at 23.

178. G.A. Res. 48/141, *supra* note 1, ¶ 4(e).

use of land mines is wreaking havoc on the reconstruction of societies.<sup>179</sup> No other example can more poignantly illustrate the necessity of disseminating humanitarian rules to those engaged in armed conflict and informing and educating civilians about the dangers of mines and other unexploded ordnance.<sup>180</sup> In this and in other human rights spheres, the High Commissioner can play a crucial role.

The High Commissioner is expected to advance the efficiency of United Nations activities in the human rights field. The Commissioner's mandate provides that part of his or her responsibility is "to enhance international cooperation,"<sup>181</sup> "to coordinate the human rights promotion and protection activities throughout the United Nations system,"<sup>182</sup> and "to rationalize, adapt, strengthen and streamline the United Nations machinery in the field of human rights with a view to improving its efficiency and effectiveness."<sup>183</sup> These tasks are daunting due in no small part to the bureaucratic quagmire created by the ubiquitous character of the United Nations. Bureaucratic barriers exist even within the narrowed sphere of human rights activity.

This wide mandate gives the High Commissioner the authority to do what is necessary to improve efficiency. In view of the piecemeal approach taken by governmental and non-governmental organizations, which arises because of inadequate funds to support human rights programs throughout the world, the High Commissioner should use his or her office to improve channels of communication between groups that share the common goal of promoting and protecting human rights abuses. For example, the problem of internally displaced populations is of such a magnitude in many countries that the U.N. High Commissioner for Refugees is without the resources to deal with all those in need of assistance. Other organizations are able to provide some assistance of shelter and care for internally displaced persons, but there is no central agency to coordinate such vast operations. The High Commissioner for Human Rights should use his or her office to help facilitate the coordination of this type of assistance activity.

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179. See, e.g., THE ARMS PROJECT OF HUMAN RIGHTS WATCH & PHYSICIANS FOR HUMAN RIGHTS, *LANDMINES: A DEADLY LEGACY* (1993).

180. *Id.*

181. G.A. Res. 48/141, *supra* note 1, ¶ 4(h).

182. *Id.* ¶ 4(i).

183. *Id.* ¶ 4(j).



The most daunting, as well as the most ambiguous challenge confronting the new High Commissioner for Human Rights is set forth in the mandate "to play an active role in removing the current obstacles and in meeting the challenges to the full realization of all human rights and in preventing the continuation of human rights violations throughout the world."<sup>184</sup> This responsibility explicitly refers to those human rights problems identified in the Vienna Declaration.<sup>185</sup> The Vienna Declaration sets forth a massive catalog of human rights concerns, in addition to prescriptions relating to the ratification of international human rights instruments by states and the contribution to United Nations activities. It calls attention to problems concerning, *inter alia*, racism and discrimination based on race, the protection of minorities and indigenous people, the rights of migrant workers, the equal status of women, the rights of the child, freedom from torture, freedom from enforced disappearances, and the rights of disabled persons.<sup>186</sup> While this blueprint for action in the human rights field may assist the High Commissioner, the scope of human rights problems that the Vienna Declaration articulates and the activities that it contemplates is overwhelming. The High Commissioner must use the limited resources of the new office to yield the greatest advances in the human rights field and address the most egregious abuses.

The High Commissioner's role in engaging "in a dialogue with all Governments in the implementation of his/her mandate with a view to securing respect for all human rights"<sup>187</sup> requires the Commissioner to be a vocal champion of human rights and to use the office to pressure and encourage advances in the field. The section envisages a process of exchange and cooperation between the High Commissioner and the international community. The success of this process is, however, dependent upon the will of states to participate in discourse that has been too frequently characterized as an act of intervention in the domestic affairs of a State.

The High Commissioner is also required to report annually on his or her activities to the Commission on Human Rights and,

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184. *Id.* ¶ 4(f).

185. *See Vienna Declaration, supra* note 2, at 34-41.

186. *Id.*

187. G.A. Res. 48/141, *supra* note 1, ¶ 4(g).

through the Economic and Social Council, to the General Assembly.<sup>188</sup> The reporting requirement provides the Commissioner with a regular forum in which to draw the attention of the world community to States with particularly egregious violations of fundamental freedoms and human rights. Accordingly, the High Commissioner has an opportunity to use the authority of the office to harness public opinion and to focus a spotlight on human rights abuses. The potential for the office to provide greater transparency to violations of human rights should not be underestimated. Calling attention to human rights abuses can pressure a country into making concessions—such as the release of political prisoners—in order to prevent cuts in foreign aid or the withholding of loans from international financial institutions.

While an assessment of the High Commissioner's office is premature, it is apparent that the High Commissioner will find it difficult to achieve much progress toward the fulfillment of the mandate set forth in Resolution 48/141 without the backing of the international community. The international community's perceived apathy in providing real support for the United Nations and other organizations in the field of human rights has prompted an early evaluation of the new High Commissioner's office.

In this regard, a recent resolution of the American Bar Association's ("ABA") section of International Law and Practice and its Standing Committee on World Order under Law directs the U.S. Government to give increased prominence to the worldwide promotion and observance of international human rights.<sup>189</sup> The newly created post of High Commissioner for Human Rights is a central focus of the resolution, which encourages the United States to support the office.<sup>190</sup>

In particular, the ABA resolution emphasizes the role of the High Commissioner in advancing the rule of law in the internation-

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188. *Id.* ¶ 5.

189. See American Bar Association, Section of International Law and Practice and Standing Committee on World Order under Law, Recommendation [hereinafter ABA Recommendation]; see also Report on the International Protection of Human Rights (Chairman, James H. Carter, Aug. 1994) [hereinafter ABA Report]. This Recommendation and Report was prepared towards the fulfillment of the American Bar Association's Goal 8—the advancement of the rule of law in the world. The recommendation is the third in a series of five recommendations dealing with issues of international law relevant to the maintenance of international peace, security, and justice.

190. ABA Recommendation, *supra* note 190, § A, ABA Report, *supra* note 190, at 1-2.

al community.<sup>191</sup> It also makes specific proposals for strengthening the Office of the High Commissioner.<sup>192</sup> Further, the resolution calls upon the office to take the lead in restructuring the approach of the United Nations in the human rights sphere and emphasizes the importance of providing the new High Commissioner with adequate funding and resources.<sup>193</sup> Related to the matter of sufficient resources and funding, the resolution also states that the High Commissioner's office "must have an adequate staff that could be stationed around the world to help victims, provide advisory services, give technical assistance, observe developments, mediate disputes and express concern about victims."<sup>194</sup>

In calling upon the United States to support the new post of High Commissioner, the ABA resolution holds that the High Commissioner should "oversee and direct the work of all U.N. agencies concerned with human rights; should be able to convene session of the Commission on Human Rights to address emergencies; should integrate human rights obligations into U.N. peacekeeping and humanitarian operations; and should have the authority to raise human rights concerns in the Security Council."<sup>195</sup> The resolution further maintains that the High Commissioner should be based in New York at U.N. Headquarters to enable ready access to the General Assembly and the Security Council and that adequate staff should be provided for the office there.<sup>196</sup>

The new post of High Commissioner for Human Rights is clearly still in its embryonic stage. It will take time for the office to come to terms with its mandate and to achieve integration with other human rights entities at the international and regional level. It is up to the protagonists in the field of international human rights law to continue to support the causes which the High Commissioner is entrusted to promote and protect. Governments, international organizations, regional inter-governmental groups, non-governmental organizations, and commentators must, therefore, work together to encourage the growth and develop-

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191. ABA Report, *supra* note 190, at 1.

192. *Id.*

193. ABA Report, *supra* note 190, at 1-2.

194. ABA Recommendation, *supra* note 190, § A, ABA Report, *supra* note 190, at 2.

195. ABA Recommendation, *supra* note 190, § A.

196. *Id.*

ment of mechanisms for the implementation of human rights norms.

## V. CONCLUSION

The creation of the United Nations High Commissioner for Human Rights is an affirmation of the commitment of the international community to move toward a world in which all persons are guaranteed their fundamental rights. This latest step forward in the implementation of the United Nations Charter provisions on human rights furthers the normative strength of those obligations that, in the absence of implementation mechanisms, are mere paper rights. The establishment of the office should also help to deliver a death-blow to the now antiquated premise that human rights concerns rest solely within the domestic domain of States. It is a significant stage in the ongoing process of what Professor Thomas Buergenthal has described as the "internationalization of human rights and the humanization of international law."<sup>197</sup> The espousal of human rights as the paramount concern of the international legal system is no longer the empty idolatry of a few visionaries. It is a matter that falls squarely within the purview of international law and is a concern that states are obligated to promote and protect separately and collectively. The opportunity and challenge of the High Commissioner for Human Rights is to facilitate the implementation of state obligations. While Resolution 48/141 gives the High Commissioner an ostensibly broad mandate, the intransigence of those states that would like to deny the application of international human rights norms to their domestic problems will require the High Commissioner to exercise perseverance and creativity in fulfilling the mandate of the office.

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197. Thomas Buergenthal, *The Human Rights Revolution*, 23 ST. MARY'S L.J. 3, 6 (1991).

