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# The Role of Non-Governmental Organizations in the New United Nations Procedures for Human Rights Complaints

MAYA PRASAD\*

## I. INTRODUCTION

### *The United Nations and Non-Governmental Organizations*

In 1945, when national delegations gathered at San Francisco to draft the Charter of the U.N., it was largely through the influence of a number of non-governmental organizations (NGOs) that the promotion of universal respect for and observance of human rights was given a pre-eminent place among the aims and purposes of the U.N.<sup>1</sup> In recognition of such efforts and because the U.N. was aware of the great potential of NGOs for contribution to its work, Article 71 of the Charter provided for the establishment of formal relations between the U.N. and NGOs.<sup>2</sup> Article 71 reads as follows:

The Economic and Social Council may make suitable arrangements for consultation with non-governmental organizations which are concerned with matters within its competence. Such arrangements may be made with international organizations and, where appropriate, with national organizations after consultation with the Member of the United Nations concerned.<sup>3</sup>

The innovative principle established in Art. 71 opened a recognized channel through which an international point of view of "We the peoples" could be brought to bear on the formulation of economic, social, and human rights policies and programs of the U.N.<sup>4</sup> (The U.N., like the League of Nations, is an organization of sovereign member states, but "We the peoples" of the U.N., and not the governments are the proponents of the U.N. Charter.)

### *Implementation of Article 71*

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1. L.C. WHITE, INTERNATIONAL NON-GOVERNMENTAL ORGANIZATIONS 10 (1951); J. BLAUSTEIN, HUMAN RIGHTS—A CHALLENGE TO THE UNITED NATIONS AND OUR GENERATION 6-7 (1963). For "seven specific references to human rights" in the U.N. Charter, and a discussion of the contribution of NGOs in the inclusion of these provisions, see Humphrey, *The U.N. Charter and the Universal Declaration of Human Rights*, in THE INTERNATIONAL PROTECTION OF HUMAN RIGHTS 41-46 (E. Luard, ed., 1967).

2. U.N. Doc. E/C.2/661 (1968).

3. U.N. CHARTER art. 71.

4. Campbell, *Do NGOs Have a Role?*, 11 INT'L. DEV. REV. 34 (1969).

In February 1946 the General Assembly, at its first session, called upon the Economic and Social Council (ECOSOC) to implement Article 72 "as soon as possible."<sup>5</sup> ECOSOC responded by adopting resolution 2/3 on June 21, 1946, which provided for temporary arrangements for consultation, including principles to govern the relationship, criteria for granting consultative status, and the rights and duties of NGOs in three different categories of consultative status. These provisions, with certain minor modifications, were later incorporated in ECOSOC resolution 288B(X) February 27, 1950.<sup>6</sup> ECOSOC resolution 1296 (XLIV) of May 23, 1968<sup>7</sup> superseded resolution 288B(X) of February 27, 1950 and is the current<sup>8</sup> legal document governing the NGOs' relationship with the Council and subsidiary organs of the Council. It recognizes in the preamble "that arrangements for consultation with non-governmental organizations provide an important means of furthering the purposes and principles of the United Nations," and reaffirms the statement contained in the ECOSOC resolution 288B(X) that the consultations "should be developed to the fullest practicable extent."<sup>9</sup>

*Right of NGOs to Submit Written Statements*

Paragraph 23 of the ECOSOC resolution 1296 (XLVI) grants to NGOs which have general and special consultative status (Categories I and II)<sup>10</sup> the right to submit written statements<sup>11</sup> on certain subjects,

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5. G.A. Res. 4, U.N. Doc. A/64 at 10 (1946).

6. ECOSOC Res. 288B, 10 U.N. ECOSOC, Supp. 1, at 24, U.N. Doc. E/1661 (1950). [hereinafter cited as ECOSOC Res. 288B].

7. ECOSOC Res. 1296, 44 U.N. ECOSOC, Supp. 1, at 21, U.N. Doc. E/4548 (1968). [hereinafter cited as ECOSOC Res. 1296]. ECOSOC resolution 1296 (XLIV) became effective on June 3, 1969, only after the completion of the modification of the related Rules of Procedure.

This resolution is a substantially detailed document in ten parts. Parts I and II deal with the principles to be applied in the establishment of consultative relations and the principles governing the nature of the consultative arrangements respectively. Part III sets up the three categories of consultative relations and provides the criteria for distinguishing between the various NGOs. Other parts of the resolution describe the rights and duties of the NGOs in different categories in relation to the Council, commission, and other subsidiary organs of the Council, International Conferences called by the Council, and the Secretariat (Parts IV, V, VI, VII, and X, respectively). Part VIII deals with the suspension and withdrawal of the consultative status and Part IX provides for a Council Committee on NGOs, the provisions regarding its composition and elections, its functions, and its special relationship with NGOs.

8. The resolution was amended by ECOSOC resolution 1391 (XLVI) of June 3, 1969. It amends the provisions regarding the election of the Council Committee on NGOs, and contains some minor editorial changes. ECOSOC Res. 1391, 46 U.N. ECOSOC, Supp. 1, at 19, U.N. Doc. E/4715 (1969).

9. ECOSOC Res. 288B, *supra* note 6.

10. Part III (paras. 15 through 19) of ECOSOC resolution 1296 establishes three categories of consultative status. In brief, they are: *Category I* (general consultative status)—organizations concerned with most of the activities of the Council; *Category*

and, with minor exceptions, requires the Secretary-General to circulate these statements to the members of the Council.

Paragraph 23 reads as follows:

Written statements relevant to the work of the Council may be submitted by organizations in categories I and II on subjects in which these organizations have a special competence. Such statements shall be circulated by the Secretary-General of the United Nations to the members of the Council, except those statements which have become obsolete, for example, those dealing with matters already disposed of and those which had already been circulated in some other form.<sup>12</sup>

The organizations in the third category (the Roster) do not have a right to submit written statements but may be invited to do so by "the Secretary-General, in consultation with the President of the Council, or the Council or its Committee on Non-Governmental Organizations."<sup>13</sup>

Paragraph 24 of the resolution<sup>14</sup> lays down the conditions regard-

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*II* (special consultative status)—organizations concerned with only a few of the activities of the Council (NGOs primarily interested in the field of human rights are usually placed in this category); *The Roster*—organizations which may make occasional and useful contributions to the work of the Council or other U.N. bodies.

The differences between the categories are not very clearly defined, resulting in considerable leeway in the placement of individual organizations, including political considerations. See Campbell, *supra* note 4, at 36.

However, generally speaking, "regard shall be had to the nature and scope of its activities and to the assistance it may be expected to give to the Council or its subsidiary bodies in carrying out the functions set out in Chapters IX and X of the Charter of the United Nations" (para. 15).

11. The scope of consultation and the rights of NGOs vary and depend upon the category in which an organization is placed. The rights and duties of NGOs in different categories are laid down in various parts of the ECOSOC resolution 1296, *supra* note 7. Briefly, NGOs in any category "shall" receive provisional agenda of the Council, commissions, and other subsidiary organs of the Council, and may sit as observers at all of their public meetings. Organizations in Category I may even propose items to be placed on the provisional agenda of the Council or commissions (paras. 21 and 27). NGOs may also, under certain circumstances, present oral statements (paras. 25 and 31).

12. ECOSOC Res. 1296, *supra* note 7.

13. ECOSOC Res. 1296, *supra* note 7, at para. 24(f).

14. Paragraph 24 of the ECOSOC resolution 1296 reads as follows:

24. The following conditions shall be observed regarding the submission and circulation of such statements:

(a) The written statement shall be submitted in one of the official languages.

(b) It shall be submitted in sufficient time for appropriate consultation to take place between the Secretary-General and the organization before circulation.

(c) The organization shall give due consideration to any comments which the Secretary-General may make in the course of such consultation before transmitting the statement in final form.

ing the submission and circulation of such statements, and includes conditions regarding the language and length of the statement and time for submission.

Paragraphs 29 and 30 grant to NGOs the right to submit written statements and have them circulated to the members of the commissions and/or other subsidiary organs of the Council. With one minor exception, these statements are subject to the same conditions as in the case of the Council.<sup>15</sup>

The provisions regarding the submission of written statements in ECOSOC resolutions 288B(X) and 1296 (XLVI) are essentially the same. The latter resolution differs from its earlier counterpart in that it modifies the procedures for circulating the statements, refines the language of resolution 288B(X), and provides guidelines regarding the loss of consultative status by NGOs.<sup>16</sup>

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(d) A written statement submitted by an organization in category I will be circulated in full if it does not exceed 2,000 words. Where a statement is in excess of 2,000 words, the organizations shall submit a summary which will be circulated or shall supply sufficient copies of the full text in the working languages for distribution. A statement will also be circulated in full, however, upon a specific request of the Council or its Committee on Non-Governmental Organizations.

(e) A written statement submitted by an organization in category II or on the Roster will be circulated in full if it does not exceed 500 words. Where a statement is in excess of 500 words, the organization shall submit a summary which will be circulated; such statements will be circulated in full, however, upon a specific request of the Council or its Committee on Non-Governmental Organizations.

(f) The Secretary-General, in consultation with the President of the Council, or the Council or its Committee on Non-Governmental Organizations, may invite organizations on the Roster to submit written statements. The provisions of sub-paragraphs (a), (b), (c) and (e) above shall apply to such statements.

(g) A written statement or summary, as the case may be, will be circulated by the Secretary-General in the working languages, and, upon the request of a member of the Council, in any of the official languages.

15. A written statement submitted by an organization in category II or on the Roster will be circulated in full if it does not exceed 1500 words as compared with only 500 words in the case of the Council. ECOSOC Res. 1296, *supra* note 7, at paras. 30(e), 30(f).

16. ECOSOC Res. 288B, *supra* note 6, provided for the circulation of the written statements to all the members of the United Nations, and it mentioned only "commission or sub-commission" and not "commissions or other subsidiary organs of the Council as mentioned in ECOSOC resolution 1296 of 1968. Also, ECOSOC resolution 288B(X) of February 27, 1950 had only nine parts as compared with ten parts in ECOSOC resolution 1296 of May 23, 1968, *supra* note 7. The additional part VIII of resolution 1296 (paras. 35 through 38) deals with the Suspension and Withdrawal of Consultative Status. There was no such provision in ECOSOC resolution 288B(X). See also Liskofsky, *The U.N. Reviews its NGO System*, in REPORTS ON THE FOREIGN SCENE (pamphlet published by the American Jewish Committee 1970).

*ECOSOC Resolution 454 (XIV) of July 22, 1952*

ECOSOC resolution 454<sup>17</sup> restricted the rights of NGOs to have written statements circulated directly to the members of the Council, Commissions or other subsidiary organs of the Council by making the statements containing complaints against governments alleging violations of human rights subject to the special procedure laid down in ECOSOC resolution 75(V) of August 5, 1947, as amended. ECOSOC resolution 75(V) was later replaced by ECOSOC resolution 728F (XXVIII) of July 30, 1959.<sup>18</sup> However, the basic principles and procedures were not changed, and it reaffirmed the statement made by the Commission on Human Rights (hereinafter referred to as the Commission) that it had "no power to take any action in regard to any complaints concerning human rights."<sup>19</sup>

The complaints received from NGOs in consultative status alleging violations of human rights in particular states, like other complaints against governments, were placed on a "confidential list" in accordance with the provisions of paragraph 2(b) of ECOSOC resolution 728F. The Commission continued to receive the confidential lists of communications in private session, which usually lasted for only a few minutes. Hardly anything was done about the complaints except the Commission's "taking note" of the list.<sup>20</sup>

*General Assembly Resolution 2144 (XXI) of 1966*

By the late sixties the political climate had changed,<sup>21</sup> and the General Assembly in its landmark resolution 2144 of October 26, 1966 invited "the Economic and Social Council and the Commission on Human Rights to give urgent consideration to ways and means of improving the capacity of the United Nations to put a stop to violations of human rights wherever they may occur" (para. 12).<sup>22</sup> ECO-

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17. ECOSOC Res. 454, 14 U.N. ECOSOC, Supp. 1, at 60, U.N. Doc. E/2332 (1952).

18. ECOSOC Res. 728F, 28 U.N. ECOSOC, Supp. 1, at 19, U.N. Doc. E/3290 (1959).

19. This decision was immediately criticized by Professor Hersch Lauterpacht as amounting to "a denial of the effective right of petition and to an abdication of the crucial function of the United Nations in this respect," U.N. Doc. E/CN.4/89, at 16 (1948). Later, in 1950, Lauterpacht made a similar point when he said, "[T]here was no legal basis for that statement. These bodies, and in particular, the Commission on Human Rights, are not only entitled to take such action. By the terms of the Charter they are bound to do so." H. LAUTERPACHT, *INTERNATIONAL LAW AND HUMAN RIGHTS* 230 (1950). The same view is expressed in a paper prepared by the Secretariat in 1949. U.N. Doc. E/CN.4/165 (1949).

20. Humphrey, *The Right of Petition in the United Nations*, 4 HUMAN RIGHTS J. 463, 470 (1971).

21. *Id.*

22. G.A. Res. 2144, 21 GAOR Supp. 16, at 46, U.N. Doc. A/6316, para. 12 (1966).

SOC responded by adopting resolution 1235 on June 6, 1967,<sup>23</sup> which *inter alia* approved a request by the Commission on Human Rights that the Sub-Commission on the Prevention of Discrimination and Protection of Minorities (hereinafter referred to as the Sub-Commission) prepare a report containing information on violations of human rights and fundamental freedoms from *all available sources* and also bring to the attention of the Commission any situation which it has reasonable cause to believe reveals a consistent pattern of violations of human rights and fundamental freedoms in any country.<sup>24</sup> It was obvious that the Council and the Commission, on whose recommendation the Council had acted, no longer thought that the Commission had "no power to take any action in regard to any complaints concerning human rights."<sup>25</sup> This position is further supported by subsequent resolutions, notably ECOSOC resolution 1503 of May 27, 1970<sup>26</sup> and Sub-Commission resolution I (XXIV) of August 13, 1971.<sup>27</sup> These resolutions provide new and detailed procedures for dealing with human rights complaints, including those received from NGOs.

In view of the renewed emphasis on the importance of NGOs in the process of reporting alleged human rights violations, this paper will examine the present status of ECOSOC resolution 454 (XIV) of July 28, 1952, which restricted the rights of NGOs to submit written complaints of such alleged violations. It will also briefly describe the new procedures, with special emphasis on the rights and duties of the Commission and Sub-Commission regarding such complaints. Finally, it will examine the role of NGOs in the international protection of human rights by invoking the new U.N. procedures.

## II. COMPLAINTS ALLEGING VIOLATIONS OF HUMAN RIGHTS

### *Complaints Alleging Violations of Human Rights and ECOSOC Resolution 454 (XIV)*

Before the adoption of ECOSOC resolution 288B(X) of February 27, 1950, written statements received by the Secretary-General from NGOs in consultative status, including statements containing complaints against governments alleging violations of human rights,<sup>28</sup>

23. ECOSOC Res. 1235, 42 U.N. ECOSOC, Supp. 1, at 17, U.N. Doc. E/4393 (1967) [hereinafter cited as ECOSOC Res. 1235].

24. Commission on Human Rights Res. 8, 42 U.N. ECOSOC, Supp. 6, at 131, U.N. Doc. E/4322 (1967).

25. Humphrey, *supra* note 20, at 471.

26. ECOSOC Res. 1503, 48 U.N. ECOSOC, Supp. 1A, at 9, U.N. Doc. E/4832/Add. 1. para. 7(c) (1970) [hereinafter cited as ECOSOC Res. 1503].

27. Question of the Violation of Human Rights & Fundamental Freedoms (etc.), Sub-Commission Res. 1 (XXIV), Sub-Commission on Minorities, Report, U.N. Doc. E/CN.4/Sub. 2/323 (1971) [hereinafter cited as Sub-Commission Res. 1 (XXIV)].

28. There was hardly any doubt about the right of the NGOs to bring complaints

were circulated as United Nations documents in accordance with ECOSOC resolution 2/3 of June 21, 1946.<sup>29</sup> However, ECOSOC resolution 454 of July 28, 1952 laid down a special procedure for dealing with all “[c]ommunications from non-governmental organizations in consultative status containing complaints against governments” (title of ECOSOC resolution 454). It provided *inter alia* that all such statements which contain complaints of violations of human rights were to be handled in accordance with the special procedure laid down in ECOSOC resolution 75(V) of August 5, 1947, as amended,<sup>30</sup> later replaced by ECOSOC resolution 728F of July 30, 1959.

*ECOSOC Resolution 728F (XXVIII)* of July 30, 1959

Resolution 728F “requests the Secretary-General,” among other things, to compile two lists of communications concerning human rights, including “communications from non-governmental organizations.”<sup>31</sup> The first compilation is “a *non-confidential list* containing a brief indication of the substance of each communication, however addressed, which deals with the principles involved in the promotion of universal respect for, and observance of, human rights” [para. 2(a)]. The second compilation is “a *confidential list* containing a brief indication of other communications concerning human rights, however addressed” [para. 2(b)] (emphasis added). The resolution also requests the Secretary-General to distribute both lists to the members of the Commission on Human Rights before each session, but the confidential list only “in private meeting.” The resolution also provides for “the members of the Commission, upon request, to consult the originals of the communications” on the non-confidential list [para. 2(c)]. The implication of this provision (and the practice at the U.N.) until ECOSOC resolution 1235 of June 6, 1967 was that members of the Commission were not entitled to consult the originals of the communications on the confidential list, which included the written statements received from NGOs in consultative status.<sup>32</sup>

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against governments, which was evident by the title of the ECOSOC resolution 454(XIV) of July 28, 1952, itself: *Communications from Non-Governmental Organizations in Consultative Status Containing Complaints Against Governments*. See also the statement of Mr. Kotschnig of the U.S. in the summary records of the 661st meeting of the ECOSOC. U.N. Doc. E/SR. 661, at 695 (1952).

29. U.N. Doc. E/C.2/332 (1952).

30. ECOSOC Res. 75, U.N. Doc. E/573, at 20 (1947); ECOSOC Res. 275B, 10 U.N. ECOSOC, Supp. 1, at 7, U.N. Doc. E/1661 (1950); ECOSOC Res. 116A, 6 U.N. ECOSOC, Supp. 1, at 16, U.N. Doc. E/749 (1948); ECOSOC Res. 192A, 8 U.N. ECOSOC, Supp. 1, at 7, U.N. Doc. E/1162/Rev.1 (1949).

31. See U.N. Doc. E/2270. Also, “communications” is “the term generally employed in all documents of the Economic and Social Council and its subsidiary bodies” to describe various written statements, including complaints. U.N. Doc. E/C.2/S.R. 118, at 9.

32. This, in effect, gave the right to the Secretary-General to withhold the com-



*ECOSOC Resolution 1235 (XLII) of June 6, 1967 and the Right of the Commission and the Sub-Commission to Consult the Originals of All Complaints*

The ECOSOC resolution 1235 of June 6, 1967, not only rejected the statement in Section 1 of ECOSOC resolution 728F that the Commission had "no power to take any action in regard to any complaints concerning human rights," but also approved the decision of the commission to give annual consideration to the item entitled "Question of the violation of human rights and fundamental freedoms" (para. 1). Also, paragraph 2 of the resolution authorized both the Commission and the Sub-Commission "to *examine* information relevant to gross violations of human rights and fundamental freedoms" contained in the communications listed by the Secretary-General pursuant to ECOSOC resolution 728F (XXVIII) of 30 July 1959 (emphasis added). It was clear that this examination required both the Commission and the Sub-Commission to see all communications concerning human rights in full, and "not merely the summaries contained the confidential lists,"<sup>33</sup> subject of course to the provisions of paragraph 2(b) of Council resolution 728F concerning the divulging of the identity of the authors of communications. In fact, subsequent to the adoption of resolution 1235, members of the Sub-Commission and the Commission did have access to copies of the originals of all complaints.<sup>34</sup> The packages of the copies of the

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plaints and exclude the members of the Commission from seeing the copies or the originals of the complaints against governments alleging violations of human rights.

However, it was not only illegal, it was unwise and unpractical, as well. Any person or group could mail a copy of the complaint to the members of the Commission, too. "All they needed was writing materials, a stamp, and in some countries, the courage to mail the letter." Humphrey, *supra* note 20, at 467.

33. Humphrey, *supra* note 20, at 471.

34. The Sub-Commission at the very first opportunity at its 20th session, held from September 25 through October 12, 1967 at Geneva, looked at the communications, discussed them, and adopted Resolution 3 (XX) of October 6, 1967 by which it unanimously drew the attention of the Commission to situations in the Republic of South Africa, South-West Africa, Southern Rhodesia, Angola, Mozambique, Guinea Bisseau, Greece, and Haiti; for details, see the Report of the Sub-Commission, U.N. Doc. E/CN.4/Sub.2/286, paras. 75-95. At its 21st session held from October 7-25, 1968, at Geneva, the Sub-Commission again adopted a resolution but simply drew the attention of the Commission to the Sub-Commission's discussion of the subject; see the Report of the Sub-Commission, U.N. Doc. E/CN.4/Sub. 2/294, paras. 61-70 and 95 (1968). It is clear that the members of the Sub-Commission had access to the originals of all complaints listed by the Secretary-General on either of the two lists prepared in accordance with ECOSOC resolution 728F. At its 22nd and 23rd sessions (August 15, 1969 to September 12, 1969, and August 10-28, 1970), the Sub-Commission did not consider the relevant Agenda items because they were involved with developing the new procedures and the rules of admissibility. See the Reports of the Sub-Commission for 22nd and 23rd sessions. U.N. Doc. E/CN.4/Sub. 2/305, para. 15 (1969), and E/CN.4/Sub. 2/316, para. 9 (1970). The Sub-Commission finally adopted resolution 1

originals included the complaints placed on the "confidential list" compiled in accordance with ECOSOC resolution 728F.

It follows that the Secretary-General did not have the power or responsibility to withhold any complaints alleging violation of human rights from the members of the Commission or the Sub-Commission. The Secretary-General, however, still compiled the two lists because the copies of the originals of the complaints on the "confidential list" were presented only in "private meeting," and were subject to the provisions concerning the divulging of the identity of the authors of the complaints [para. 2(b) of Council resolution 728F]. But it was the Sub-Commission and the Commission which had the authority to decide which information was relevant to gross violations of human rights and fundamental freedoms with a view toward ascertaining situations which reveal a consistent pattern of violations of human rights.

Thus, the members of both the Commission and the Sub-Commission had access to the originals of all the complaints alleging violations of human rights placed on either of the two lists—confidential or non-confidential. The originals included the written statements submitted by NGOs in consultative status containing complaints against governments alleging violations of human rights.

### III. NEW U.N. PROCEDURES FOR HUMAN RIGHTS COMPLAINTS *ECOSOC Resolution 1503 (XLVIII) of May 27, 1970*

ECOSOC resolution 1503 of May 27, 1970<sup>35</sup> provides more detailed procedures and new machinery to assist the Commission and the Sub-Commission to discharge their functions in relation to violations of human rights and fundamental freedoms. Paragraph 1 of the resolution provides as follows:

*The Economic and Social Council,*

1. Authorizes the Sub-Commission on Prevention of Discrimination and Protection of Minorities to appoint a working group consisting of not more than five of its members, with due regard to geographical distribution, to meet once a year in private meetings for a period not exceeding ten days immediately before the sessions of the Sub-Commission to consider all communications, including replies of Governments thereon, received by the Secretary-General under Council resolution 728F (XXVIII) of 30 July 1959 with a view to bringing to the attention of the Sub-Commission those communications, together with replies of Govern-

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(XXIV) at its 24th session held August 2-20, 1971. See Sub-Comm'n. Res. 1 (XXIV), *supra* note 27, at paras. 16-89. For the activities of the Sub-Commission at its 25th and 26th sessions held from August 14, 1972 to September 1, 1972, and August 20-31, 1973, see *infra* notes 48 and 51.

35. ECOSOC Res. 1503, *supra* note 26.

ments, if any, which appear to reveal a consistent pattern of gross and reliably attested violations of human rights and fundamental freedoms within the terms of reference of the Sub-Commission.<sup>36</sup>

The Sub-Commission, in turn, is requested:

to consider in private meetings . . . the communications brought before it in accordance with the decision of the majority of the members of the working group and any replies of Governments relating thereto and *other relevant information* with a view to determining whether to refer to the Commission on Human Rights particular situations which *appear to reveal* a consistent pattern of gross and reliably attested violations of human rights requiring consideration by the Commission (emphasis added).<sup>37</sup>

The Commission, after it has examined any situation 'referred to it by the Sub-Commission, determines (a) whether it requires a thorough study by the Commission and a report and recommendations thereon to the Council in accordance with paragraph 3 of Council resolution 1235 (XLII)(para.6(a)) or (b) whether it may be a subject of an investigation by an *ad hoc* committee to be appointed by the Commission (para. 6(b)).<sup>38</sup> Such an investigation, however, "shall be undertaken only with the express consent of the State concerned and shall be conducted in constant cooperation with that State and under conditions determined by agreement with it" (para. 6(b)).<sup>39</sup> In addition, the investigation cannot be undertaken unless all available means at the national level have been exhausted, and the situation is not related to a matter which is being dealt with under other procedures prescribed in the constituent instruments of, or conventions adopted by, the U.N. and the specialized agencies, or in regional conventions. The *ad hoc* committee's procedure "shall be confidential"<sup>40</sup> and "the committee shall strive for friendly solutions before, during, and even after the investigation."<sup>41</sup> The Committee is then required to report to the Commission with such observations and suggestions as it may deem appropriate.<sup>42</sup>

*Sub-Commission Resolution 1 (XXIV) of August 13, 1971*<sup>43</sup>

ECOSOC resolution 1503, however, did not become effective

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36. *Id.* at para. 1.

37. *Id.* at para. 5.

38. ECOSOC Res. 1235, *supra* note 23.

39. *Id.*

40. ECOSOC Res. 1503, *supra* note 26. This paragraph also provides for the composition of the *ad hoc* Committee, nature of its membership, and its rules of procedure.

41. *Id.* at para. 7(d).

42. *Id.* at para. 7(e).

43. For an in-depth analysis of the procedures provided by this resolution, see Cassese, *The Admissibility of Communications to the United Nations on Human Rights Violations*, 5 HUMAN RIGHTS J. 375 (1972). See also Guggenheim, *Key Provisions of the United Nations Rules Dealing with Human Rights Petitions*, 6 N.Y.U.J. INT'L.

immediately because paragraph 2 of the resolution stipulated that the Sub-Commission should, as the first stage in the implementation of the resolution, devise appropriate procedures for dealing with the question of admissibility of communications. Sub-Commission resolution 1 (XXIV)<sup>44</sup> of August 13, 1971 provides the "provisional procedures" (preamble of the resolution), which in fact are the rules of admissibility of communications. The Sub-Commission also appointed a working group of five of its members in accordance with rules laid down in Sub-Commission resolution 2 (XXIV) of August 16, 1971.<sup>45</sup>

The first meetings of the working group were held from July 31 to August 11, 1972, before the 25th session of the Sub-Commission held from August 14 to September 1, 1972.<sup>46</sup> The meetings were both "private and closed," and the working group communicated the results of its work to the Sub-Commission confidentially.<sup>47</sup> The working group again met from August 20 to August 31, 1972 at Geneva before

L. & Pol. 427 (1972).

44. Sub-Comm'n. Res. 1 (XXIV), *supra* note 27, at paras. 16-89.

45. Question of the Violation of Human Rights & Fundamental Freedoms (etc.), Sub-Comm'n. Res. 2 (XXIV), Sub-Comm'n on Minorities Report, U.N. Doc. E/CN.4/Sub. 2/323 (1971).

46. The working group met from July 31, 1972 to August 11, 1972, and considered over 2,000 communications. *See* para. 109 of the Report of the Sub-Commission, U.N. Doc. E/CN.4/Sub. 2/332 (1972). It submitted a confidential report to the Sub-Commission. The Sub-Commission, in turn, "discussed the report and certain communications drawn to its attention. . ." in closed session. *Id.* at para. 110. "The Sub-Commission unanimously adopted a resolution on the matter, which it decided to include in Chapter XIV of the present report as resolution 2 (XXV)." *Id.* at para. 111. Paragraph 4 of the Sub-Commission resolution 2 (XXV), "[d]ecides that the Working Group shall consider at its next session those communications it was not able to examine at its last session, as well as communications received thereafter, and that it may *re-examine* the communications singled out in its report, in the light of replies of Governments, if any" (emphasis added). Some members of the Commission at their next session from February 26 to April 6, 1973, "expressed concern about the delay in dealing with communications under ECOSOC resolution 1503 (XLVIII). They felt that the Sub-Commission should take account of the urgency of some of the situations brought to its attention." *See* para. 265 of the Report of the Commission on Human Rights. U.N. Doc. E/CN.4/1127 (1973). However, no relief or redress was provided regarding any of the complaints during the first year of the implementation of the new procedures, and the consideration and examination of the complaints were postponed for next year. *See infra* note 69.

It may be noted here that despite the confidential discussion and report by the Sub-Commission, some of the facts from the proceedings were uncovered by the press. Teltsch, *U.N. Unit Said to Report Greeks Violate Human Rights*, N.Y. Times, September 21, 1971, at 18, col. 1. "At that point, to help ensure accuracy, the pleadings were made available to the press." *See* Newman, *The New U.N. Procedures for Human Rights Complaints: Reform, Status Quo, or Chambers of Horror?*, 34 ANNALES DE DROIT 141 (1974).

47. Newman, *supra* note 46, at 132; Teltsch, *supra* note 46.

the 26th session of the Sub-Commission held from September 3 to September 22, 1972, and the results of its work were again confidential.<sup>48</sup>

*NGOs as a Source of Complaint Under the New Procedures*

Paragraph 2(a) of the Sub-Commission resolution 1 of August 13, 1971 laid down the sources of admissible communications.<sup>49</sup> It reads as follows:

Admissible communications may originate from a person or group of persons who, it can be reasonably presumed, are victims of the violations referred to in sub-paragraph (1)(b) above, any person or group of persons who have direct and reliable knowledge of those violations, or non-governmental organizations acting in good faith in accordance with recognized principles of human rights, not resorting to politically motivated stands contrary to the provisions of the Charter of the United Nations and having direct and reliable knowledge of such violations.<sup>50</sup>

Thus any non-governmental organization, whether in consultative status or not, can file a complaint alleging violations of human rights in particular states, and the working group will have access to the originals of all such complaints.

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48. The working group met from August 20, 1972 to August 31, 1972 at Geneva before the 26th session of the Sub-Commission held September 3-21, 1973. For the activities of the working group and the Sub-Commission, see U.N. Doc. E/CN.4/Sub.2/343, paras. 82-89 (1973). "After considering over 7,000 communications received after its first session in 1972, including replies of Governments, and after implementing paragraph 4 of Sub-Commission resolution 2 (XXV), the Working Group submitted a confidential report (U.N. Doc. E/CN.4/Sub.2/R-7 and Add. 1-8) to the Sub-Commission." *Id.* at para. 87.

The Sub-Commission considered this item in closed session (para. 82 and later adopted a confidential resolution on this matter.

The press again uncovered and reported that the Sub-Commission referred eight cases for consideration by the Commission. *The Times* (London), Sept. 21, 1973, at 7, col. 1; *The Times* (London), Sept. 24, 1973, at 7, col. 1.

The Commission, in turn, at the conclusion of five closed meetings on March 6, 1974, "decided to establish a five-member Working-Group to examine a set of confidential documents concerning alleged gross violations of human rights transmitted to the Commission last September by the Sub-Commission. The Group, which would meet one week before the next session of the Commission in February 1975, was asked to examine observations by Governments on those documents and any further report which the Sub-Commission might submit on the matter." See *New Group on Rights Violations*, 11 U.N. MO. CHRON. 22 (Apr. 1974); Report of the Comm'n, 56 U.N. ECOSOC, Supp. 5, at 34, U.N. Doc. E/CN.4/1154 (1974). See also Teltsch, *U.N. Rights Group is Under Attack—Charged with the Failure to Study Alleged Inhumane Acts in 8 Nations*, N.Y. Times, March 10, 1974, at 1, col. 1.

49. For an analysis of some of the phrases used in paragraph 2 of the Sub-Commission resolution 1 (XXIV), see Cassese, *supra* note 43, at 377.

50. Sub-Comm'n. Res. 1 (XXIV), *supra* note 27.

## IV. SOME EFFECTS OF THE NEW U.N. PROCEDURES

*ECOSOC Resolution 1503 did not Replace or Repeal the ECOSOC Resolution 1235.*

A reading of the debates before the adoption of the Sub-Commission resolution 1 (XXIV) makes it clear that the working group is established to help the Sub-Commission in discharging its functions in relation to violations of human rights and fundamental freedoms, and "would in no way diminish the over-all powers of the Sub-Commission."<sup>51</sup> In particular, the Sub-Commission retained the right to over-ride the conclusions of the working group. It follows that the Commission also retained the right to over-ride the conclusions of the working group and/or of the Sub-Commission. The purpose of the working group is further clarified by the preamble of the Sub-Commission resolution 2 (XXI) of October 10, 1968, referred to in the preamble of the ECOSOC Resolution 1503. It reads, in part, as follows:

*Considering* that not all the members of the Sub-Commission have necessary time to deal adequately with communications while the Sub-Commission is in session to determine which communications appear to reveal a consistent pattern of gross violations of human rights in accordance with the instructions of the Council and the Commission . . . .<sup>52</sup>

Also, the Sub-Commission merely has to find a *prima facie* case of particular situations which appear to reveal a consistent pattern of gross and reliably attested violations of human rights requiring consideration by the Commission.<sup>53</sup> The Commission alone still has the responsibility and the authority to "study" or "investigate" any situations. Thus, the establishment of the working group and the new procedures laid down in ECOSOC resolution 1503 and Sub-Commission resolution 1 (XXIV) did not repeal, replace or supersede ECOSOC resolution 1235. In fact both the resolutions refer to the ECOSOC resolution 1235 and lean on it. The mandate granted to the Sub-Commission and the Commission in ECOSOC resolution 1235, particularly that in paragraphs 2 and 3, and as explained in Section II, remains intact.<sup>54</sup>

*Sub-Commission, Commission, and ECOSOC May Take Direct Cognizance of the Complaints*

It is clear that the Sub-Commission is authorized to appoint a

51. See the summary records of the Sub-Commission, U.N. Doc. E/CN.4/Sub.2/SR.615, at 39 (1971).

52. Procedure for Dealing with Communications Relating to Violations of Human Rights and Fundamental Freedoms, Sub-Comm'n Res. 2 (XXI), Sub-Comm'n on Minorities, Report, U.N. Doc. E/CN.4/976, at 34 (1968).

53. *Id.* at 41; ECOSOC Res. 1503, *supra* note 26, at paras. 1,5.

54. Humphrey, *supra* note 20, at 472.

working group merely to facilitate the work of the Sub-Commission. This working group is a subordinate body of the Sub-Commission. In fact, the working group consists of five of the members of the Sub-Commission itself. It therefore seems obvious that the Sub-Commission has the right to take direct cognizance of any complaints relevant to gross violations of human rights and fundamental freedoms listed by the Secretary-General in accordance with ECOSOC resolution 728F. It is also evident that the Sub-Commission not only has the authority to reject the conclusions of the working group, but may also reconsider any of the complaints listed in accordance with ECOSOC resolution 728F. In addition, the Sub-Commission has the authority, in fact ECOSOC requests the Sub-Commission, to consider any "other relevant information"<sup>55</sup> before referring any "situations" for consideration by the Commission<sup>56</sup> (para. 5 of ECOSOC resolution 1503).

In paragraph 1 of resolution 1235 the ECOSOC has enlarged the terms of reference of the Sub-Commission by concurring with the request for assistance addressed by the Commission to the Sub-Commission. The purpose of this provision is to assist the Commission in discharging its functions in relation to violations of human rights and fundamental freedoms. In the light of this fact, it is clear that the Commission also has the right to take direct cognizance of the complaints mentioned in the preceding paragraph.<sup>57</sup> Similarly, the Commission has the authority to reject the conclusions of the Sub-Commission and/or the working group, and reconsider any of the complaints listed in accordance with ECOSOC resolution 728F, regardless of whether such complaints were considered and referred to by the Sub-Commission and/or the working group.<sup>58</sup> In view of this

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55. The Sub-Commission already gets all the information contained in the communications listed by the Secretary-General in both the lists prepared in accordance with ECOSOC resolution 728F and in the report prepared by the Sub-Commission from all available sources. *Supra* notes 24, 32. Thus, "other relevant information" referred to in para. 5 of ECOSOC resolution 1503 must be in addition to the information mentioned in the preceding sentence, including the information independently acquired by the members.

56. ECOSOC Res. 1503, *supra* note 26, at para. 5.

57. Paragraph 1 of ECOSOC resolution 1235 does not exclude or prohibit the Commission from reviewing the complaints itself, if and when the Commission deems it appropriate. This conclusion is further supported by paragraph 2 which authorizes both the Commission *and* the Sub-Commission to examine relevant information. The term used is "and" regarding the authority in para. 2, and not "or" or any other term. It is clear that the purpose of ECOSOC resolution 1235 is not to exclusively create a step-by-step procedure but to place the responsibility on, and grant the authority to, both the Commission and the Sub-Commission. ECOSOC Res. 1235, *supra* note 23.

58. The Commission, of course, is superior to the Sub-Commission, and nothing prohibits the Commission to reject any conclusions of the Sub-Commission. Also, the use of the term "and" in para. 2, as explained in footnote 57, provides clear authority

fact and paragraph 5 of ECOSOC resolution 1503, mentioned in the preceding paragraph, it seems obvious that the Commission may also consider any other information relevant to a consistent pattern of gross violations of human rights. This conclusion is further supported by the fact that it is only the Commission which has the responsibility and authority to "study" or "investigate" any situations and make recommendations to the ECOSOC.

The ECOSOC established the Commission under Article 68 of the U.N. Charter *to assist* the Council in carrying out its functions.<sup>59</sup> It is, therefore, reasonable to presume that the ECOSOC, which granted the above rights to the Sub-Commission and the Commission, simply delegated the authority for expediting the work of the Council, and did not exclude or prohibit itself in relation to the above rights. Thus the ECOSOC also has the right to take direct cognizance of the above-mentioned complaints. Similarly, the ECOSOC has the authority to reject the conclusions of the Commission and/or the Sub-Commission, reconsider any of the complaints listed in accordance with ECOSOC resolution 728F, regardless of whether such complaints were considered by any of the subordinate bodies. The ECOSOC may also consult the originals of any such complaints, and consider any other information relevant to a consistent pattern of gross violations of human rights.

*Present Status of ECOSOC Resolution 454 (XIV) of 1952*

ECOSOC resolution 454 (XIV) of July 28, 1952 has not been repealed, and all the communications received from NGOs in consultative status containing complaints against governments are still to be handled according to the procedure laid down in this resolution.<sup>60</sup> Thus the NGOs cannot require the Secretary-General to circulate human rights complaints against governments, unlike other written statements as provided for in paragraphs 23 and 29 of ECOSOC resolution 1296 of May 23, 1968.<sup>61</sup> However, ECOSOC resolution

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to the Commission to reconsider any complaints which have already been considered by the Sub-Commission.

It may be argued that the use of the phrase "*thus made available to it*" (emphasis added) in paragraph 3 of ECOSOC resolution 1235 limits the Commission to consider only the information made available by the Sub-Commission. I submit that this interpretation is incorrect. As mentioned above in note 57, paragraph 2 of ECOSOC resolution 1235 authorizes both the Commission *and* the Sub-Commission to examine information, and places the responsibility on both the bodies. The phrase "thus" in paragraph 3 does not in any way diminish the powers of the Commission.

59. 3 REPERTORY OF U.N. PRACTICE 488-90, 504-07 (1955). ECOSOC established the Commission by ESC resolution 1/5 at its first session, and defined its terms of reference by ESC resolution 2/9 at its 2nd session.

60. Letter to the author from G.N. Ceccatto, Human Rights Officer, U.N. Division of Human Rights, New York City, Nov. 21, 1973.

61. ECOSOC Res. 1296 *supra* note 7, at paras. 23, 29. A recent communication,



1503 provides that the Secretary-General must "furnish to the members of the Sub-Commission *every month* a list of communications prepared by him in accordance with Council resolution 728F (XXVIII) and a brief description of them, together with the text of any replies received from governments"<sup>62</sup> [para. 4(a) — emphasis added].

In the light of the above-mentioned rights of the Sub-Commission, the Commission, and the ECOSOC itself, ECOSOC resolution 454 regarding human rights complaints against governments received from NGOs appears to have been diluted and does not seem to have the same restrictive effect. Even if the NGOs have the right to require the Secretary-General to circulate those complaints, it will be meaningless and ineffective, unless the Sub-Commission, the Commission, and/or the ECOSOC care to take some action. And under the existing provisions, as noted above, these bodies do have the authority to take cognizance of the complaints and to take appropriate action.

#### V. SUMMARY AND CONCLUSIONS

##### *Right of the U.N. to Consider Human Rights Complaints*

In February 1947 the Commission on Human Rights abdicated one of the crucial functions of the United Nations by deciding that "it recognizes that it has no power to take any action in regard to any complaints concerning human rights . . . ."<sup>63</sup> However, ECOSOC resolution 1235 of June 6, 1967 provided a major breakthrough by reestablishing the authority and responsibility of the Commission, as envisioned in Article 68 of the U.N. Charter. The positions taken by the Secretariat in its paper E/CN.4/165 in 1949 and by Lauterpacht have also been vindicated.<sup>64</sup>

ECOSOC resolution 1235 was in response to the General Assembly resolution 2144 of October, 1966, which *inter alia* invited the ECOSOC and the Commission "to give urgent consideration to ways and means of improving the capacity of the United Nations to put a stop to violations of human rights wherever they may occur." The General Assembly resolution 2144 of October, 1966 not only departed significantly from the attitude and practice of the U.N. in relation to one of its purposes of promoting and encouraging respect for human

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U.N. Doc. E/NGO/14 of May 6, 1974, however, was circulated by the Secretary-General to the members of the ECOSOC. The document appears to be a complaint against a government, despite the assertion in the communication that "in no sense do we lodge a complaint against any government" (paragraph 13 of the communication).

62. ECOSOC Res. 1503 *supra* note 26, at para. 4(a).

63. U.N. Doc. E/CN.4/165 (1949).

64. Humphrey, *supra* note 20, at 471.

rights for all,<sup>65</sup> but also presented "far-reaching possibilities" for "assisting in the realization of human rights and fundamental freedoms for all."<sup>66</sup> The U.N. effort continued through ECOSOC resolution 1503 of May 27, 1970, and Sub-Commission resolution 1 of August 13, 1971, which provide more detailed procedures and new machinery to enable the Commission to discharge its functions in relation to violations of human rights.

*Some Problems with the New Procedures*

Although the U.N. has come a long way with respect to human rights protection, the present procedures leave much to be desired. First, the new procedures are concerned only with "a consistent pattern of gross and reliably attested violations of human rights and fundamental freedoms."<sup>67</sup> Second, the complaints can be filed only after the violations, and there are no provisions to deal with the threats of violations of human rights and/or to prevent them before they occur.<sup>68</sup>

Also, it is extremely cumbersome to establish "a consistent pattern of gross violations," especially by the victims of torture who are still under detention, not to mention the victims who have already been killed. In addition, the procedures are unduly lengthy and gross violations of human rights may continue while the complaints make their way from the working group to the ECOSOC.<sup>69</sup> Flagrant violations of human rights require provisions for more expeditious remedial measures. The need is particularly obvious in cases involving torture, threat to life, or other violations where irreparable damage may occur.

There has also been some criticism of the requirement for the *ad*

65. U.N. CHARTER art. 1, para. 3.

66. U.N. CHARTER art. 1, para. 1(b).

67. ECOSOC Res. 1235, *supra* note 23, at para. 3.

68. However, if a particular "situation" presents an imminent threat to international peace and security, the ECOSOC and/or the Secretary-General may decide to refer the matter to the Security Council in accordance with Articles 65 and 99 of the Charter respectively. Also, the Security Council itself may take cognizance of the situation under Article 39 of the Charter and take appropriate action.

69. At its 30th session (held from February 4 to March 8, 1974), the Commission decided to send the Chilean authorities a telegram calling for the immediate cessation of human rights violations. The cable was sent on March 1, 1974. Particular concern was expressed for the protection of persons whose lives were reported to be in imminent danger. The Commission insisted that the Chilean citizens and foreigners in similar situations should not be prevented from leaving the country if they wished.

A reply from the Chilean authorities said that the persons mentioned in the cable were in good health and would remain under detention during the emergency. Afterward, all detained persons would be released and might leave the country if they wished, unless they were charged with common crimes. See 11 U.N. MO. CHRON. 21 (Apr. 1974); Report of the Comm'n, *supra* note 48, paras. 94-97.

*hoc* committee, in case of an "investigation," "to strive for friendly solutions before, during and even after the investigation."<sup>70</sup> Such an approach of "conciliation applied to human rights is somewhat self-contradictory in that it suggests that, despite their sacred and inviolable nature, human rights can be 'negotiated'."<sup>71</sup> Finally, even though the U.N. is a political organization of sovereign states, the provisions that the "investigation" by the *ad hoc* committee "shall be undertaken only with the express consent of the State concerned and shall be conducted in constant cooperation with that State and under conditions determined by agreement with it,"<sup>72</sup> seem to be self-defeating, and may rarely result in a genuine "investigation." A *prima facie* case of a consistent pattern of gross and reliably attested violations of human rights is not subject to any claims of domestic jurisdiction under paragraph 2(7) of the Charter or any other provisions.<sup>73</sup> The requirement of "consent" and "conditions determined by agreement" should be repealed.

Paragraph 8 of ECOSOC resolution 1503 provides that all actions by the Sub-Commission and the Commission "shall remain confidential until such time as the Commission may decide to make recommendations to the ECOSOC."<sup>74</sup> This requirement does not seem to

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70. ECOSOC Res. 1503, *supra* note 26, para. 7(d).

71. Vasak, *National, Regional and Universal Institutions for the Promotion and Protection of Human Rights*, HUMAN RIGHTS J. 165, 175 (1968).

72. ECOSOC Res. 1503, *supra* note 26, para. 5(b).

73. It has been argued that, in the absence of an international agreement by which a state agrees to respect specific human rights, the treatment a state accords its own nationals remains essentially within its domestic jurisdiction and outside U.N. competence. The Assembly, however, has not accepted this claim and has acted on the premise that it does have the competence to deal with such situations on the ground that Charter provisions dealing with human rights are being violated. L. GOODRICH, E. HAMBRO, & P. SIMMONS, CHARTER OF THE UNITED NATIONS 71 (1969). It is a very fortunate coincidence that at the very time when ECOSOC and its subsidiary organs completed the institutional arrangements for dealing with violations of human rights, the International Court of Justice stated unambiguously that human rights provisions do impose legal obligations on the parties to the Charter. See Advisory Opinion on the Legal Consequences for States of the Continued Presence of South Africa in Namibia Notwithstanding Security Council Resolution 276, [1971] I.C.J. 1. See also Schwelb, *Interpretation of the Human Rights Clauses of the United Nations Charter by the International Court of Justice*, 55 PROC. INT'L L. ASSOC. 583 (1972); Fawcett, *Human Rights and Domestic Jurisdiction*, in THE INTERNATIONAL PROTECTION OF HUMAN RIGHTS, *supra* note 1, 286-303.

Also, see the statement by Mr. Cassese at the 24th session of the Sub-Commission held from August 2, 1971 through August 20, 1971: "... a communication dealt with a consistent pattern of gross violations of human rights, any possible objection by the State involved based on Article 2, paragraph 7 would not be justified, since it was definitely the practice of the United Nations to take the position that gross and systematic violations of human rights were not exclusively within the domestic Jurisdiction of States." U.N. Doc. E/CN.4/Sub.2/SR.620, at 89 (1971).

74. ECOSOC Res. 1503, *supra* note 26, at para. 3.

serve the purpose of the new procedures. It is against the concept of natural justice<sup>75</sup> and also against the established principles of due process in many countries. It is very unfair to the victims because it deprives them of the knowledge whether any action is being taken on their complaints and whether any relief is forthcoming. This provision may have the effect of discouraging the victims from seeking redress from the U.N. Would it not defeat the very purpose of the procedures? Would it not also damage the authority of, and the respect for, the United Nations regarding its responsibility for the maintenance of international peace and security in conformity with the principles of justice (see Art. 1, para. 1., of the Charter)? Paragraph 8 of ECOSOC resolution 1503 should also be repealed.

#### *Function of the New Procedures*

In any event, it is too early to say how effective the procedures will be. The new procedures may prove to be only a minor step in terms of providing an effective remedy; they have, however, certainly established the basic principle regarding the responsibility of the U.N. in the international protection of human rights. In addition, the new procedures do serve an important function of exerting a restraining influence on the conduct of states with respect to the violation of human rights of their citizens. A state, especially in case of a complaint, may not only face censure by the U.N., it may be exposed to condemnation by world public opinion. In fact, it is believed that the consideration of the complaints by the working group and the Sub-Commission in August, 1972 and August and September, 1973 did have the effect of at least lessening certain violations in some of the countries complained against.<sup>76</sup>

#### *Special Role for NGOs*

It is well known that states are reluctant to complain against others regarding violations of human rights for fear of having their own violations exposed,<sup>77</sup> and sometimes for fear of damaging bilateral relations.<sup>78</sup> Politically motivated complaints are usually unre-

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75. Newman, *supra* note 46, at 135.

76. It may be coincidental that one day before the working group was to meet on August 20, 1973, George Papadopoulos, who took the oath as the country's first president, promised an amnesty for some 300 political prisoners, including the man who tried to kill him in 1968. However, as a result, the working group did not consider the complaints against the government of Greece. N.Y. Times, August 20, 1973, at 1, col. 8.

77. For the dangers of state versus state complaints, see Hoffman, *Implementation of International Instruments on Human Rights*, 53 PROC. AMER. SOC'Y INT'L L. 235, 236 (1959). One of the recent exceptions has been the complaint by Norway, Sweden and Denmark against Greece before the European Commission of Human Rights in 1967.

78. Teltsch, *supra* note 46.

lated to the real violations.<sup>79</sup> Also, as noted earlier it is extremely difficult for an individual to get any relief by invoking the new procedures because they require a gross and consistent pattern of violations which an individual will find very difficult to establish, especially if the victim is still under detention or threat of life. Moreover, it would be highly desirable, sometimes extremely important and urgent (*e.g.*, in case of torture or possibility of death), to protect the individual before a violation takes place. Under these circumstances, it seems that the major responsibility for the international protection of human rights lies with the NGOs, particularly in invoking the new procedures in case of a consistent pattern of gross violations of human rights. NGOs seem to be in a better position to provide reliable attestation of a case, if any, of a consistent pattern of gross violations of human rights and fundamental freedoms.<sup>80</sup> NGOs can also alert the Sub-Commission regarding any threat of violations of human rights by filing a complaint, since the Secretary-General furnishes to the members of the Sub-Commission *every month* a list of complaints prepared by him in accordance with ECOSOC resolution 728F<sup>81</sup> [ECOSOC resolution 1503, para. 4(a)]. Perhaps through these procedures, future Biafras or Bangladeshes can be avoided.

#### *Some Other Rights of NGOs*

NGOs in consultative status, of course, can also make oral statements<sup>82</sup> during the sessions of the ECOSOC, the Commission, and other subsidiary organs of the Council. NGOs in category I can even propose items to be placed on the provisional agenda<sup>83</sup> of the ECOSOC and the Commission. Unfortunately, the right of the NGOs in Category I to place human rights items on the agenda of the ECOSOC or the Commission has almost never been utilized.<sup>84</sup> However,

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79. See the I.L.O. proceedings of *Ghana v. Portugal* and the retaliatory action *Portugal v. Liberia* discussed in E. LANDY, *THIRTY YEARS OF I.L.O. EXPERIENCE*, 175-76 (1966).

80. In addition, the NGOs in consultative status (especially those in Categories I and II) can always request the Secretary-General to bring a situation directly to the attention of the Security Council, ECOSOC, the Commission, or the Sub-Commission. The U.N. body in question may take direct cognizance of the complaint and take appropriate action, especially in cases involving torture, threat to life, or other such violations where irreparable damage may occur. NGOs may also bring to bear the weight of the world public opinion by publicizing the violations or threat of violation of human rights.

81. ECOSOC Res. 1503, *supra* note 26, at para. 4(a).

82. ECOSOC Res. 1296, *supra* note 7, at paras. 25, 31.

83. *Id.* at paras. 21, 27.

84. There are two cases on record of NGOs in consultative status having proposed human rights items to be placed on the agenda of ECOSOC. First, the American Federation of Labor proposed to the 6th session of the ECOSOC in November, 1947, a survey of forced labor and measures for its abolition, and the question of the infringement of trade union rights. This effort culminated, in 1957, in the adoption and

NGOs have spoken on various occasions at the sessions of the Commission and on a few occasions also at the sessions of the ECOSOC. In fact, several NGOs spoke out at the 29th session of the Commission and helped expose many violations of human rights in various states which, without this voice, would have gone completely unnoticed on the official records.<sup>85</sup>

It may be noted here that the formal provisions do not exhaust the role and opportunity of NGOs in the protection of human rights. Many universally respected representatives of NGOs are able to work behind the scenes and influence the thinking and action of various government representatives and experts through quiet persuasion. NGOs also frequently advance the cause of human rights by research and publications, and by educating the world public opinion.

#### *Conclusion*

In sum, much has been done in the second half of the 20th Century by the community of nations for the protection of human rights<sup>86</sup> and the contribution of NGOs has been beyond doubt impressive.<sup>87</sup> However, the present implementation measures are not enough and we have to continue to work very diligently in developing effective measures of implementation.<sup>88</sup> NGOs have a special responsibility

subsequent entry into force of the Abolition of Forced Labor Convention. Second, The World Federation of Trade Unions proposed an item concerned with the infringement of trade union rights and guarantees for their exercise. These proposals eventually led not only to the adoption of two important international labor conventions on freedom of association, and on the right to organize and collective bargaining, but also to specific fact finding and conciliation machinery established by the I.L.O. in its own name as well as on behalf of the U.N. ECOSOC Res. 277, 10 U.N. ECOSOC, Supp. 1, at 9, U.N. Doc. E/1661 (1950).

85. Representatives of the Anti-Slavery Society, International Federation for the Rights of Man, and International Student Movement for the United Nations spoke at the 1232nd and 1233rd meetings of the Commission. U.N. Doc. E/CN.4/SR.1232 (1973); U.N. Doc. E/CN.4/SR. 1233 (1973). See also U.N. Doc. E/CN.4/1127, para. 231 (1973). Statements were also made by the observers of the All-Pakistan Women's Association and the All-India Women's Conference, concerning questions affecting human rights in the sub-continent. U.N. Doc. E/CN.4/SR. 1229 (1973).

86. Secretariat, Measures Taken Within the U.N. in the Field of Human Rights. U.N. Doc. A/C.32/5 (1967).

87. For a brief description of the contribution of NGOs, see Archer, *Action by Unofficial Organizations on Human Rights*, in THE INTERNATIONAL PROTECTION OF HUMAN RIGHTS, *supra* note 1, at 160-82. Also, see the statement of a former Chairman of the Commission: "There is . . . surely no other area of international affairs in which nongovernmental organizations have participated so actively and constructively." Quentin-Baxter, *International Protection of Human Rights*, in ESSAYS ON HUMAN RIGHTS, 132, 138 (K. Keith, ed. 1968).

88. For a discussion regarding many implementation proposals advanced in the Commission for a World Court of Human Rights, see V. VAN DYKE, HUMAN RIGHTS, THE UNITED STATES, AND WORLD COMMUNITY 187 (1970). A proposal for a High Commis-

and challenge to help expedite such development. At the same time, NGOs must continue to serve and represent the international conscience. In particular, NGOs must make the best possible use of the existing procedures and machinery.

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sioner for Human Rights has been before the General Assembly since the 1967 session in the form of an ECOSOC draft resolution. ECOSOC Res. 1237, 42 U.N. ECOSOC, Supp. 1, at 18, U.N. Doc. E/4393 (1967). For a discussion of the type of functions such a High Commissioner could perform, see R. CLARK, A UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS (1971). See also MacDonald, *The United Nations High Commissioner for Human Rights*, 5 CAN. Y.B. INT'L L. 84 (1967).