

1982

## A New United Nations Mechanism for Encouraging the Ratification of Treaties

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### Recommended Citation

David Weissbrodt, *A New United Nations Mechanism for Encouraging the Ratification of Treaties*, 76 AM. J. INT'L L. 418 (1982), available at [https://scholarship.law.umn.edu/faculty\\_articles/227](https://scholarship.law.umn.edu/faculty_articles/227).

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well-organized uniform rules adopted and promulgated by the International Civil Aviation Organization (ICAO)?

*Answer:*

Ratification of the Protocols will not directly affect current ICAO standards and recommended practices. However, we believe that U.S. repudiation of the Montreal Protocols—which were largely the product of U.S. urging and leadership—would impair U.S. credibility, influence, and authority in future international aviation negotiations in ICAO and elsewhere.<sup>5</sup>

MARIAN NASH LEICH\*

#### A NEW UNITED NATIONS MECHANISM FOR ENCOURAGING THE RATIFICATION OF HUMAN RIGHTS TREATIES

##### *Introduction*

The ratification of international human rights treaties is critical to the worldwide observance of human rights and fundamental freedoms. The United Nations General Assembly and Commission on Human Rights have repeatedly emphasized the importance of ratification and have frequently encouraged states to ratify the relevant international instruments. Despite these efforts, acceptance of human rights treaties has been uneven; a considerable number of states have failed to ratify.

Recognizing that a regular mechanism for encouraging ratification would be more effective than general exhortations, the Sub-Commission on Prevention of Discrimination and Protection of Minorities, a subsidiary body of the Commission on Human Rights, established in 1979 a sessional working group to consider ways and means of encouraging acceptance of human rights treaties. The procedures of the Working Group on the Encouragement of Universal Acceptance of Human Rights Instruments were modeled on the highly successful methods used by the International Labour Organisation to encourage its members to accede to labor standards. In 1980 and 1981, the working group began by systematically considering the written explanations of governments as to impediments they had encountered in ratifying human rights treaties and by receiving representatives from several countries to discuss these difficulties.

This Note will discuss the rationale for the establishment of the working group, the group's accomplishments thus far, and recent debate concerning its authority. Finally, suggestions will be made for future objectives on which the group may profitably focus.

##### *Importance and Appropriateness of Encouraging Ratification*

In keeping with its mandate to promote universal respect for human rights, the General Assembly has promulgated over 35 standard-setting treaties, which set forth obligations to be undertaken by ratifying countries for ensuring the

<sup>5</sup> Dept. of State File No. P82 006-0592.

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observance of human rights.<sup>1</sup> The General Assembly acknowledged in its often cited Resolution 32/130 (1977) that

[i]t is of paramount importance for the promotion of human rights and fundamental freedoms that member States undertake specific obligations through accession to or ratification of international instruments in this field; consequently the standard setting work within the United Nations system in the field of human rights and the universal acceptance and implementation of the relevant international instruments should be encouraged.<sup>2</sup>

Recognition of the importance of encouraging ratification of international human rights treaties is not new to the United Nations. The General Assembly and the Commission on Human Rights have urged member states to accept these instruments on numerous occasions.<sup>3</sup> But despite the frequency and eloquence of the general exhortations to ratify, ratifications continue to be made at only a moderate pace.<sup>4</sup> Clearly, the goals of widespread ratification and implementation of human rights treaties cannot be met by relying on general resolutions requesting ratification.

#### *Establishment of the Working Group*

At its 32d session in 1979, the Sub-Commission on Prevention of Discrimination and Protection of Minorities adopted Resolution 1B (XXXII), which established the Working Group on the Encouragement of Universal Acceptance of Human Rights Instruments.<sup>5</sup> The Sub-Commission gave the working group a threefold mandate: (1) to make requests, through the Secretary-General, to governments that had not yet ratified the principal instruments that they inform the Sub-Commission of circumstances or difficulties preventing ratification or

<sup>1</sup> See Human Rights: A Compilation of International Instruments, UN Doc. ST/HR/Rev.1 (1978).

<sup>2</sup> GA Res. 32/130, 32 UN GAOR, Supp. (No. 45) 150, UN Doc. A/32/45 (1977).

<sup>3</sup> See, e.g., urging ratification of the International Convention on the Elimination of All Forms of Racial Discrimination: GA Res. 3225, 29 UN GAOR, Supp. (No. 31) 86, UN Doc. A/9631 (1974); GA Res. 34/28, 34 UN GAOR, Supp. (No. 46) 166, UN Doc. A/34/46 (1979); urging ratification of the Human Rights Covenants and Optional Protocol to the Civil and Political Covenant: GA Res. 3270, 29 UN GAOR, Supp. (No. 31) 90, UN Doc. A/9631 (1974); GA Res. 34/45, 34 UN GAOR, Supp. (No. 46) 169, UN Doc. A/34/46 (1979); urging ratification of the International Convention on the Suppression and Punishment of the Crime of Apartheid, Human Rights Comm'n Res. 6, 37 UN ESCOR, Supp. (No. 5) 201, UN Doc. E/CN.4/1475 (1981).

<sup>4</sup> UNITED NATIONS, MULTILATERAL TREATIES IN RESPECT OF WHICH THE SECRETARY-GENERAL PERFORMS DEPOSITARY FUNCTIONS: LIST OF SIGNATURES, RATIFICATIONS, ACCESSIONS, ETC. AS AT 31 DECEMBER 1979, UN Doc. ST/LEG/SER.D/13, at 111 (1980); updated through June 15, 1981, by UN Doc. E/CN.4/Sub.2/463 (1981).

<sup>5</sup> Report of the Sub-Commission on Prevention of Discrimination and Protection of Minorities on its Thirty-second Session, Res. 1B, UN Doc. E/CN.4/1350 (1979); see UN Doc. E/CN.4/Sub.2/L.716 (1979). Eight nongovernmental organizations submitted a statement to the Sub-Commission supporting the establishment of the working group and stressing the need for improved methods of encouraging ratification of human rights treaties. UN Doc. E/CN.4/Sub.2/NGO/80 and Add.1 (1979). The resolution was adopted by a vote of 17 to 2 with two abstentions. José Martínez Cobo of Ecuador and Dumitru Ceausu of Romania voted against the resolution. Mario Amadeo of Argentina and Hicri Fisek of Turkey abstained.

adherence; (2) to examine replies and, if necessary for further clarification, to invite representatives from such governments for discussions with the working group; and (3) to consider what assistance the United Nations might offer to enable them to ratify as soon as possible. The working group was to accomplish its purposes during regular Sub-Commission sessions, which would avoid the expense of pre-session meetings. It was to direct its attention to certain human rights instruments enumerated in the resolution<sup>6</sup> and to such other instruments as might be designated by the Sub-Commission.

Pursuant to Resolution 1B (XXXII) of the Sub-Commission, the Secretary-General in December 1979 asked governments that had not ratified the treaties to forward the specified explanatory information.<sup>7</sup> Through the report on its 32d session, the Sub-Commission in the spring of 1980 informed the Commission on Human Rights of the creation of the sessional working group.<sup>8</sup> The Commission offered no objection, taking note of the Sub-Commission's report without a vote.<sup>9</sup>

The Working Group on the Encouragement of Universal Acceptance of Human Rights Instruments held its first meetings during the 33d session of the Sub-Commission in the fall of 1980. During the interim, 20 countries had responded to the Secretary-General's initial request for information. The group examined the replies and representatives of Australia, France, and the Netherlands appeared before it with oral clarifications of their countries' positions.<sup>10</sup>

These representatives explained the remaining obstacles to ratification in their respective countries. A common difficulty was the question of extraterritorial criminal responsibility arising from the Convention against Apartheid.<sup>11</sup> The group ended the session with plans to discuss the designation of additional instruments for attention at the next session. The Sub-Commission took note of the working group's report without resolution, decided to allow more time to future sessions, and requested that the Secretary-General make a study of the issue of extraterritorial criminal responsibility.<sup>12</sup>

<sup>6</sup> The International Covenant on Economic, Social and Cultural Rights; the International Covenant on Civil and Political Rights; the Optional Protocol to the International Covenant on Civil and Political Rights; the International Convention on the Elimination of All Forms of Racial Discrimination; the Convention on Prevention and Punishment of the Crime of Genocide; the International Convention on the Suppression and Punishment of the Crime of Apartheid; the Slavery Convention; the Protocol amending the Slavery Convention signed in Geneva on September 26, 1976; and the Supplementary Convention on the Abolition of Slavery, the Slave Trade and the Institutions and Practices similar to Slavery.

<sup>7</sup> Note Verbale by the Secretary-General, UN Ref. No. G/SO 234 (17-4) (1979).

<sup>8</sup> Report of the Sub-Commission, *supra* note 5, considered at the Commission's 1559th to 1563d meetings.

<sup>9</sup> Human Rights Comm'n Dec. No. 7, 36 UN ESCOR, Supp. (No. 3) 202, UN Doc. E/CN.4/1408 (1980).

<sup>10</sup> Report of the sessional Working Group on the Encouragement of Universal Acceptance of Human Rights Instruments, UN Doc. E/CN.4/Sub.2/453 (1980).

<sup>11</sup> See Note by the Secretary-General containing a summary of information submitted by Governments, UN Doc. E/CN.4/Sub.2/452 and Add.1, 2 (1980).

<sup>12</sup> Report of the Sub-Commission on Prevention of Discrimination and Protection of Minorities on its Thirty-third Session, UN Doc. E/CN.4/1413, at 84-85 (1980).

*Scope of Authority Questioned at the 1981 Human Rights Commission*

In February and March 1981, the Commission on Human Rights held its 37th session in Geneva; the report of the Sub-Commission received close attention and was the subject of considerable debate.<sup>13</sup> The representative from Brazil, Jardim Gagliardi, criticized the Sub-Commission's work in some instances as beyond its terms of reference.<sup>14</sup> In particular, he assailed the Sub-Commission for communicating directly with member states and for adopting resolutions and recommendations with budgetary effects that had not first been submitted for authorization by the Commission and ECOSOC.

After some debate, the Commission finally adopted a resolution reaffirming the Sub-Commission's significant role. Although the Commission referred to the debate surrounding the issue of competence, it only invited the Sub-Commission to take note and to bear in mind its tasks.<sup>15</sup> Thus, the Commission did not take steps to delimit or redefine the Sub-Commission's terms of reference. The working group on treaty ratification was not even mentioned in the resolution. Also at the 37th session, the Commission considered the Draft Medium-Term Plan for the Human Rights Programme for the Period 1984-1989, which was submitted for comment by the Secretary-General.<sup>16</sup> In setting out the general orientation of the program, the drafters "expected that useful contributions to the further ratification of international instruments will be made by the Sub-Commission's Working Group on the ratification of international standards in the field of human rights."<sup>17</sup>

*The Working Group Meets Again*

In August and September 1981, the working group and the Sub-Commission considered the questions raised in February and March by several Commission members. Members of the Sub-Commission supported its right to communicate directly with member states on human rights issues, as it had done for many years without objection. At the same time, the working group met for six sessions, carefully continued its country-by-country review of governmental replies, discussed the adequacy of the replies from the point of view of completeness and substance, and reconfirmed its authority to discuss replies directly with governments by inviting Sweden and Syria to participate in its deliberations.<sup>18</sup> Neither Sweden nor Syria interposed any objections.

Based upon the recommendations of the working group, the Sub-Commission adopted a resolution by a vote of 20 in favor, none against, and only the Soviet

<sup>13</sup> 37 UN ESCOR, Supp. (No. 5) 160, UN Doc. E/CN.4/1475 (1981).

<sup>14</sup> See UN Doc. E/CN.4/SR.1592, at 5-10 (1981).

<sup>15</sup> Human Rights Comm'n Res. 17, 37 UN ESCOR, Supp. (No. 5) 219, UN Doc. E/CN.4/1475 (1981); see UN Doc. E/CN.4/SR.1635, at 8-11 (1981).

<sup>16</sup> Note by the Secretary-General, Review of the Draft Medium-Term Plan for the Period 1984-1989, UN Doc. E/CN.4/1424, Annex (1980).

<sup>17</sup> *Id.* at 3. The Human Rights Commission took note of the plan. Human Rights Comm'n Dec. No. 9, 37 UN ESCOR, Supp. (No. 5) 246, UN Doc. E/CN.4/1475 (1981).

<sup>18</sup> Report of the sessional Working Group on the Encouragement of Universal Acceptance of Human Rights Instruments, UN Doc. E/CN.4/Sub.2/L.785 (1981).

expert abstaining, that continued the efforts of the working group by asking the Secretary-General to renew in 1981 the requests of 1979 and 1980 for governments to explain their difficulties in ratifying the principal human rights treaties.<sup>19</sup> The Sub-Commission sought to make the Secretary-General's inquiry even more pointed by individualizing the notes verbales to governments, that is, by drawing attention to those specific treaties each government had not yet ratified. The United States, for example, has signed but not ratified many of the principal human rights treaties.<sup>20</sup> The Sub-Commission's resolution also requested that the Secretary-General invite the Governments of the Philippines, Rwanda, Iran, the Solomon Islands, and Suriname to supply additional information because the working group was not satisfied with the previous responses from those countries. The Sub-Commission resisted efforts to expand the mandate of the working group to include other human rights treaties, but decided to reconsider this issue at its next session.<sup>21</sup>

All in all, the working group continued its work with the support of the Sub-Commission. Several states, including Australia which had appeared before the working group in 1980, had ratified the human rights instruments by 1981. While the working group has not yet generated substantive discussion of the general problems raised by ratification, which one might expect in the future, it has begun to establish itself as a relatively innovative institution for achieving the ratification, and thus ultimately the implementation, of human rights standards.

### *Legitimacy of the Working Group*

The Brazilian delegate to the 1981 Human Rights Commission called into question the very heart of the working group's mandate: the mechanism of soliciting information from nonratifying states. This challenge to the Sub-Commission's competence presents two issues. First, does the Sub-Commission specifically have the authority, within its terms of reference, to encourage ratification by requesting information directly from governments regarding reasons for failure to ratify? The second, broader question is: should an international

<sup>19</sup> Draft Report of the Sub-Commission on Prevention of Discrimination and Protection of Minorities to the Commission on Human Rights on its Thirty-fourth Session, Res. 19, UN Doc. E/CN.4/Sub.2/(XXXIV)/CRP.2, at 113 (1981); see also UN Doc. E/CN.4/Sub.2/L.790 (1981) (draft resolution submitted by five members of the Sub-Commission: Marc Bossuyt of Belgium, Ibrahim Jimeta of Nigeria, Louis Joinet of France, Syed Masud of India, and Ivan Toševski of Yugoslavia; Julio Oyhanarte of Argentina was the only member of the working group who did not join in sponsoring the resolution).

<sup>20</sup> See Weissbrodt, *United States Ratification of the Human Rights Covenants*, 63 MINN. L. REV. 35, 35-37 (1978).

<sup>21</sup> In 1981 the working group discussed the possibility of adding three more treaties to its mandate: the International Convention Against the Taking of Hostages, the Convention on the Elimination of All Forms of Discrimination Against Women, and the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others. See UN Doc. E/CN.4/Sub.2/L.785, at 3 (1981); UN Doc. E/CN.4/Sub.2/NGO/87 (1981) (recommendation of several nongovernmental organizations that the Convention on the Elimination of All Forms of Discrimination Against Women be included within the working group's purview). The working group, however, resisted the addition of these new instruments in the belief that it should concentrate its efforts to be effective.

organization involve itself in encouraging ratification of its treaties, once adopted, and if so, to what extent?

As to the first issue, Mr. Gagliardi of Brazil asserted that direct communication with states is outside the Sub-Commission's competence. However, its terms of reference of 1948, which were expanded in 1949, seem to contemplate the receipt of information from governments by mandating that the Sub-Commission is to "undertake studies" in regard to human rights and to perform other functions delegated by ECOSOC and the Human Rights Commission.<sup>22</sup>

The Sub-Commission's request for information from member states follows a very common practice of the Sub-Commission in particular, and of the United Nations in general. The Sub-Commission has long studied human rights issues by means of inquiries to governments. For example, in preparing his Study of Discrimination in Education, Charles D. Ammoun, who was special rapporteur of the Sub-Commission, was supported by a note verbale of April 13, 1954, from the Secretary-General to member governments requesting assistance.<sup>23</sup> Such inquiries to governments have become a standard practice.<sup>24</sup>

The working group's invitation to several states for oral presentations, however, provides a greater opportunity for encouraging ratification and is a substantial innovation in the Sub-Commission's practice. Within the human rights field, only the Human Rights Committee organized under the UN Covenant on Civil and Political Rights and the Racial Committee under the International Convention on the Elimination of All Forms of Racial Discrimination have regularly pursued this approach.<sup>25</sup> Nevertheless, the Sub-Commission's working group does not violate the Sub-Commission's rules or terms of reference by inviting state representatives to discuss treaty ratification. Rule 69 of the Rules of Procedure of the Functional Commissions of the Economic and Social Council specifically provides authority for the Sub-Commission to "invite any State to participate in its deliberations on any matter of particular concern to that State."<sup>26</sup> Hence, the Economic and Social Council has long authorized the Sub-Commission to pursue the approach it adopted for the working group on discussions of treaty ratification.

As to the second, broader question: on the one hand, Gagliardi argued that once an international organization has adopted a treaty and opened it for

<sup>22</sup> 9 UN ESCOR, Supp. (No. 10) 6, UN Doc. E/CN.4/350 (1949).

<sup>23</sup> Ammoun, Study of Discrimination in Education, UN Doc. E/CN.4/Sub.2/181/Rev.1, at 177 (1957).

<sup>24</sup> See, e.g., Krishnaswami, Study of Discrimination in the Matter of Religious Rights and Practices, UN Doc. E/CN.4/Sub.2/200/Rev.1, at 76 (1960); Santa Cruz, Study of Discrimination in the Matter of Political Rights, UN Doc. E/CN.4/Sub.2/213/Rev.1, at 100-01 (1962); Santa Cruz, Racial Discrimination, UN Doc. E/CN.4/Sub.2/307/Rev.1, at 314 (1971).

<sup>25</sup> See, e.g., Buergerthal, *Implementing the Racial Convention*, 12 TEX. INT'L L.J. 187, 194 (1977); Fischer, *Reporting Under the Covenant on Civil and Political Rights: The First Five Years of the Human Rights Committee*, 76 AJIL 142 (1982).

<sup>26</sup> UNITED NATIONS, RULES OF PROCEDURE OF THE FUNCTIONAL COMMISSIONS OF THE ECONOMIC AND SOCIAL COUNCIL, rule 69(2), at 17 (1977) [hereinafter cited as FUNCTIONAL RULES]; UN JURIDICAL Y.B., UN Doc. ST/LEG/SER.C/6, at 204 (1968). While there was some criticism at the Human Rights Commission of the Sub-Commission for directly addressing governments, such criticism was not focused on the working group.

acceptance, the organization has no authority to take steps to encourage its entry into force.<sup>27</sup> On the other hand, international organizations exist to promote certain goals that in principle all members share. In pursuit of those goals, organizations adopt conventions and treaties in accordance with Charter authority. Encouraging the acceptance of those instruments is simply further promotion of the goals of the organization. As noted above, United Nations bodies have often encouraged states to ratify instruments. The effect of such encouragement is not to interfere with a government's sovereign determination to ratify or not to ratify, but to urge governments to exercise that discretion.<sup>28</sup>

Responding to the criticisms of the Sub-Commission, the Director of the UN Human Rights Division<sup>29</sup> noted that the 1962 advisory opinion of the International Court of Justice in regard to *Certain Expenses of the United Nations*<sup>30</sup> provides some guidance about the authority of the Sub-Commission to encourage ratification of human rights treaties and to communicate directly with governments. In determining whether peacekeeping expenses were improperly incurred by the United Nations, the Court was asked first to consider whether the peacekeeping activity was improper or unauthorized by the Charter. The Court responded that "each organ [of the United Nations] must, in the first place at least, determine its own jurisdiction."<sup>31</sup> This reasoning could support the Sub-Commission, as it determines its own jurisdiction to promote human rights.<sup>32</sup> The establishment of the working group represents the Sub-Commission's effort to organize its work as efficiently as possible. Such an internal procedural affair has always been within the competence of the Sub-Commission.<sup>33</sup>

The experience of other international organizations confirms the propriety and efficacy of these techniques. Since 1919, the International Labour Organisation has operated a successful reporting mechanism to encourage ratification of its conventions.<sup>34</sup> The working group's approach follows the ILO model in

<sup>27</sup> UN Doc. E/CN.4/SR.1592, at 9 (1981).

<sup>28</sup> Such was the conclusion of the United Nations Institute for Training and Research (UNITAR) in its analysis of the reporting approach as a method for encouraging ratification of treaties. O. SCHACHTER, M. NAWAZ, & J. FRIED, *TOWARD WIDER ACCEPTANCE OF UN TREATIES* 52 (1971) [hereinafter cited as UNITAR study]; see also I. DETTER, *LAW MAKING BY INTERNATIONAL ORGANIZATIONS* 168-70 (1965).

<sup>29</sup> UN Doc. E/CN.4/SR.1595, at 8 and 9 (1981); see United Nations Division of Human Rights, *The Role and Competence of the Sub-Commission on Prevention of Discrimination and Protection of Minorities* 20 (internal unpub. memo, June 15, 1981).

<sup>30</sup> Advisory Opinion on *Certain Expenses of the United Nations*, [1962] ICJ REP. 151.

<sup>31</sup> *Id.* at 168.

<sup>32</sup> The ICJ in its advisory opinion, however, was discussing the legal authority of the principal organs of the United Nations: the General Assembly, the Security Council, and the Secretary-General. There is some doubt that such broad self-interpretation of mandate would apply to the Sub-Commission. At least, the parent organs of the Sub-Commission, that is, the Commission on Human Rights and the Economic and Social Council, possess the authority to alter the mandate of the Sub-Commission. However, under its present broad mandate, with no express limits on its right to promote human rights, and with a long, uncriticized practice of pursuing similar activities, the Sub-Commission might well be entitled, in accordance with the reasoning of the ICJ advisory opinion, to interpret its own mandate—at least in the first instance.

<sup>33</sup> See *FUNCTIONAL RULES*, *supra* note 26, rules 21 and 24, at 6-7.

<sup>34</sup> ILO CONST. Art. 19, para. 5.

which member states report on their ratification of ILO conventions and recommendations. The reports, or the failure of members to report, are examined by a group of independent experts, the International Labour Committee of Experts on the Application of Conventions and Recommendations.<sup>35</sup> Supplementing the formal reporting procedures, informal discussions between ILO staff and government representatives during sessions of the International Labour Conference have been perhaps the most effective means of resolving technical difficulties that impede ratification.<sup>36</sup>

In 1930 the League of Nations adopted a similar procedure for encouraging ratification of League conventions.<sup>37</sup> The League's reporting procedure and the attention it focused on the importance of ratification resulted in a large increase in ratifications.<sup>38</sup> Historical records do not explain why the League's system of reporting on the status of ratifications was not immediately incorporated into UN practice, if not the Charter.<sup>39</sup> The Economic and Social Council was given the authority to "make arrangements with the members of the United Nations and with the specialized agencies to obtain reports on the steps taken to give effect to its own recommendations and to recommendations on matters falling within its competence made by the General Assembly."<sup>40</sup> In practice, ECOSOC has frequently obtained reports from governments regarding actions taken on individual resolutions and on groups of recommendations.<sup>41</sup>

<sup>35</sup> Such reports are included in the INTERNATIONAL LABOUR CONFERENCE, REPORTS OF THE COMMITTEE OF EXPERTS ON THE APPLICATION OF CONVENTIONS AND RECOMMENDATIONS, Report III, pt. 3.

<sup>36</sup> The ILO system has been successful. As of January 1, 1981, the 152 member states of the ILO had reported over 4,856 ratifications of the then existing 153 ILO conventions. ILO, Chart of Ratifications of International Labour Conventions (Jan. 1, 1981). See also E. LANDY, THE EFFECTIVENESS OF INTERNATIONAL SUPERVISION 203-04 (1966).

<sup>37</sup> Resolution of Oct. 3, 1930, LEAGUE OF NATIONS O.J., Spec. Supp. 83, at 12 (1930); for discussion on the resolution, see *id.*, Spec. Supp. 84, at 213-17 (1930); see also Resolution of Sept. 23, 1926, *id.*, Spec. Supp. 43, at 27 (1926).

In addition to the ILO and League of Nations systems of reporting, constitutional provisions of some UN specialized agencies authorize similar procedures. WHO CONST., 14 UNTS 185, Art. 20; UNESCO CONST., 4 UNTS 275, Art. VIII; see Ago, *La Codification du droit international et les problèmes de sa réalisation*, in RECUEIL D'ÉTUDES DE DROIT INTERNATIONAL EN HOMMAGE À PAUL GUGGENHEIM 93, 117 (1968); see also another precursor of the working group: Final Act of the International Conference on Human Rights, Teheran, 22 April to 13 May 1968, UN Doc. A/CONF.32/41, at 19, 48 (1968).

<sup>38</sup> See F. WILCOX, THE RATIFICATION OF INTERNATIONAL CONVENTIONS 133 (1935).

<sup>39</sup> This statement is based on such sources as the UNCIO Docs. (1945); UNITED NATIONS, REPORT OF THE PREPARATORY COMMISSION OF THE UNITED NATIONS, UN Doc. PC/20 (1945); COMMENTARY ON THE REPORT OF THE PREPARATORY COMMISSION OF THE UNITED NATIONS, CMD. NO. 6734 (1946). See also R. RUSSELL, A HISTORY OF THE UNITED NATIONS CHARTER (1958); L. GOODRICH, E. HAMBRO, & A. SIMONS, CHARTER OF THE UNITED NATIONS, COMMENTARY AND DOCUMENTS (3d and rev. ed. 1969); N. BENTIVICH & A. MARTIN, A COMMENTARY ON THE CHARTER OF THE UNITED NATIONS (1950); J. ROBINSON, HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN THE CHARTER OF THE UNITED NATIONS (1946); J. CAMARA, THE RATIFICATION OF INTERNATIONAL TREATIES (1949); Q. WRIGHT, INTERNATIONAL LAW AND THE UNITED NATIONS (1960); K. HOLLOWAY, MODERN TRENDS IN TREATY LAW (1967).

<sup>40</sup> UN CHARTER, Art. 64, para. 1.

<sup>41</sup> ECOSOC regularly reports to the General Assembly under UN Charter Article 15(2) on the implementation of recommendations by member governments.

A 1971 study by the United Nations Institute for Training and Research entitled *Toward Wider Acceptance of U.N. Treaties* found that it would be within the competence of the United Nations to institute procedures similar to those of the ILO.<sup>42</sup> The UNITAR study suggested the establishment of a committee of experts that would systematically review states' positions on treaty ratification. In the field of human rights, the Sub-Commission's Working Group on Universal Acceptance of Human Rights Instruments is just such a body.

*Problems of Ratification to be Considered by the Working Group*

The sessional Working Group on Universal Acceptance of Human Rights Instruments has just begun its efforts and it may be too soon to assess what contribution it may ultimately make to encouraging treaty ratification. Nevertheless, based upon the initial governmental replies to the working group's inquiries about impediments to ratification and the working group's early sessions, several observations and suggestions may be offered with a view toward maximizing the success of the group. First, following the example of the ILO,<sup>43</sup> the group should focus its attention on certain particularly important treaties. Even the nine treaties that were identified in its authorizing resolution may be too many for the group to consider efficiently during the few days available for meetings. The working group might address one or two treaties at a time to achieve the greatest effect upon ratifications, for example, by beginning with the two Covenants, which are the central human rights instruments, and then proceeding to the other instruments.

Second, the working group might delineate or concentrate on one or two issues that frequently delay or prevent ratification. It could explore those issues in detail and identify measures the United Nations might take to assist states in overcoming their problems. Such an issue was the question of extraterritorial criminal responsibility raised by the Apartheid Convention, which, as mentioned above, troubled many governments<sup>44</sup> and prompted the working group at its first sessions to request a study of that issue.<sup>45</sup>

Several other problems deserve study and attention by the working group. For example, Australia's reply mentioned the problem of federalism,<sup>46</sup> and the Senate hearings that discuss this impediment to ratification of the Covenants were incorporated by reference in the U.S. response.<sup>47</sup> The working group could determine the extent of this problem and could consult with federal states like Australia and Canada, which have apparently overcome such difficulties in ratifying some of the principal treaties. Indeed, the group might convene a

<sup>42</sup> UNITAR study, *supra* note 28, at 16.

<sup>43</sup> See, e.g., ILO GB Doc. 208/SC/1/6 (1978).

<sup>44</sup> Including those of Australia, the Federal Republic of Germany, the Netherlands, New Zealand, and Sweden. See UN Doc. E/CN.4/Sub.2/452, at 3, 6, 9, and 12 (1980); UN Doc. E/CN.4/Sub.2/452/Add.4, at 1-2 (1981).

<sup>45</sup> See text at note 12 *supra*.

<sup>46</sup> UN Doc. E/CN.4/Sub.2/452, at 3 (1980).

<sup>47</sup> *Id.*, Add.2; *International Human Rights Treaties: Hearings Before the Senate Comm. on Foreign Relations*, 96th Cong., 1st Sess. 26 (1979) (testimony of Roberts B. Owen, Legal Adviser, Dep't of State).

discussion at which those countries could offer advice to others encountering similar impediments to ratification, and thus foster a valuable dialogue among countries. Specifically, Canada could explain how it has been able to overcome provincial objections to ratification of the Covenants and the Optional Protocol to the Civil and Political Covenant. Such a presentation might prove useful to Australia, which has ratified the Covenants and is still considering the Optional Protocol, and to the United States. While the U.S. Departments of Justice and State have attempted to protect state prerogatives regarding the human rights treaties, they have not generally consulted state officials, as apparently have Australia and Canada. Perhaps such consultation will clarify which objections states actually have and which might be overcome.

The working group at its 1981 session found many other problems of ratification in the governmental replies, but it has not yet fully considered them. For example, governments gave the following reasons for not ratifying the Optional Protocol to the International Covenant on Civil and Political Rights: (1) that the title included the word "optional"; (2) that individuals would be entitled to file complaints against states; and (3) that the procedure in the Protocol overlapped with regional human rights structures.<sup>48</sup> With regard to the Slavery Convention, one government expressed concern over the compulsory jurisdiction of the International Court of Justice.<sup>49</sup> In addition, the working group's 1981 report had this to say about the International Convention on the Suppression and Punishment of the Crime of Apartheid:

[I]t was noted that the reasons often given by States for not having become parties to it were that: (a) such States had already become parties to the International Convention on Elimination of All Forms of Racial Discrimination; (b) in their view, the definition of the crime of *apartheid* itself was rather vague; (c) the Convention established extra-territorial criminal jurisdiction for the crime of *apartheid*; and (d) there was incompatibility between the obligations imposed by the Convention and domestic legislation. Incompatibility with domestic legislation was evoked by States as a reason for not adhering to several other instruments as well.<sup>50</sup>

A third possible approach that the working group might consider is suggested by the UNITAR study of 1971, which demonstrated that some impediments to treaty ratification are not substantive.<sup>51</sup> An extreme example emerged in the replies to the working group of Rwanda and the United Republic of Cameroon, who explained that they lacked the texts of several human rights instruments.<sup>52</sup> The Secretary-General promptly supplied the texts.

A number of states, including Belgium, the Dominican Republic, Ethiopia, Iran, Italy, Luxembourg, Mexico, Morocco, Rwanda, Spain, Suriname, the United States, and Venezuela, indicated that various treaties had been under

<sup>48</sup> UN Doc. E/CN.4/Sub.2/452/Add.3, at 5 (India), 8 (Ukrainian Soviet Socialist Republic), and 8-9 (USSR) (1981).

<sup>49</sup> *Id.* at 8-9 (USSR).

<sup>50</sup> UN Doc. E/CN.4/Sub.2/L.785, at 5-6 (1981).

<sup>51</sup> UNITAR study, *supra* note 28, at 9.

<sup>52</sup> UN Doc. E/CN.4/Sub.2/452, at 11 and 13 (1980).

consideration by administrative or legislative bodies for some period.<sup>53</sup> The UNITAR study found that treaty ratifications were often delayed by such nonsubstantive matters as inefficient bureaucratic coordination, administrative lethargy, the drafting of implementing legislation, and a lack of trained personnel to consider ratification issues.<sup>54</sup> The working group might ask these countries whether technical assistance or some of UNITAR's ideas for coordinated administrative consideration of treaties might be helpful to them.

Moreover, some of the governments that were considering the treaties assured the working group that they would complete the ratification process "in the near future" or in a short time.<sup>55</sup> Hence, after an appropriate interval, the group might inquire of Ethiopia, Iran, Mexico, and the Solomon Islands, for example, whether they had made any progress or might need assistance.

A fourth approach that the working group might consider derives from the experience of the ILO.<sup>56</sup> Certain UN staff members could be assigned responsibility for offering technical assistance identified by the working group as necessary for speedy ratification. Papua New Guinea indicated in its reply that the Covenants may conflict with customs and laws of that country.<sup>57</sup> Perhaps technical assistance and a knowledge of the way the Covenants have been applied in countries with similar problems might aid the Government of Papua New Guinea in achieving ratification.

Finally, the Director of the Human Rights Division and his staff could follow the example of the ILO by holding informal meetings with governmental representatives on the difficulties of obtaining acceptance of human rights treaties, using the working group's material as a basis for discussion. In addition, in the course of receiving governmental delegations during the sessions of the General Assembly, the Secretary-General could initiate discussions about ratification of the principal human rights instruments.

### Conclusion

The new Working Group on Universal Acceptance of Human Rights Instruments has the potential of encouraging greater ratification of human rights treaties, if questions about its competence raised at the 37th session of the Human Rights Commission do not impede its efforts.

<sup>53</sup> *Id.* at 4, 8, 9, and 11; *id.*, Add.2; *id.*, Add.3, at 3, 5, 6, 7, and 10 (1981).

<sup>54</sup> UNITAR study, *supra* note 28, at 81-92.

<sup>55</sup> UN Doc. E/CN.4/Sub.2/452, at 4, 8, and 11 (1980).

<sup>56</sup> *See, e.g.*, discussion of the Report of the Committee on the Application of Conventions and Recommendations, comments of Mrs. Makabir, Employers' delegate from Trinidad and Tobago and Vice-Chairman of the committee, 66 ILC, PROC. 42/7, 42/8 (1980):

The ILO is to be commended on the extent to which it gives assistance to countries, particularly developing countries. . . . An impressive system of direct contacts, missions, national and international seminars, fellowships and other means of assistance has been developed over the years, which has been of great help to developing countries. . . . The progress which has been achieved as a result is a tribute to the efficacy of this assistance.

*See also id.* at 42/13 (remarks of Mr. Isacson, Government delegate from Sweden); *id.* at 42/20 (remarks of Mr. Haase, Government delegate from the Federal Republic of Germany).

<sup>57</sup> UN Doc. E/CN.4/Sub.2/452/Add.3, at 6 (1981).

A specific grant of authority to solicit governmental reports and appearances would be clearly preferable to the current implied authority. If doubt remains about the competence of the Sub-Commission to assign such tasks to its sessional working group, ECOSOC and/or the General Assembly should give the necessary authorization. Indeed, a resolution by one of those bodies would endow the working group with an incontestable mandate, higher visibility, and consequent increased effectiveness. Without such a resolution, however, the working group would still be able to pursue significant United Nations objectives while remaining within its mandate. It can continue to encourage the communication of difficulties encountered by states in the ratification process and to determine what assistance can be given. The group's approach combines previously tested reporting techniques with an innovative method for open discussion of human rights treaty ratifications. The present mandate of the Sub-Commission certainly encompasses such efforts.

The working group's efforts to study and communicate problems commonly encountered in the ratification of human rights instruments, and to provide states with assistance, should make it possible to increase the number of states parties to human rights treaties. Other organizations such as the International Committee of the Red Cross and the UN High Commissioner for Refugees might also consider such methods for encouraging ratification of their respective treaties. The ILO and now the Working Group on Encouragement of Universal Acceptance of Human Rights Instruments could provide valuable models for other international organizations concerned with the implementation of a variety of important standards.

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