

**Meeting of Special Rapporteurs/Representatives/Experts and Chairmen of
Working Groups of Special Procedures of the Commission on Human
Rights**

Relations with the High Commissioner for Human Rights

31 May 1994.

001134

MEETING OF SPECIAL RAPORTEURS/REPRESENTATIVES/
EXPERTS AND CHAIRMEN OF WORKING GROUPS OF
SPECIAL PROCEDURES OF THE COMMISSION ON HUMAN RIGHTS

31 MAY 1994

RELATIONS WITH THE HIGH COMMISSIONER FOR HUMAN RIGHTS

Justice Michael Kirby

Special Representative of the Secretary-General on Human Rights
in Cambodia

Reflection on the relationships

Item 4 of our agenda calls for a reflection on the relationship between the Special Rapporteurs, Special Representatives, Experts and Chairmen of Working Groups of the Commission on Human Rights, engaged in the Special Procedures (whom I shall compendiously describe as Special Rapporteurs) with the High Commissioner for Human Rights and the Centre for Human Rights.

It would be a presumption for me to endeavour to define the relationship. The High Commissioner, drawing on the authority of his high mandate by unanimous decision of the United Nations and his own rich experience, needs no guidance from this meeting. Nor are we concerned in the precise delineation of the functions of the High Commissioner and the Centre and its officers. Nevertheless, we have been invited to reflect upon the relationship and it is possible that the product of our collective thoughts and ideas will be of use to the High Commissioner, the Assistant Secretary-General and other officers of the Centre. They have summoned us here and we gladly respond to the opportunity to express our views.

Filling the vacuum.

At a number of points in this meeting, concern has been expressed about the hiatus which typically exists between identification before the Commission of urgent problems for human rights, passage of a resolution proposing the appointment of a Special Rapporteur and the confirmation in office of an appointee to that office. As one participant put it, human rights abuses do not conveniently halt between February and July. It is into this vacuum that the High Commissioner can move. He can do so with resolution and with authority, representing the moral conscience of humanity. He did so recently in the case of Rwanda. With one of our most experienced and distinguished colleagues, Mr. Louis Joinet (Chairman of the Working Group on Arbitrary Detention), he travelled to Rwanda. At not inconsiderable risk, the High Commissioner and Mr. Joinet entered the war zone,

the High Commissioner issued an appeal and contributed to the cessation of the terrible massacres which have affronted the international community's regard for basic human rights. The High Commissioner's immediate response to the proposal of Canada for the convening of an extraordinary session on the position in Rwanda and the steps taken to secure the appointment of a Special Rapporteur for Rwanda, show vividly the way in which his office relates to the special procedures machinery and, effectively, puts it in place in an emergency situation calling for resolute action. I commend to all participants in this meeting the report of the High Commissioner on his initiatives in Rwanda. The report is, if I may respectfully say so, a model of brevity and clarity and a most useful example to us in how to tackle difficult and dangerous emergencies, using the moral authority of the United Nations, appropriate imagination and resolve and drawing on the commitment of the Commission to universal respect for human rights. See report of the United Nations High Commissioner for Human Rights, Mr. José Ayala Lasso, on his mission to Rwanda 11-12 May 1994 (E/CN.4/S-3/3).

Guarantor of independence

It is in the nature of the office of a Special Rapporteur, that the office holder will often be subjected to calumny and fierce criticism by those whom he or she is duty bound to criticize. This renders the Special Rapporteur vulnerable to criticism at a very high level, of which he or she may be completely unaware. No office holder, such as a Special Rapporteur, has a right to office. Doubtless, over time, people will be appointed to the office who prove unsuitable. Changes in personnel are frequently healthy and allow new ideas to be brought to bear in important and sensitive offices requiring imagination. However, some protection and support in the tenure of office of a Special Rapporteur will frequently be necessary if the Special Rapporteur is to discharge the mandate fearlessly and with integrity. I know of at least one case where a Special Rapporteur of great ability was, in effect, terminated without any indication of the cause. It is important that the Special Rapporteurs should feel that they have a guarantor and supporter, at the highest level of the United Nations, to stave off unjustified criticism which derives from the necessary attention which their reports will cast upon dark corners where human rights have been assaulted. I am sure that the Special Rapporteurs would like to think that the High Commissioner (and the Assistant Secretary-General) are their guarantors - to speak up for their integrity when it is assailed.

A recent example of the kind of attack on Special Rapporteurs to which I refer is that launched at the 50th session of the Commission on Human Rights against the Special Rapporteur on Human Rights in the Sudan (Mr. Gasper Biro). The violence of the language directed at him and his report was completely unacceptable. The Chairperson of the Commission made a solemn statement concerning the integrity of the Special Rapporteur. When the Commission is not in session - and in the inevitable criticisms and innuendos behind closed doors, the Special Rapporteurs will value the support of the High Commissioner as the champion of their integrity. Otherwise, the Special Rapporteurs could become demoralized if they did not feel that, where deserved, they had a voice within the

United Nations, who would speak up for their courageous and independent performance of their duties.

Perceiving general issues

There is a danger in particular appointments that Special Rapporteurs, focusing upon their own mandates, may fail to extrapolate from their experience the lessons which are relevant to the global defence of human rights. This is a responsibility of the High Commissioner. Thus, in my report on human rights in Cambodia, three issues emerged which far transcended my mandate in that country. They were:

- the particular problem of land mines (which has relevance to Angola, Afghanistan and other places);
- the problem of discipline and education of peace keeping forces (which has relevance wherever the blue helmets go - and, indeed, to the general discipline of the United Nations); and
- the problem for human rights of the spread of HIV/AIDS.

Just as there are inevitable overlaps between the mandates of particular Special Rapporteurs, there will be emerging issues which are important for human rights, but which go far beyond particular mandates. It is here that I expect that the High Commissioner will draw upon and extrapolate from the reports which we individually submit. I have already called the above three issues to the particular attention of the High Commissioner. I drew them to the notice of the Commission in my report. The problem of mines was noticed in the Commission's resolution. The problem of discipline of United Nations military and other personnel did not attract special attention. I have therefore called them to the notice of the Secretary-General with copy of my letter to the High Commissioner and Assistant Secretary-General for Human Rights for such action as they consider appropriate. However there will be other case where we, the Special Rapporteurs, are so focussed upon our particular concerns that we may miss, or fail to see clearly enough, the general issues which emerge from our labours. I hope and expect that the High Commissioner will be vigilant in this regard.

Breaking the logjams

A recurrent theme of this meeting has been the concern of the Special Rapporteurs concerning the financial and administrative impediments which sometimes arise within the United Nations system and impede the achievement by the Special Rapporteurs of their mandates. The most vivid exposition of the difficulties was portrayed by the Special Rapporteur on the Former Yugoslavia (Mr. T. Mazowiecki). However each one of us could tell our own tale. I could illustrate the problem with the many difficulties which have arisen in the funding and administration of the Office of the Centre for Human Rights in Phnom Penh, Cambodia. The inflexibilities and rigidities are truly astonishing to the rational mind

and far exceed the necessary controls appropriate to prevent waste or misapplication of funds in a huge body such as the United Nations. The Special Rapporteurs fully realize that the High Commissioner will want to distance himself from the details of office management. Clearly, it is vital that he maintains his distance and perspective and does not become embroiled in the minutiae of administration. However, where problems persist for an undue length of time, persist despite all other vigorous attempts to solve them and impede the effective performance by the Special Rapporteur of his or her mandate, it may be hoped that, occasionally, the High Commissioner (or possibly the Assistant Secretary-General) will intervene to cut the Gordian Knot and help solve the practical problems which have proved truly intractable. It is unnecessary to say that we would all realize that it is essential to keep this relief in reserve, as a final court of appeal (as it were), when all other solutions have failed.

Communicating the work

A number of participants in this meeting have mentioned the desirability, as it seemed to them, of the High Commissioner's considering the publication of an annual report. The Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography (Mr. V. Muntarbhorn), even suggested a bolder project: an annual human rights report embracing the work of all of the human rights organs of the United Nations. Whilst that might be too ambitious in the present times of economic constraint, it could be possible for the High Commissioner in an annual report, or otherwise, to include a short precis of the work of the Special Rapporteurs who report to the Human Rights Commission. The variety, range and importance of the work of the Special Rapporteurs is little known and certainly not fully appreciated. This is not to suggest elevating the special procedures to a formality and permanency which they do not have. But it is to propose that the special procedures will gain greater institutional and, perhaps financial, support if their range and importance is realized. It may be hoped that the High Commissioner will consider this idea. Each one of us would be willing, I am sure, to provide a paragraph or two, within space assigned, concerning the mandate and important achievements or noteworthy problems which need to be called to notice in an annual résumé.

Asking fundamental questions

Perhaps the chief hope for the High Commissioner will be that he will ask the fundamental questions which otherwise tend to be postponed or neglected, concerning the special procedures and the role of the Special Rapporteurs in them. Some of these questions will be about matters of detail affecting the performance by the Special Rapporteurs of their respective missions, such as:

- The inclusion of photographs and other data in reports and alteration of the style of presentation of reports

- The preservation of information by electronic means, relations with the media and the sensitive use of the media to support the work of the Special Rapporteurs
- The provision of technological assistance. The Special Rapporteurs welcomed the promised provision of facsimile facilities and the provision of computer capacity to collect, track and share (on appropriate conditions) data concerning human rights abuses.

Some of the questions will doubtless concern the institutional issues which have arisen during this meeting, such as

- The frequency and venue of reports, for example it is arguable that a Special Rapporteur with a mission of technical assistance should have a longer appointment and less frequent reporting obligations than a Special Rapporteur with responsibility to investigate and report on alleged violations;
- The timing of meetings of the Commission on Human Rights;
- The criteria for the appointment of Special Rapporteurs. In this connection it is worthy of note that only two of our number are women. The need to give consideration to the issue of gender in the selection of Special Rapporteurs is a matter that may attract the High Commissioner's attention.
- The provision of funding to the Special Rapporteurs to enable them to discharge their mandates and the provision to them of appropriate staff support within the Centre;
- The consideration of the follow-up to reports of the Special Rapporteurs. Where necessary and especially where it is urgent, it may be hoped that the High Commissioner will lend the weight of his high office to bringing appropriate attention to recommendations addressed to Member States designed to prevent and redress human rights abuses called to notice in reports; and
- The design of an appropriate means of auditing the performance of Special Rapporteurs and the observance, by those to whom they are addressed, of the recommendations contained in their reports.

Some matters of the High Commissioner's concerns will be even more fundamental. They will call on the High Commissioner's role as the leader of the United Nations' efforts to secure and protect human rights. This will truly involve the function of the High Commissioner as the spokesman for the "moral conscience of humanity". Not only will this entail speaking out to articulate the global mission of the United Nations in support of human rights. It will also involve the identification of new issues for human rights in the future; not the least of

which will be the impact on human rights of certain scientific and technological developments concerning the human person - affecting even, possibly, what is to be "human".

The High Commissioner can be assured of our respect and support. It will be helpful to all of the Special Rapporteurs if they could receive, from time to time, copies of the important addresses of the High Commissioner on general issues of human rights. Like the address with which he opened this meeting, we know we will find in his ideas and in his words, rich thoughts and inspiration for the work which we perform within our respective fields of competence. The cause in which we are all involved is, as the High Commissioner has repeatedly said, a moral one. We will perform our respective functions more effectively if we continue the dialogue which this meeting, called by the Assistant Secretary-General for Human Rights, has made possible.