

"Special Rapporteurs and Representatives meet in Geneva May-June 1994"

Australian Law Journal, International Legal Notes

11 August 1994.

001153

AUSTRALIAN LAW JOURNAL
INTERNATIONAL LEGAL NOTES

Special Rapporteurs and Representatives meet in Geneva May-June 1994

A number of events are producing introspection within the United Nations organisation. The approach of the fiftieth anniversary of the *Charter*, which will be celebrated in 1995, has led to the preparation for observances which will mark this event notable for the development of international law. Between 13-17 March 1995, a congress on international law will be assembled at UN headquarters in New York to permit a reflection upon the state of international law and the part of the United Nations in it.

Another significant development was the Second World Conference on Human Rights which took place in Vienna, Austria in June 1993.¹ Not a little of the time of that conference was spent in consideration of the ways in which the United Nations could improve the cooperation and coordination between States and international organisations. This was the subject of the opening call by the Secretary-General (Dr Boutros Boutros-Ghali).² The Secretary-General acknowledged candidly the "proliferation of bodies each entrusted with monitoring implementation of a specific convention" and overlapping institutions which increased the costs of the United Nations and diminished its effectiveness.

The *Vienna Declaration and Programme of Action* which followed the Vienna Conference,³ called for a number of initiatives in the field of human rights. One of them was the appointment of a High Commissioner for Human Rights. With a speed surprising to many, this proposal was accepted unanimously by the General Assembly.^{3bis} The first High Commissioner appointed is Mr José Ayala Lasso. Until his appointment, he was the Ambassador for Ecuador to the United Nations. His

appointment was, in part, a reflection of his skill in chairing the Working Group of the General Assembly which led to the adoption of the resolution creating the office of High Commissioner. My Ayala Lasso was confirmed as the first High Commissioner on 14 February 1994 and officially took up his appointment in Geneva on 5 April 1994.

A further reason for introspection is the increasing body of writing on the future of the United Nations and specifically of international human rights treaties in the post Cold War period. Some of this writing has been done by persons holding relevant national offices, such as the Australian Minister for Foreign Affairs (Senator Gareth Evans). His "blue book" *Cooperating For Peace*⁴ is probably the most significant Australian contribution to the thinking about the structure of the United Nations and its rôle since that made by Dr H.V. Evatt, who led the Australian delegation to the 1945 San Francisco conference. Dr Evatt was the President of the Third United Nations' General Assembly in 1948. Other writing, by scholars has addressed the way in which the United Nations' treaty system can be made to work better.⁵ This subject has suddenly become one of increased attention in Australia following the decision of the United Nations Human Rights Committee on the complaint by Mr Nick Toonen against Australia in respect of the Tasmanian laws criminalising homosexual conduct.⁶ As a result of that report, the Federal Government in Australia is giving consideration to federal legislation to override the Tasmanian law so as to bring Australia's domestic law into conformity with the international obligations of Australia, under the *International Covenant on Civil and Political Rights*, as defined by the UN Human Rights Committee.

Extra-conventional mechanisms of the United Nations

Outside the mechanisms established by the United Nations treaties, including the Human Rights Committee with jurisdiction under the First Optional Protocol to the *International Covenant on Civil and Political Rights*, lies a network of Working Groups, Special Rapporteurs and Special Representatives responsible for particular

aspects of human rights. Generally these persons report to the Commission on Human Rights, and sometimes additionally report to the General Assembly of the United Nations. Typically, such office holders are appointed by the Chairman of the Commission on Human rights; a few have been appointed by the Secretary-General. A number have thematic mandates. A schedule of the current appointments is attached to this note. Others have country mandates. Virtually all have responsibility to investigate and report upon violations. A few have duties to provide advice and to suggest technical assistance to countries, in the course of which assistance, advice may be given on improvements in human rights mechanisms, laws, policies and action; this is especially so for those independent experts who function in the context of the Commission's programme of Adviser Services".

The *Vienna Declaration and Programme of Action* adopted by the Second World Conference called specifically for rationalisation and enhancement of United Nations activities in the field of human rights.⁷ It demanded that such activities should become "more efficient and transparent"⁸. It put the call for improvement in a context of "increased coordination of human rights within the United Nations system"⁹. It envisaged that one of the functions of the High Commissioner for Human Rights would be improved "coordination, efficiency and effectiveness" among the extra conventional office-holders. It proposed that the Special Rapporteurs and Special Representatives should be summoned together to consider procedures which would enable improved harmonisation and rationalisation of their work. The first meetings of Special Rapporteurs/Representatives actually took place in conjunction with the Vienna Conference. Their representative, Mr Bacre Ndiaye of Senegal, Special Rapporteur on Extrajudicial, Summary or Arbitrary Execution, addressed the Vienna Conference in presenting a "Joint Declaration of the independent experts responsible for the special procedures for the protection of human rights".^{9b18} The Joint declaration emphasised the importance of coordination of their work. Inevitably, with large themes such as Mr Ndiaye's, the work of Special Rapporteurs with thematic

mandates sometimes overlaps the work of Special Rapporteurs/Representatives assigned to particular countries.

In his first address to the Commission on Human Rights in March 1994 in Geneva, the High Commissioner for Human Rights emphasised the need for "the closest and most coordinated dialogue" not only within the United Nations system but with intergovernmental organisations, national human rights bodies and non-governmental organisations.¹⁰

It is in this context that the initiative of the Assistant Secretary-General of the United Nations for Human Rights (Professor Ibrahima Fall) is to be understood. Professor Fall summoned all the Special Rapporteurs/Representatives and Chairmen of Working Groups, including those from the Advisory Services programme, to a meeting in Geneva 30 May 1994 - 1 June 1994. The meeting elected as its Chairman Mr Ivan Tosevski (of the former Yugoslav Republic of Macedonia), Chairman of the Working Group on Enforced or Involuntary Disappearances. It elected Professor Nigel Rodley of the United Kingdom (Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment) as rapporteur for the meeting. During the course of the meeting, the Special Rapporteurs/Representatives gave particular consideration to a report by one of their number, Mr Gáspár Bíró, Hungary, (Special Rapporteur on the Situation of Human Rights in the Sudan). This consideration related especially to reported threats which had been made against Mr Bíró for his report to the Fiftieth Session of the Commission on Human Rights in March 1994 in discharge of his mandate. The Special Rapporteurs/Representatives adopted a resolution on his case to which reference will be made below. On 1 June 1994, they adopted a report at their meeting which the High Commissioner for Human Rights has made available to the Commission on Human Rights.¹¹

The Secretary of the meeting was Mr Georg Mautner-Markhof, Chief of the Special Procedures Branch within the United Nations Centre for Human Rights in Geneva. In a Secretariat paper, prepared on the basis of suggestions received from

Special Rapporteurs / Representatives, a number of issues requiring discussion were identified. These included:

- the use of sources for the gathering of information, including procedures taken for the protection of the confidentiality of sources to prevent risks of reprisal against those who informed the United Nations of human rights abuses;
- the improvement of procedures for resolving disputed facts, investigating complaints of human rights abuses and monitoring asserted improvements;
- the refinement of the procedures of the Commission on Human Rights to permit a greater facility for discussion and interchange amongst those interested following presentation of reports;
- improved publicity to reports, as a de facto sanction or stimulus for the implementation of recommendations; and
- cooperation within the United Nations system between the procedures established by human rights conventions and the extra-conventional machinery, of which the Special Rapporteurs/Representatives are the central element.

The meeting in Geneva addressed all of these issues and many more. It had before it extracts from a number of the reports of the Special Rapporteurs dealing with the methodology which they had adopted in the performance of their duties. It also had before it a discussion paper prepared by the Special Representative of the Secretary-General for Human Rights in Cambodia., Justice Michael Kirby, Australia.¹² This paper listed a number of innovations which, it was suggested, would, if adopted, improve the work of the Special Rapporteurs/Representatives:

- provision of a basic manual, including a history of extra-conventional procedures and basic UN documents for the guidance of new appointees;

- * adoption of procedures for consultation and for the sharing of information relevant to the overlapping mandates of particular Special Rapporteurs/Representatives;
- * introduction of improved procedures for communication about work of Special Rapporteurs/Representatives within the United Nations – through media releases, notes for an annual review of the High Commissioner or the Centre and a newsletter;
- * introduction of improved auditing and follow-up of the reports, once delivered to the Commission on Human Rights; and
- * improved procedures of the Commission on Human Rights to permit more interaction between the Special Rapporteurs/Representatives, members of the Commission and relevant government representatives.

Report recommends changes

The report of the meeting summarised the discussion of the Special Rapporteurs/Representatives. It examined the methods of work and the inherent need for flexibility given the different mandates and diverse topics which are covered by the respective mandates. The report referred to the need for care in the processing of information where that information involved the need to respect confidences, particularly in respect of information given by people who were victims of human rights abuses, or were the representatives of such victims. The need for great care in the preparation and timing of missions was expressed as was the importance of reacting to emergency situations with appropriate speed. In this connection, laudatory reference was made to the mission conducted by the High Commissioner for Human Rights to Rwanda in the midst of the fighting¹³ and prior to the arrival of military forces from France, following a resolution of the Security Council.^{13b1s}

One idea which was put forward by the report was of joint missions, e.g. by a country Special Rapporteur and one having a thematic obligation. It was the unanimous view of the participants that more consideration needed to be given to the

personal security of Special Rapporteurs/Representatives. Many of them have to operate in countries, or with groups of individuals, deeply involved in grave abuses of human rights, who might in some circumstances be tempted to reprisals against a Special Rapporteur/Representative, especially after an adverse report.

The report recorded the call for improved procedures of the Commission on Human Rights to enable substantive and public dialogue to take place between the independent experts and interested governments and non-governmental organisations. It was stressed that the Special Rapporteurs/Representatives were not merely chroniclers of events and violations but that they had to perform the task of being "catalysts in a broader process of change". Several participants called for an annual United Nations report on human rights which could draw upon the reports of individual Rapporteurs/Representatives whilst at the same time seeking to identify trends and to extrapolate lessons derived from common experience. Amongst suggestions for improving cooperation within and outside the United Nations system were proposals for the placement of human rights officers in United Nations Development Program (UNDP) offices throughout the world and in other United Nations organs concerned with the broader activities of the Organisation. Improved links with treaty bodies and with regional human rights bodies were suggested. So was improved provision of resources and assistance to ensure the efficient performance of the work of the experts.

Amongst the recommendations made by the Special Rapporteurs/Representatives were for:

- improvements in the sharing of information and, where appropriate, the pursuit of joint missions;
- the provision of a manual to all new holders of mandates established by the Commission on Human Rights;
- a suggestion that the Commission should consider improved means of systematic examination of the reports delivered to it;

support for the postponement of the annual sessions of the Commission on Human Rights from March to May to permit a more suitable interval between meetings of the Commission and of the General Assembly to whom most Rapporteurs must also report¹⁴ ;

introduction of field monitors and expansion of field missions to supplement the work of the experts;

improvement in the technological facilities made available to the Rapporteurs/Representatives, particularly to permit better sharing of information;

closer cooperation with non-governmental organisations with particular emphasis on those based in developing countries and not confined to Geneva;

improvement in the resources available to the Centre for Human Rights in Geneva for the servicing of the increasing number of mandates, and increasing volume of work under existing mandates, of the Rapporteurs/Representatives.

Resolution on the Special Rapporteur on the Sudan

A unanimous resolution of the participants expressed concern about a report to the meeting concerning the Special Rapporteur on the situation of Human Rights in the Sudan.¹⁵ During the Fiftieth Session of the Commission on Human Rights, he was subjected to severe personal criticism, including by a representative of the Government of the Sudan. At the time of the last-mentioned criticism a statement of support for the Special Rapporteur, and a call for moderation, was made by the Chairman of the Commission on Human Rights. However, evidence was placed before the participants of continuing statements of an intimidating kind attributed to the Government of the Sudan and its agents and supporters. The participants acknowledged the right of any person to criticise their reports. However, they stated that it was essential that Special Rapporteurs/Representatives should continue to be allowed to perform the mandates entrusted to them "without intimidation, with complete independence and in the knowledge of full support of the Commission on

Human Rights". Care was taken not to accuse the Government of the Sudan, which was not present to answer accusations. However, the participants were obviously affected by the apparently excessive language in which the criticisms of Mr Bíró's report had been voiced. It was resolved to bring the resolution of concern to the notice of the Secretary-General, the Commission and the Government of the Sudan

MDK

SCHEDULE

LIST OF CHAIRMEN OF WORKING GROUPS, SPECIAL RAPORTEURS, SPECIAL REPRESENTATIVES AND INDEPENDENT EXPERTS ON HUMAN RIGHTS.

THEMATIC MANDATES

Working Group on Enforced or Involuntary Disappearances: Chairman: Mr I Tosevski* (Macedonia).

Working Group on Arbitrary Detention: Chairman: Mr L Joinet* (France).

Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination and Xenophobia: Mr M Glele-Ahanhanzo* (Benin).

Special Rapporteur on Extra-judicial, Summary or Arbitrary Executions: Mr B Ndiaye* (Senegal).

Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment: Professor N Rodley* (United Kingdom).

Special Representative on Internally Displaced Persons: Mr F Deng (Sudan).

Special Rapporteur on Religious Intolerance: Professor A F Amor* (Tunisia).

Special Rapporteur on the Use of Mercenaries as a Means of Impeding the Exercise of the Right of Peoples to Self-Determination: Mr E Bernales-Ballesteros* (Peru).

Special Rapporteur on Freedom of Opinion and Expression: Mr A Hussain* (India).

Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography: Professor V Muntarbhorn* (Thailand).

Special Rapporteur on the Independence and Impartiality of the Judiciary, Jurors and Assessors and the Independence of Lawyers: Dato' Param Cumaraswamy* (Malaysia).

Special Rapporteur on the Elimination of Violence Against Women: Ms R Coomaraswamy* (Sri Lanka).

COUNTRY MANDATES

Special Committee to Investigate Israeli Practices Affecting the Palestinian People:
Chairman: Mr S Kalpage (Sri Lanka)

Working Group on Southern Africa: Mr M L Balanda* (Zaire).

Special Rapporteur on Afghanistan: Professor F Ermacora* (Austria).

Special Rapporteur on Cuba: Mr C J Groth* (Sweden).

Special Rapporteur on Equatorial Guinea: Mr A Artucio* (Uruguay).

Special Rapporteur on Haiti: Mr M T Bruni-Celli* (Venezuela).

Special Rapporteur on the Islamic Republic of Iran: Professor R Galindo-Pohl (El Salvador).

Special Rapporteur on Iraq: Mr M van der Stoep* (Netherlands).

Special Rapporteur on Myanmar: Professor Y Yokota*: (Japan).

Special Rapporteur on Occupied Arab Territories Including Palestine: Mr R Felber (Switzerland)

Special Rapporteur on Rwanda: Mr R Degni-Segui (Ivory Coast).

Special Rapporteur on the Sudan: Mr G Bíró* (Hungary).

Special Rapporteur on the Former Yugoslavia: Mr T Mazowiecki* (Poland).

Special Representative for Human Rights in Cambodia: Justice M Kirby* (Australia).

Independent Expert for El Salvador: Mr P Nikken (Venezuela).

Independent Expert for Guatemala: Ms M Pinto* (Argentina).

Independent Expert for Somalia: Mr F Kozonguizi (Namibia).

* Present at the Geneva meeting.

FOOTNOTES

1. See M D Kirby, Second World Conference on Human Rights, Vienna, Austria, June 1993 (1993) 67 ALJ 948. The first world conference on Human Rights was held in Tehran in 1968 and resulted in the Proclamation of Tehran; see United Nations, *A Compilation of International Instruments*, Volume 1 (First part), NY, 1994, 51.
2. Boutros-Boutros Ghali, "Human Rights, the Common Language of Humanity" x
in United Nations, *World Conference on Human Rights*, August 1993, United Nations NY, 5.
3. *Loc cit* 25. The text of the Vienna Declaration and Programme of Action has been reprinted, together with "An overview prepared by the Centre for Human Rights", and relevant texts adopted by the World Conference and in the process leading up to the World Conference, in (1993) 14 *Human Rights Law Journal* 346.
- 3bis General Assembly resolution 48/141 of 20 December 1993.
4. Allen and Unwin, Sydney, 1993.
5. See eg L Henkin and J L Hargrove (eds) *Human Rights: An Agenda for the Next Century* in *Studies in Transnational Legal Policy*, No 26, American Society of International Law, Washington, 1993. See esp ch 10, A F Bayefsky, "Making The Human Rights Treaties Work", *ibid*, 229.
6. United Nations, Human Rights Committee (50th Session), Nicholas Toonen and Australia (Communication No 688/1992), Views of the Human Rights Committee under Article 5, Paragraph 4 of the Optional Protocol to the *International Covenant on Civil and Political Rights* (CCPR/C/50/D/488/1992 (4 April 1994)).
7. *Vienna Declaration*, above n 3, 27.
8. *Ibid*, Part I, para 34.

9. *Ibid*, Part II, sub-part A.
- 9bis A/CONF. 157/9 of 18 June 1993; reprinted in (1993) 14 HRLJ 365.
10. United Nations, High Commissioner for Human Rights, Address to the Commission on Human Rights at its 50th Session, 3 March 1994.
11. United Nations, Report of Commission on Human Rights. Note by the High Commissioner for Human Rights on the Meeting of Special Rapporteurs, Special Representatives, Experts and Chairmen of Working Groups of the Commission on Human Rights, 30 May 1994-1 June 1994. Follow-up to the World Conference on Human Rights, 15 June 1994, E/CN.4/1995/5. Addresses to the meeting by the High Commissioner and Assistant Secretary-General are reproduced in E/CN.4/1995/5Add.1.
12. United Nations, Paper by the Special Representative of the Secretary-General for Human Rights in Cambodia for the meeting of Special Rapporteurs/Special Representatives/Experts and Chairmen of Working Groups of the Commission on Human Rights, 1994.
13. United Nations, Commission on Human Rights, Report of the United Nations High Commissioner for Human Rights on his Mission to Rwanda 11-12 May 1994 (E/CN.4/S-3/3, 19 May 1994).
- 13bis According to a letter dated 5 July 1994 from the Permanent Representative of France to the United Nations addressed to the Secretary-General (S/1994/795 of 5 July 1994), France progressively deployed its force of 2,300 soldiers (together with 32 Senegalese soldiers) in western Rwanda from 24 June to 4 July 1994. Code-named "Operation Turquoise", the French deployment was in implementation of paragraph 10 of Security Council resolution 929 (1994) of 22 June 1994. Fully six weeks prior to this deployment, the High Commissioner for Human Rights had visited Rwanda (11 to 12 May 1994) in an effort to stop the fighting; an appeal was issued to this end on 12 May 1994 (see E/CN.4/S-3/3 in Annex). By resolution 935 (1994) of 1 July 1994, the Security Council welcomed the High Commissioner's visit to Rwanda and

requested the Secretary-General to establish a Commission of Experts to examine evidence of grave violations of international humanitarian law, including possible acts of genocide, in Rwanda.

14. See United Nations, Secretary-General, Report to the Commission on Human Rights on "Effective Functioning of the Various Mechanisms Established for Supervision, Investigation and Monitoring of the Implementation of the Treaty Obligations Entered Into by States in Regard to Human Rights and the Existence of International Standards in this Regard", 14 February 1994, (E/CN.4/1994/42).
15. The full text of the resolution is reproduced in E/CN.4/1994/5, Appendix II.