



PUBLICATIONS DE L'INSTITUT INTERNATIONAL DES DROITS DE L'HOMME  
INSTITUT RENÉ CASSIN DE STRASBOURG

LES ORGANISATIONS  
NON GOUVERNEMENTALES  
ET LE DROIT INTERNATIONAL  
DES DROITS DE L'HOMME



INTERNATIONAL  
HUMAN RIGHTS LAW  
AND NON GOVERNMENTAL  
ORGANIZATIONS



**BRUYLANT**

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DES DROITS DE L'HOMME

(Collection dirigée par G. COHEN-JONATHAN et J.F. FLAUSS)

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NGO INVOLVEMENT  
IN INTERNATIONAL HUMAN RIGHTS  
MONITORING

BY

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I. – THE PIVOTAL ROLE OF NGOS  
IN INTERNATIONAL HUMAN RIGHTS MONITORING

The influence of non-governmental organizations (NGOs) in international human rights monitoring owes much to a paradox fundamental to human rights law. International human rights law imposes binding legal obligations on the State not to interfere unduly with the life, liberty and property of individuals and groups within its jurisdiction, but at the same time, it is mainly up to the Government itself to implement these obligations. In other words, the Government is at once bound by human rights guarantees and its main enforcer.

If we could rely on each Government to monitor its own observance of human rights objectively and diligently, or at least to expose and criticize impartially the human rights violations of other Governments, then the horizontal configuration of sovereign and

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equal States might in itself serve adequately as an international human rights monitoring system – without any need for NGOs in this process. Unfortunately however, Governments cannot be trusted to monitor either themselves or other Governments with respect to human rights observance. The particularly sensitive character of human rights violations as a potential source of embarrassment often leads Governments to deny, minimize or conceal such violations. No Government can be trusted to tell the truth, the whole truth and nothing but the truth about the status of human rights within its jurisdiction. Neither has “peer pressure” been an adequate form of human rights monitoring because Governments generally avoid criticizing other Governments, especially those friendly to them, in order not to invite the same unfavourable treatment in retaliation and to avoid jeopardizing friendly relations. It is true that sometimes Governments denounce other Governments for human rights violations, but this phenomenon usually seems to involve political considerations and a measure of self-interest. In other words, Governments often apply the old proverb that “people who live in glass houses should not throw stones”, which explains also why State Parties to human rights conventions have not lodged inter-State complaints at the UN level. (2)

The weakness of intergovernmental human rights protection makes all the more important NGO involvement in international human rights monitoring. Fortunately, NGOs have become so integrated in the regular workings of international human rights monitoring mechanisms that their non-involvement has now become almost unthinkable.

The present enquiry identifies how NGOs have transformed the character of international human rights monitoring. Accordingly, we first define the term “non-governmental organization” in rough terms. Then, we trace the influence of NGOs in international law and multilateral diplomacy, particularly with regard to human rights matters, to place the role of NGOs into historical context. Next, we consider the criteria governing the consultative relationship of NGOs with the Economic and Social Council (ECOSOC) of the United Nations because this forms the legal basis for NGO involvement in international human rights monitoring at the global

level. We then situate the contribution of NGOs in human rights standard setting and focus on their important role throughout the range of UN human rights monitoring functions. In this connection, we explore, in particular, the:

- UN human rights treaty bodies;
- UN Commission on Human Rights special procedures;
- UN Commissions of Experts, the ICTY, ICTR and ICC;
- UN human rights field presences, UN technical cooperation and advisory assistance to Governments in the field of human rights; and
- regional and national human rights monitoring.

Finally, we draw some conclusions as to how NGO involvement in international human rights monitoring has transformed the global system of human rights promotion and protection.

## II. – DEFINITION OF “NON-GOVERNMENTAL ORGANIZATION” AND THE RELEVANCE OF NGO CONSULTATIVE STATUS WITH ECOSOC

The *Encyclopaedia of Public International Law* defines “NGO” as private organizations:

...not established by a government or by intergovernmental agreement, which are capable of playing a role in international affairs by virtue of their activities, and whose members enjoy independent voting rights. The members of an NGO may be individuals (private citizens) or bodies corporate. Where the organization’s membership or activity is limited to a specific State, one speaks of a national NGO and where they go beyond, of an international NGO. (3)

By incorporating the element of “actual capacity to play a role in international affairs”, the above definition properly narrows the focus to exclude organizations which, although formally and legally constituted, may exert little practical effect or influence on policy making. It must be said however that this aspect seems less relevant to national NGOs which do not necessarily claim to have an

(2) The procedures of human rights treaty bodies are discussed below in Part VI(A).

(3) HERMANN H. K. RECHENBERG, *Non-Governmental Organizations* in: *Encyclopaedia of Public International Law*, pp. 612-619 at 612.

international profile. Not only that, but for our purposes, the above definition leaves out commonly accepted notions of what constitutes an NGO concerned with human rights, namely, that it should function on the basis of non-profit or charitable status, subscribe to human rights or humanitarian aims, and assume a public advocacy role.

For the purposes of the present enquiry, it is more pertinent to consider the relevant norms governing the participation of NGOs within the framework of the United Nations human rights programme, in particular, the consultative relationship of NGOs with ECOSOC – the principal UN organ responsible for human rights matters. Before turning to this question however, it is valuable to recall the participation of NGOs in multilateral diplomacy and international law.

### III. – HISTORICAL OVERVIEW OF NGO INVOLVEMENT IN MULTILATERAL DIPLOMACY AND INTERNATIONAL LAW

International law remains a set of juridical norms regulating primarily inter-State relations. As the primary subjects of international law, States enjoy pre-eminent legal authority over any other entity on the international plane: they are the main actors on the international stage. Non-governmental entities have never been completely absent from the international scene however and their influence in multilateral diplomacy and international law has grown substantially over time.

The rise of non-governmental associations can be traced back to Enlightenment philosophy which in the mid-1700's helped to foster systematic and independent enquiry in natural science, politics and social philosophy. The Enlightenment and the ascendancy of the bourgeoisie not only encouraged individual free thought, but criticism of all kinds, including that of State, Government and the Church. Associations of philosophers, financiers, writers and scientists can be considered precursors to modern NGOs in that they expressed ideas critical of State authority. (4) At the same time, the

(4) Pei-heng CHENG, *Non-Governmental Organizations at the United Nations: Identity, Role and Function* (1983) at 28.

spirit of independent scientific enquiry in the Age of Reason could not recognize any national frontiers, and in this sense, free thought remains inherently international in character. Putting it another way, cosmopolitanism lies at the root of non-governmental thinking and association, particularly as regards paradigms claiming to be of universal application, such as human rights.

Some non-governmental lobbying was achieved at the Congress of Vienna with respect to the civil rights of Jews and also the interests of certain German publishers. In later conferences, non-governmental activity increased substantially, for example, the 1878 Congress of Berlin received some 145 petitions from individuals or private associations. (5)

In his article entitled "Two Centuries of Participation: NGOs and International Governance", (6) Professor Charnowitz notes that by the year 1900, 425 peace societies had been formed and many important NGOs concerned with the maintenance of international peace, labour law and social security, free trade, and international law, began to develop. In terms of worker solidarity, there were the International Working Men's Association (1864), the International Federation of Tobacco Workers Fund (1876), the International Federation for the Observation of Sunday (1876), the Permanent International Committee on Social Insurance (1889), which was the predecessor of the International Federation of Trade Unions (1901) and the International Congress on Occupational Disease (1906). A number of international law associations emerged in the second half of the 19<sup>th</sup> century, the main examples being the Institut de Droit International in 1873, the International Law Association in the same year, the Association of International Law in Japan (1897) and the American Society of International Law in 1906. Between 1872 and 1914, twenty-six new law-related NGOs were formed. Perhaps even more significantly, NGOs began to develop associations amongst themselves such as the Union of International Associations which brought together 132 international associations and 13 governments in 1910. NGOs played a role at The Hague Peace Conferences of 1899 and 1907 which the Russian Tsar convened to limit arms spending, prohibit certain weapons, codify the

(5) See STEVE CHARNOWITZ, "Two Centuries of Participation: NGOs and International Governance" 18 (Winter) *Michigan Journal of International Law* (1997) 183 at 195.

(6) *Ibid.* at 193.

customary laws of war, and ensure a lasting peace. (7) At the Paris Peace Conference convened in 1919 to establish the League of Nations, a number of NGOs were active in advocating the establishment of a strong collective security system and an effective permanent court of international justice, namely, the League to Enforce Peace, the League of Nations Society of London, the Union of International Associations, the Inter-Parliamentary Union and the World Court League. The Treaty of Versailles also established the International Labour Organization as a tripartite body that formalized worker and employer representation alongside Government representation, in effect strengthening non-governmental influence in all labour law and social security issues at a global level.

The foundations of the UN's relationship with NGOs lie in Article 24 of the League of Nations Covenant which authorized the League to "direct" international bureaux already established by treaty. However, Article 24 was silent on international bureaux not created by treaty, so in 1921 the League Council interpreted Article 24 widely to allow the League to provide support for the activities of "non-public" and "semi-public" international organizations. In 1923, the League Council considered that official supervision might inhibit voluntary associations and reversed its earlier interpretation of Article 24, deciding not to apply it to NGOs after all. (8) As Chiang explains, during the life of the League of Nations (1919-1939), NGOs could attend various committees and were called "assessors" (advisory members). (9) Many Secretariat officials of the League participated in various NGO activities and they took the initiative to attend NGO conferences and to liaise with NGOs for information and technical expertise. Although NGOs normally could not make oral representations in League committees, they could submit reports, initiate discussions and propose amendments to draft resolutions — an important background role in standard setting. In 1932, NGOs were permitted to speak to a Plenary Meeting of the Disarmament Conference and to circulate peti-

(7) At the 1899 Peace Conference, many peace societies sent deputations of oppressed peoples which met with Government Delegations. Interestingly, despite a rule of secrecy at The Hague Peace Conference, NGOs formed a parallel forum and circulated a newspaper to report on the Conference's progress — a technique that has been used very effectively in recent international conferences to coordinate lobbying of Government Delegations. See generally, *ibid.*, at 197.

(8) *Op. cit.* note 3 at 220.

(9) *Op. cit.* note 4 at 35.

tions. (10) During the 1930's, NGO activity weakened in the deteriorating international climate and could not resume effectively until the end of World War II.

#### IV. — THE FORMAL/LEGAL CRITERIA GOVERNING NGO CONSULTATIVE STATUS WITH ECOSOC

NGO consultative status with ECOSOC forms the main avenue through which NGOs can interact with the official bodies of the UN. One must recall that among ECOSOC's functions and powers is the authority to "call, in accordance with the rules prescribed by the United Nations, international conferences on matters falling within its competence". (11) NGOs which have been granted consultative status can therefore participate in the sessions of the UN Commission on Human Rights and other meetings convened under ECOSOC authority.

The UN Commission on Human Rights brings together the 53 member States of the Commission itself, States sitting as Observers, representatives of intergovernmental organizations, UN agencies, bodies and programmes, the ICRC, NGOs and experts concerned about human rights. Convened annually over a six-week period from mid-March to the end of April at the European Headquarters of the UN in Geneva, the Commission is the only truly global human rights forum. In addition to the Commission's annual meeting, NGOs in consultative status with ECOSOC can attend public meetings of the Sub-Commission on the Promotion and Protection of Human Rights as well as those of the human rights treaty bodies which we discuss in Part VI(A). Consultative status with ECOSOC also affords NGOs access to diplomatic conferences such as the UN Diplomatic Conference of Plenipotentiaries on the Establishment of the International Criminal Court or the Durban Conference on Racism, Racial Discrimination, Xenophobia and Other Forms of Related Intolerance.

In all these *fora*, NGOs can make their views known to Governments directly involved in diplomatic negotiations, human rights

(10) *Ibid.*

(11) Article 62(4) of the Charter of the United Nations on the Functions and Powers of ECOSOC.



standard setting, monitoring and reporting. Participation in UN meetings also provides NGOs with an opportunity to keep abreast of the latest human rights developments around the world, to liaise with other NGOs, to develop common policy positions and strengthen networks. Thus, the criteria governing the consultative relationship of NGOs with ECOSOC are of capital importance to any NGO that wishes to involve itself in the international promotion and protection of human rights.

The involvement of NGOs in the United Nations dates back to the drafting of the UN Charter. Hoping to publicize the importance of the UN and to marshal public support for its establishment, in February 1945, the US Government decided to designate 42 NGOs that could place consultants with the US Delegation to the San Francisco Conference. Once the NGO representatives were in San Francisco, they also contributed informally to the drafting of certain of the UN Charter provisions relating to human rights promotion and protection. (12)

The role envisaged for NGOs in the UN relates closely to the functions and powers that were allocated to ECOSOC because ECOSOC's powers in effect prescribe the scope of the UN's authority in economic and social matters, including human rights. As regards the Charter's human rights provisions, Chiang records that NGOs lobbied Delegations to expand ECOSOC's authority and to secure human rights as a fundamental purpose of the UN. (13)

The drafting of Article 71 of the UN Charter, which provides the legal basis for NGO involvement in the UN, was influenced strongly by the ideological battle going on at the time between the USSR and the US over the role of certain trade unions in the UN and in the International Labour Organization. As finally drafted, Article 71 of the UN Charter provides that :

"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 organ-

izations and, where appropriate, with national organizations after consultation with the Member of the United Nations concerned."

Thus, Article 71 could sweep in thousands of national NGOs many of which might have little to do with international affairs. A more precise set of criteria therefore had to be developed to restrict which NGOs could obtain consultative status. These limitations and procedures are set out in ECOSOC resolution 1996/31 entitled "Consultative Relationship between the United Nations and Non-Governmental Organizations". (14)

ECOSOC resolution 1996/31 requires that an organization applying for consultative status must :

- be concerned with matters falling within ECOSOC's competence (para. 1);
- have aims and purposes that conform to "the spirit, purposes and principles of the Charter of the United Nations" (para. 2); and
- undertake to support the work of the UN and to promote knowledge of its principles and activities (para. 3).

It further provides that :

- the Committee on Non-Governmental Organizations should ensure fair regional representation particularly of developing countries and shall pay special attention to NGOs with special expertise or experience (para. 5);
- NGOs must demonstrate the relevance of their work to the aims and purposes of the United Nations, and "in the case of national organizations, after consultation with the Member State concerned" at which stage, Member States can respond through the Committee on Non-Governmental Organizations" (para. 8);
- the "organization shall be of recognized standing within the particular field of its competence or of a representative character" and that where there are similar organizations they might form "a joint committee or other body authorized to carry on such consultation for the group as a whole" (para. 9);

(12) *Op. cit.* note 5 at 250-251.

(13) CHIANG explains that : "Both small and large States expressed enthusiastic support for the inclusion of human rights and cultural cooperation in the purposes of the UN, the powers of the General Assembly, and in the ECOSOC's functions. The Soviet Union and several other governments, for example, were responsible for inserting after the phrase 'and promote respect for human rights and for fundamental freedoms', the words 'for all without distinction as to race, language, religion, or sex'". *Op. cit.* note 4 at 44

(14) Economic and Social Council resolution 1996/31 entitled "Consultative Relationship between the United Nations and Non-Governmental Organizations", adopted on 25 July 1996 at ECOSOC's 49<sup>th</sup> plenary meeting, updates ECOSOC resolution 1296 (XLIV) of 23 May 1968 and enhances the operational coherence of rules governing the practical participation of NGOs in UN conferences. These arrangements are managed through the Committee on Non-Governmental Organizations and the Non-Governmental Organizations Section of the United Nations Secretariat.



- the organization shall have an established headquarters, executive officer, democratically adopted constitution which is deposited with the Secretary-General of the United Nations, the authority to speak for its members, mechanisms for accountability and voting rights as well as transparent decision-making processes (para. 12); and
- the organization, in order to be considered non-governmental, cannot be established by a governmental entity or intergovernmental agreement (para. 12).

In terms of funding, resolution 1996/31 establishes that the NGO must rely mainly on contributions from national affiliates or individual members and that it must be prepared to disclose all sources of voluntary contributions to the Committee on Non-Governmental Organizations, or in default of faithful reporting, the organization must explain its sources of funding to the Committee (para. 13).

As set out in paragraph 15 of the resolution, States retain the prerogative to grant consultative status to NGOs through ECOSOC, to suspend and withdraw it, and to interpret the applicable rules, but an NGO applying for consultative status has the opportunity to respond to any objections raised in the Committee before the Committee takes a decision.

Interestingly, resolution 1996/31 stresses the concerns of States to maintain the UN Charter's distinction between "participation without vote" and "consultation" in ECOSOC deliberations. In this connection, the resolution recalls that, under Articles 69 and 70 of the Charter "participation is provided for only in the case of States not members of the Council, and of specialized agencies" and that "Article 71, applying to non-governmental organizations, provides for suitable arrangements for consultation". Resolution 1996/31 goes on to reiterate that "arrangements for consultation should not be such as to accord to non-governmental organizations the same rights of participation as are accorded to States not members of the Council and to the specialized agencies brought into relationship with the United Nations". Similarly, the "arrangements should not be such as to overburden the Council or transform it from a body for coordination of policy and action, as contemplated in the Charter, into a general forum for discussion" (paras. 18 and 19). Also indicating the views of States as to how NGOs should behave, paragraph 20 of the resolution states that decisions for the granting of

consultative status should balance ECOSOC's need to secure expert information and advice from NGOs with special competence in the particular field in question, with the enabling of international, regional, subregional and national organizations to represent public opinion and express their views. (15)

Having reviewed the legal basis as to how NGOs can involve themselves in UN procedures, we are now in a position to explore the specifics of NGO involvement in international human rights standard setting and monitoring.

#### V. – THE INTENSIFICATION OF NGO ADVOCACY AND INVOLVEMENT IN INTERNATIONAL HUMAN RIGHTS STANDARD SETTING

NGO influence in international human rights monitoring could not have increased as much as it has without the intensification of human rights NGO advocacy on a global level, which several factors have made possible.

First, the application of Article 71 of the UN Charter and ECOSOC resolutions 1296 and 1996/31, discussed above, established a solid legal basis upon which NGOs could conduct regular consultations with the UN. Second, the consolidation of human rights law at international, regional and national levels, has provided human rights NGOs with a stronger, clearer and more detailed normative basis upon which to monitor and report on violations. At the international level, the adoption of a series of universal human rights treaties equipped with monitoring mechanisms, and the rise of a wide range of UN extraconventional mechanisms, have provided NGOs with important institutional avenues through which to contribute to human rights monitoring and reporting. Similarly, regional human rights systems in Africa, Europe and Latin America have provided implementation frameworks within which NGOs can and do work to promote and protect human rights. Also, at the

(15) The text of resolution 1996/31 spells out: the mechanics of the establishment of consultative relationships; consultation with ECOSOC, commissions and other ECOSOC subsidiary organs; participation of NGOs in international conferences convened by the UN and their preparatory processes; the procedures for the suspension and withdrawal of consultative status; the functions and powers of the Council Committee on Non-Governmental Organizations; and principles governing NGO consultation with the UN Secretariat and Secretariat support.

domestic level, the incorporation of human rights guarantees in national constitutions, statutes and regulations, have increased the weight of human rights legal obligations on the State, which has further solidified the grounds for NGO human rights monitoring and reporting. Third, the phenomenon of globalization, (16) including the extended reach of instant media organizations such as CNN, BBC World and TV5, as well as Internet penetration even to geographically remote places, have strengthened NGO capacity to marshal public opinion and action on human rights issues. (17)

All these factors have intensified the influence of such human rights NGOs as Amnesty International, Human Rights Watch, the International Commission of Jurists, Fédération des Droits de l'Homme and Human Rights First (formerly called the "Lawyers Committee for Human Rights") on UN human rights standard setting. For example, at the World Conference on Human Rights held in Vienna in 1993, there were an estimated 3700 NGO representatives of over 800 NGOs with UN consultative status and another 1000 human rights NGOs which were invited that did not have consultative status. (18) NGOs lobbied successfully for the establishment of the Office of a High Commissioner for Human Rights and for the main streaming of human rights in all UN programmes and activities as well as for improvements in the procedures of conventional and extraconventional human rights mechanisms, among other things.

At the Beijing Conference on Women, held in 1995, NGOs played a critical role in developing the Declaration and Platform for Action (19) and NGOs were active also at the Ottawa Conference on Landmines (1997), the Kyoto World Conference on Climate Change (1997), (20) and the Durban World Conference on

(16) See Michelle LEIGHTON and Elena CASTANEDA, "Civil Society Concerns in the Context of Economic Globalization", 15 (Winter) *Transnational Lawyer* (2002) 105.

(17) See Karsten NOWROT, "Legal Consequences of Globalization: The Status of Non-Governmental Organizations under International Law", 6 (Spring) *Indiana Journal of Global Legal Studies* (1999) 579.

(18) See William KOREY, *NGOs and the Universal Declaration of Human Rights: A Curious Grapevine* (1998) at 288.

(19) Adopted by the Fourth World Conference on Women (Report of the Fourth World Conference on Women), Beijing, 4-15 September 1995; UN Sales No. E.96.IV.13.

(20) Tamlyn HUNT, "People or Power: A Comparison of Realist and Social Constructivist Approaches to Climate Change Remediation Negotiations", 6 (Spring / Summer) *UCLA Journal of International Law and Foreign Affairs* (2001) 265. Already in 1984, Weissbrodt noted the activities of NGOs at the Stockholm Conference on the environment: "The Stockholm environmental conference is often viewed as a watershed of NGO involvement. There were 113 governments

Racism (2001). In each case, NGOs provided valuable technical expertise that assisted Governments to clarify key issues and take better account of public opinion in deciding how to address challenges. NGOs also proposed draft provisions and amendments and were active in publicizing through the mass media the main issues at stake and possible ways forward.

NGOs were also highly influential at the Rome Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court. This campaign was led by the well-funded and elaborately organized Coalition for the International Criminal Court (CICC), based in New York. (21) The CICC, established in February 1995, eventually encompassed a membership of more than 2000 NGOs from around the world concerned with human rights, humanitarian law, peace, women, children, refugees and the rights of victims. Before, during and since the Rome Conference, the CICC published *The International Criminal Court Monitor* in English, French and Spanish, which disseminated information on the ICC and also criticized Government positions that would weaken the Court. Each day at the Rome Conference itself, NGOs lobbied Government Delegations with impressive energy and commitment to push for the establishment of a strong, fair and independent international criminal court. They took detailed notes of the positions taken by Delegates on key issues in order to produce for the next day highly pertinent articles intended to mobilize support for one or other approach, using the *Monitor* as their main conduit of expression. Individual NGOs also circulated statements and position papers. Without the active involvement of NGOs, it is doubtful that the Statute of the ICC would have been as broad and progressive as it is on such issues as crimes of sexual violence, gender representation on the Court, the scope of provisions on war crimes and crimes against humanity, the powers of the Prosecutor, or the rights of victims.

and at least 225 accredited NGOs. NGOs were permitted to make a formal statement to the conference. NGOs also distributed a daily newspaper, a practice regularized at subsequent global conferences". See David WEISSBRODT, "The Contribution of International Nongovernmental Organizations to the Protection of Human Rights", in 2 *Human Rights in International Law: Legal and Policy Issues* (ed. Meron) 1984 at 403.

(21) See William B. PAGE and Mark THIEROFF, "Participation of Non-Governmental Organizations", in Roy B. LEE (ed.) *The International Criminal Court: The Making of the Rome Statute: Issues, Negotiations, Results* (1999) 391-398.

## VI. – NGO INVOLVEMENT IN INTERNATIONAL HUMAN RIGHTS MONITORING

To appreciate the ways in which NGOs contribute to international human rights monitoring, it is convenient to consider first their role vis-à-vis UN human rights treaty bodies, then UN Commission on Human Rights special procedures, mechanisms concerned with individual responsibility for crimes under international law, UN human rights field presences and the UN's technical cooperation programme in the field of human rights.

### A. – *NGO Involvement in International Monitoring through UN Human Rights Treaty Bodies*

Turning to the NGO role in UN human rights treaty body monitoring, it is important to recall at the outset that NGOs have been influential in the international community's adoption of a number of multilateral human rights conventions that establish monitoring mechanisms. A clear example is the Convention on the Rights of the Child the adoption of which NGOs pushed insistently. Once the Convention was adopted, NGOs also actively lobbied Governments to sign and ratify it. (22)

Currently, there are seven UN human rights treaty bodies in operation :

- the Committee on the Elimination of Racial Discrimination (CERD) which monitors the International Convention on the Elimination of All Forms of Racial Discrimination; (23)
- the Human Rights Committee which monitors the International Covenant on Civil and Political Rights; (24)

(22) See Stuart N. HART, "Non-Governmental Efforts Supporting US Ratification of the Convention on the Rights of the Child". 4 (Spring) *Loyola Poverty Law Journal* (1998) 141.

(23) International Convention on the Elimination of All Forms of Racial Discrimination, adopted by General Assembly resolution 2106 (XX) of 21 December 1965, entered into force, 4 January 1969. As of 2 November 2003, there were 169 States Parties to the Convention.

(24) International Covenant on Civil and Political Rights, adopted 16 December 1966; entered into force 23 March 1976; UNTS N° 14668, vol 999 (1976) at 171. As of 2 November 2003, there were 151 States Parties to the ICCPR. There were 104 States Parties to the first Optional Protocol to the ICCPR which in Article 1 provides that: "A State Party to the Covenant that becomes a Party to the present Protocol recognizes the competence of the Committee to receive and consider communications from individuals subject to its jurisdiction who claim to be victims of a violation by that State Party of any of the rights set forth in the Covenant".

- the Committee on Economic, Social and Cultural Rights (CESCR) which monitors the International Covenant on Economic, Social and Cultural Rights; (25)
- the Committee on the Elimination of All Forms of Discrimination against Women (CEDAW) which monitors the International Convention on the Elimination of All Forms of Discrimination against Women; (26)
- the Committee against Torture (CAT) which monitors the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; (27)
- the Committee on the Rights of the Child (CRC) which monitors the Convention on the Rights of the Child; (28) and
- the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families which monitors the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. (29)

What do these human rights treaty bodies do? Each of the treaty bodies consists of independent experts, ranging from 10 to

(25) International Covenant on Economic, Social and Cultural Rights, adopted 16 December 1966; entered into force 3 January 1976; UNTS N° 14531, vol. 993 (1976) at 3. As of 2 November 2003, there were 148 States Parties to the ICESCR.

(26) The Convention on the Elimination of All Forms of Discrimination against Women, adopted by the General Assembly in resolution 34/180 of 18 December 1979, entered into force, 3 September 1981. Article 17(1) of the Convention provides for a Committee of 18 independent experts to monitor compliance. In resolution A/Res/54/4, the General Assembly adopted Optional Protocol 1 to the Convention on 6 October 1999, opened for signature on 10 December 1999 and entered into force on 22 December 2000, following the tenth instrument of ratification. As of 2 November 2003, there were 174 States Parties to the Convention and 53 States Parties to Optional Protocol 1.

(27) UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by consensus by the General Assembly on 10 December 1984, opened for signature on 4 February 1985, entered into force on 26 June 1987. The Convention forms the Annex to General Assembly resolution 39/46. As per Article 22, the Committee can receive allegations of torture from the individual where the State Party has so declared that it recognizes the competence of the Committee to receive individual allegations. As of 2 November 2003, there were 133 States Parties to the Convention.

(28) The Convention on the Rights of the Child, adopted by the General Assembly in resolution 44/25 of 20 November 1989, entered into force, 2 September 1990. Article 43 of the Convention provides that for "the purpose of examining the progress made by States Parties in achieving the realization of the obligations undertaken" in the Convention, there shall be established a Committee of ten experts. As of 2 November 2003, there were 192 States Parties to the Convention.

(29) International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, adopted by General Assembly resolution 45/158 of 18 December 1990, entered into force on 1 July 2003. The Committee consists of 10 experts serving in their personal capacity and will rise to 14 experts when 41 ratifications have been received. As of 2 November 2003, there were 23 States Parties to the Convention.



23 in number who are of recognized competence in human rights and who, although nominated and elected by the States Parties to the particular convention in question, are expected to serve in a personal capacity. Under each of the conventions listed above, the State Party is obliged to submit to the UN Secretary General for consideration by the corresponding Committee a report on the legislative, judicial, administrative or other measures which the State Party has adopted to give effect to the convention's provisions. State reports are due within one year after the entry into force of the Convention for the State concerned and periodically thereafter and whenever the Committee so requests. It is the responsibility of each of the treaty bodies to examine the State reports, together with information from other sources it may receive. Following a dialogue with the delegation of the State whose report is under consideration, the committee adopts "concluding observations" or "comments" which identify areas of concern and include recommendations on ways in which the State could improve observance of its obligations under the convention. The treaty bodies also issue general comments or observations which express the committee's interpretation of specific convention provisions. The ICCPR and Convention on Discrimination against Women have Optional Protocols which allow States parties to recognize the competence of the respective committee to receive complaints from individuals who claim to be victims of the violation of a right set out in the convention, whereas the Racial Discrimination and Torture Conventions each have provisions in the conventions themselves that provide for such faculty. Finally, one must mention that a number of conventions set forth procedures whereby one State Party can lodge a complaint against another State Party claiming a violation of a convention right.<sup>(30)</sup> In short, the above-named human rights treaties set out three main monitoring procedures: 1) State reports; 2) inter-State complaints; and 3) individual complaints.

It is important to bear in mind first, that the international monitoring of human rights through treaty bodies applies only

<sup>(30)</sup> See Compilation of Rules of Procedure Adopted by Human Rights Treaty Bodies: Note by the Secretariat; HRI/GEN/3/Rev. 1, 28 April 2003.

to States that have signed and ratified the particular human rights treaty in question. So the human rights treaty bodies remain based on the consent of the State to be legally bound by the Convention. They therefore do not address the difficult situations of violator States which have chosen to remain outside the treaty framework. Second, the inter-State complaints procedure which initially seemed to hold promise as an effective means by which to channel international disputes over convention violations into procedures for friendly settlement or *ad hoc* international conciliation, at the time of writing, had never been used at the global level, although several inter-State complaints have been lodged over the years under the European Convention on Human Rights.<sup>(31)</sup> Considering also that States generally wish to avoid increasing the level of friction with other States, it is unlikely that in future State Parties will avail themselves much of the option to lodge complaints against other State Parties. Third, the State Party obligation to submit periodic reports is often simply not respected. In many cases, where the State Party actually does submit a report, it may be months or years overdue. In addition, most State reports simply recite measures the State has taken to comply with its conventional obligations without any attempt to identify or address real issues of concern. In some instances, States Parties have failed to send delegations to respond to questions or to provide further information which the Committee had requested upon review of the State report. On other occasions, States cancelled or postponed their appointments with the Committee at the last moment, causing havoc with the Committee's planning of work and agenda.<sup>(32)</sup>

The failure of State Parties to use the inter-State complaints procedure provided for in human rights conventions, combined with their poor record in meeting their reporting obligations, has been mitigated by the willingness of human rights NGOs to supply specific, detailed and credible information unofficially to Committee members in what are known as "shadow reports". The human rights treaty bodies have generally wel-

<sup>(31)</sup> See generally, P. van Dijk and G.J.H. van Hoof, *Theory and Practice of the European Convention on Human Rights* (Third Ed.) (1998).

<sup>(32)</sup> See generally, Philip Alston and James Crawford (eds.), *The Future of UN Human Rights Treaty Monitoring* (2000).



comed reports from NGOs, and this attitude has been reflected in their formally adopted procedures. (33) Thus, nothing prevents Committee members from liaising with NGOs concerned about specific country situations or from consulting NGO reports disseminated in annual publications or on the Internet in order to sharpen the Committee's dialogue with the Government. Amnesty International and FIDH for example have often provided members of the Human Rights Committee with reports and draft reports on the human rights situation in the country under consideration. In addition to written reports, astute Committee members can check the credibility of State responses under consideration with a phone call to a geographic desk officer in one or other international NGO or by contacting a relevant national NGO of recognized stature. Increasingly, human rights NGOs in Latin America, Africa and Asia have been keeping a close eye on developments at the grassroots level, which ultimately remain key to effective human rights protection. (34)

As regards individual petitions procedures, the UN human rights treaties only allow an NGO to lodge a complaint either where it claims itself to have been a victim of a violation of the convention, or where it has been explicitly authorized by the victim to act on his or her behalf. (35)

Finally, the jurisprudence and General Comments of the Committees provide their authoritative interpretation of particular Conven-

(33) See eg. the Committee on Economic, Social and Cultural Rights procedure, adopted at its eighth session, which states that: "The Committee reiterates its long-standing invitation to NGOs to submit to it in writing, at any time, information regarding any aspect of its work" and that in addition "a short period of time will be made available at the beginning of each session of the pre-session working group to provide NGOs with an opportunity to submit relevant oral information to the members of the working group": E/1994/23, para. 354.

(34) It is important to bear in mind the Rachel BRETT's point that: "Seen from the international perspective, there is a tendency to focus on the consideration by the Committee of the state's report, and on the role of NGOs in enhancing that process. This is, however, a grossly misleading picture of the role of NGOs in state reporting procedures since the process both starts and finishes not in the Committee, but in the country concerned, which is where the role of national (as opposed to international) NGOs is crucial". Rachel BRETT, "Role of NGOs: An Overview", in *International Human Rights Monitoring Mechanisms* (eds. Gudmundur ALFREÐSSON et al.) (2001) 845-854 at 849-850.

(35) In any case, a communication concerning a violation of one of the rights set out in the relevant convention can be brought only where all the admissibility requirements have been fulfilled, namely, that all domestic remedies have been exhausted, the communication is not anonymous, the communication itself does not constitute an abuse of process, and it is not the subject of another international procedure. See eg. Article 5 of Optional Protocol 1 to the ICPR.

tion provisions, which lends further precision to international human rights law.

B. – *NGO Involvement  
in International Monitoring  
through UN Commission  
on Human Rights  
Special Procedures Mechanisms*

Unlike the human rights treaty bodies which can only monitor human rights situations in countries that have signed and ratified the particular Convention in question, "special procedures" of the UN Commission on Human Rights focus on human rights issues of international concern regardless of any State consent to be placed under scrutiny. These procedures are also referred to as "extra-conventional mechanisms" because their legal authority does not derive from any specific human rights treaty, but rather from the general legal authority which the Charter of the United Nations vests in the principal organs of the UN, in particular, ECOSOC and its subsidiary bodies, chiefly the UN Commission on Human Rights and the Subcommission on the Promotion and Protection of Human Rights, the UN General Assembly, and arguably, the UN Security Council. For this reason, they are also known as "Charter-based mechanisms".

Special procedures were developed to deal with serious human rights situations on a pragmatic basis as they may arise, but it took the international community several decades to agree upon their development. Since its establishment in 1945, the UN has always received communications from individuals alleging human rights violations. However, ECOSOC resolution 5(I) which established the UN Commission on Human Rights, thereby implementing Article 68 of the UN Charter which directs ECOSOC to "set up commissions in economic and social fields and for the promotion of human rights, and such other commissions as may be required for the performance of its functions" did not confer upon the Commission any powers of investigation nor any capacity to receive or examine communications from individuals. The lack of capacity of the Commission on Human Rights in this regard was specifically reiterated in ECOSOC resolutions 75(V) which recognizes the Commission's authority merely to receive communications from individuals alleg-

ing human rights violations, but also states that the Commission had "no power to take any action in regard to any complaints concerning human rights". ECOSOC resolution 76(V) repeats this stricture specifically in regard to allegations of violations concerning the status of women.

The odd picture of a UN Commission on Human Rights without clear authority to take any action with regard to human rights violations can be viewed as yet another manifestation of the paradox fundamental to the intergovernmental system of human rights monitoring. States wished to associate themselves with human rights principles in the abstract, but at the same time, they wanted to avoid embarrassment from intrusive international human rights monitoring procedures. Despite this, expansion in the membership of the international community following the emergence of countries from colonial domination in the 1950's and 1960's built political pressure within the UN General Assembly to address human rights violations resulting from the apartheid system of the Government of South Africa. In 1961, the General Assembly established a Special Committee on the Policies of Apartheid which reviewed individual communications, setting the stage for similar action to be taken by the Commission on Human Rights, which eventually led to the adoption of ECOSOC resolution 1235(XLII) on 6 June 1967.

ECOSOC resolution 1235 authorizes the Commission on Human Rights and the Subcommission on the Promotion and Protection of Human Rights "to examine information relevant to gross violations of human rights and fundamental freedoms, as exemplified by the policy of apartheid as practised in the Republic of South Africa and in the Territory of South West Africa". The word "exemplified" signalled that other similar situations could come within the purview of the Commission and Subcommission, in effect authorizing the Commission to refer publicly to human rights violations in any part of the world regardless of the State's treaty obligations. Moreover, paragraph 3 of resolution 1235 establishes that: "the Commission on Human Rights may, in appropriate cases, and after careful consideration of the information thus made available to it... make a thorough study of situations which reveal a consistent pattern of violations of human rights and fundamental freedoms" and make recommendations thereon to ECOSOC.

From special procedures mandates concerned with particular countries developed thematic special procedures. (36) In 1970, ECOSOC adopted resolution 1503 paragraph 1 of which basically requests the Subcommission to appoint a working group to consider all communications which have been sent to the UN alleging human rights violations, including replies of Governments thereon. This Working Group considers the communications in private meetings. (37) Taken together, ECOSOC resolutions 1235 and 1503 set the legal framework for special procedures mandates whereby the Commission, composed of 53 Member States, can turn its attention to the human rights situation in a particular country or globally according to a human rights issue of thematic concern, such as torture, slavery, disappearances etc.

The first thematic special procedures mandate came in 1980 with the establishment of the UN Working Group on Enforced or Involuntary Disappearances. NGOs were key to the creation of this new kind of monitoring mechanism. (38) On 29 February 1980, the

(36) See generally Miko LEMPINEN, "Challenges Facing the System of Special Procedures of the United Nations Commission on Human Rights" (2001), and Lyal S. SUNGA, "The Special Procedures of the United Nations Commission on Human Rights: Should They Be Scrapped?", in *International Human Rights Monitoring Mechanisms* (eds. Gudmundur Alfredsson et al.) (2001) 231-275.

(37) Paragraph 5 of ECOSOC resolution 1503 requests the Sub-Commission "to consider in private meetings, in accordance with paragraph 1 above, the communications brought before it in accordance with the decision of a 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". Under resolution 1503, the Commission is obliged to examine any situation referred to it by the Subcommission and to determine whether "it requires a thorough study by the Commission and a report and recommendations", whether it should become the subject of the public procedures under paragraph 3 of resolution 1235 or whether "it may be a subject of an investigation by an ad hoc committee to be appointed by the Commission which 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" in cases where: a) all domestic remedies have been exhausted; and b) the situation is not already being handled by other UN procedures provided for by a convention.

(38) See *op. cit.* note 18 at 253 where Korey records that: "One week after the Commission had begun, the NGOs in Geneva held a meeting on disappearances and publicized a new Amnesty report that revealed shocking information about 16 secret detention centres in Argentina. The NGO meeting also clearly was designed to stir up enthusiastic support for halting an especially gross human rights violation. When the proposal to create a Working Group first came to the Commission floor, no government was prepared to speak. The Chair promptly turned to those NGOs in attendance who sought to address the Commission. Amnesty launched the discussion, referring to its documentation on thousands of disappearances cases worldwide. Specific mention was made of Argentina, Afghanistan, Cambodia, Ethiopia, Nicaragua and Uganda. In his comments about Argentina, the Amnesty representative described specific experiences of those who had been tortured and had disappeared while in a secret military detention centre.

Working Group was established by the Commission on Human Rights in resolution 20 (XXXVI) as the first UN thematic human rights mechanism, consisting of five members to serve as experts in their individual capacity to examine questions relevant to enforced or involuntary disappearances anywhere in the world. In the resolution, "humanitarian organizations and other reliable sources" were mentioned as possible sources of information for the Working Group. Korey observes that:

During the first several years, the Working Group received reports on disappearances in some three dozen countries. The reports came overwhelmingly from national and international NGOs, a hardly surprising result. One of the reports of the mid-80's listed 44 organizations with which the [Working] Group has been dealing over the years. (39)

The Commission on Human Rights has regularly acknowledged the contribution of NGOs to the clarification of cases on enforced or involuntary disappearances in its many resolutions on the issue. (40) The Working Group paved the way for the establishment of many other thematic mechanisms which today cover a wide range of human rights issues.

In all aspects of UN Commission on Human Rights special procedures, NGOs have completely transformed international human rights monitoring from a primarily intergovernmental and diplomatic exercise to a much more vibrant process focussing on the real needs of victims and potential victims of violations. This becomes particularly important where a special rapporteur requests the State under consideration for its permission to undertake a mission to the country in order to view the situation first hand, consult with Government officials and perhaps members of the Diplomatic Corps, representatives of intergovernmental organizations, the

The infuriated government delegate interrupted and challenged the right of an NGO to criticize any government by name. Uruguay and Ethiopia supported Argentina. On the other hand, the US supported the right of NGOs to mention countries [while the] Argentine delegation, with the support of Uruguay, desperately was seeking to halt the creation of a new implementation organ. They did succeed in preventing any reference to Argentina in the draft resolution, but this had the tactical effect of permitting the Working Group to examine disappearances everywhere".

(39) *Ibid.* at 254.

(40) See eg Commission on Human Rights resolution 1998/40 on the "Question of Enforced or Involuntary Disappearances" of 17 April 1998 which in para. 8: "takes note of non-governmental organizations' assistance to the Working Group and activities in support of the implementation of the Declaration, and invites those organizations to continue their cooperation."

ICRC, NGOs, academics and other individuals, to enable accurate monitoring and reporting to the Commission's next session. Often best-placed to understand the human rights situation in their country, nationally based NGOs can provide up-to-date information directly to the special rapporteur and thereby balance off the Government's official position which may be less than forthright.

The contribution of international and national human rights NGOs becomes even more important where the Government refuses to allow a visit of a special rapporteur. In such cases, the special rapporteur has little recourse other than to rely more heavily on NGO reports, which usually tend to be more critical of the Government's attitude and policy on human rights. For this reason, it is much more astute politically for a Government to welcome the proposed visit of a special rapporteur, and to engage the Commission on Human Rights in a constructive dialogue to improve the human rights situation in fact, rather than to seek to avoid further international scrutiny, since in any case, such evasiveness is always all too transparent.

#### C. - *NGO Involvement in Commissions of Experts, ICTY, ICTR and ICC*

An important outgrowth of UN Commission on Human Rights special procedures has been the fielding of special investigative missions to monitor and report on facts and responsibilities relating to serious violations of human rights and humanitarian law, particularly in situations involving armed conflict. Here too, NGOs have been playing a highly essential role in the international monitoring process, both in publicizing violations that call for urgent international attention, and in contributing to concrete elements of the investigative process.

In 1992, when media reports began to portray serious human rights violations as the former Yugoslavia broke apart and armed conflict ensued among the breakaway States, Helsinki Watch deployed a number of investigative missions to look into the situation. Helsinki Watch interviewed victims of and witness to serious human rights violations, including refugees, displaced persons, local officials, journalists, medical and relief specialists and UN personnel. They also visited detention centres and prison camps that the belligerents had set up and then analyzed the situation in terms of



specific human rights violations. The reports coming from Helsinki Watch and other human rights NGOs were highlighted in the international media, which intensified the pressure on Governments to convene a special emergency session of the Commission on Human Rights to address the situation in the former Yugoslavia.

At this special session, the first ever to have been convened, the UN Commission on Human Rights considered the situation in the former Yugoslavia and adopted resolution 1992/S-1/I of 14 August 1992, which requested the Commission's Chairman to appoint a special rapporteur "to investigate first hand the human rights situation in the territory of the former Yugoslavia, in particular within Bosnia and Herzegovina". (41) In his first report to the Commission, the Special Rapporteur registered his concerns over the policy of ethnic cleansing and other serious human rights violations committed in the territory of the former Yugoslavia and he recommended that:

A commission should be created to assess and further investigate specific cases in which prosecution may be warranted. This information should include data already collected by various entities within the United Nations system, by other intergovernmental organizations and by non-governmental organizations. (42)

At that juncture, a number of Governments, international organizations and NGOs urged the enforcement of criminal responsibility upon the perpetrators of crimes under international law.

NGOs helped marshal public pressure on Governments to work through the Security Council to establish the Commission of Experts which led to the establishment of the ICTY. Once the ICTY was formed, NGOs such as Human Rights Watch, the Lawyers Committee for Human Rights (as it was then called) and Physicians for Human Rights, were instrumental in gathering victim and witnesses testimony and assisting in grave site exhumations and examinations. They also provided assistance in conducting interviews on mass rape and other crimes of sexual violence that

(41) See Report on the situation of human rights in the territory of the former Yugoslavia submitted by Mr. Tadeusz MAZOWIECKI, Special Rapporteur of the Commission on Human Rights, pursuant to paragraph 14 of Commission resolution 1992/S-1/I of 14 August 1992, E/CN.4/1992/S-1/9, 28 August 1992.

(42) *Ibid.* at para. 79.

required special care to minimize the exposure of interviewees to further trauma.

Similarly, NGOs played an important role in bringing information to the UN Security Council's Commission of Experts on Rwanda. (43) As with the ICTY, NGOs contributed also to the criminal fact-finding and investigation process once the ICTR was formed and the Prosecutor sought independent victim and witness accounts to help build its cases.

If we turn to the work of the newly established International Criminal Court, NGOs are bound to play a very important role at several stages of international criminal prosecutions. Procedurally, the ICC Prosecutor can: initiate investigations on his/her own motion; and gather information from any reliable source. (44)

D. — *NGO Involvement*  
in *UN Human Rights Field Presences*  
and in *UN Technical Cooperation*  
and *Advisory Assistance*  
in the *Field of Human Rights*

Another form of international human rights monitoring lies in the development of "human rights field presences" to countries struggling with post-conflict instability or insurgency. In this connection, the UN Office of the High Commissioner for Human Rights (UNHCHR) has deployed sizeable human rights field presences in such places Bosnia and Herzegovina, Burundi, Cambodia, Colom-

(43) The Commission received reports from Amnesty International; the Regional Council of Non-Governmental and Development Organizations of Southern Kivu; Droits de l'Homme sans Frontières; International Federation of Human Rights; Médecins du Monde; Médecins sans Frontières; Nord-Sud XXI; World Organization Against Torture; OXFAM; Reporters sans Frontières; the Zaire section of the International Society for Human Rights; the International Service for Human Rights; Survival International and the US Committee for Refugees. The International Committee of the Red Cross (ICRC) also provided information. See Preliminary Report of the Independent Commission of Experts established in accordance with Security Council Resolution 935 (1994), UN Doc. S/1994/1125 of 4 October 1994.

(44) Article 15(2) of the Rome Statute explicitly provides that the Prosecutor can seek information from NGOs: "The Prosecutor shall analyse the seriousness of the information received. For this purpose, he or she may seek additional information from States, organs of the United Nations, intergovernmental or non-governmental organizations, or other reliable sources that he or she deems appropriate, and may receive written or oral testimony at the seat of the Court". Finally, Article 44(4) of the Rome Statute provides that: "The Court may, in exceptional circumstances, employ the expertise of gratis personnel offered by States Parties, intergovernmental organizations or non-governmental organizations to assist with the work of any of the organs of the Court".



bia, Democratic Republic of Congo, Rwanda, and Serbia and Montenegro, or as a component of larger UN missions, such as in Abkhazia / Georgia, Afghanistan, Central African Republic, Côte d'Ivoire, Ethiopia / Eritrea, Guinea Bissau, Iraq, Liberia, Sierra Leone, Tajikistan and Timor-Leste.

While the presence of international peacekeepers and monitors can help stabilize a country suffering from the immediate aftermath of armed conflict, and assist the Government to foster human rights and the rule of law, sustained efforts have to involve primarily local people, civil society, NGOs and Government at all levels. Otherwise, once the presence of international personnel comes to an end, old problems can again set in. In this sense, NGOs play an essential role in identifying key problems on the ground and carry out human rights promotion and protection activities over the longer term.

One must mention also the technical cooperation programme whereby UNHCHR offers advisory assistance to Governments to help them improve their policy, law and practice in the field of human rights. UNHCHR has conducted a broad range of activities to support countries in strengthening the rule of law through human rights education at the school level, and to the judiciary, police, military and all those concerned with law enforcement. The establishment of numerous national human rights institutions in various countries, with the active support of the Office, in many cases has opened up avenues for NGOs to raise human rights issues at the domestic level. NGOs often assist national institutions of human rights, such as the Ombudsman, national human rights commissions and other local mechanisms, by providing assistance to complainants and publicizing the availability of such mechanisms to redress human rights violations.

#### VII. – NGO INVOLVEMENT IN HUMAN RIGHTS MONITORING AT REGIONAL AND NATIONAL LEVELS

To further round out the picture, one must mention the NGO contribution to international human rights monitoring at the regional level.

Article 25 of the European Convention on Human Rights, (45) as revised, establishes that the European Court of Human Rights, "may receive petitions addressed to the Secretary-General of the Council of Europe from any person, non-governmental organization or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in this Convention". (46) Also significant is that the Committee of Ministers of the Council of Europe in 1986 adopted the European Convention on the Recognition of the Legal Personality of International Non-Governmental Organizations (Legal Personality Convention) which clarifies the legal status of NGOs throughout the Council of Europe. (47) Article 1 indicates that the Convention shall apply to associations, foundations and other private institutions which: are not-for-profit and have been established by an instrument governed by the internal law of a Party; carry on their activities in at least two States; and have their statutory office in the territory of a Party and the central management and control in the territory of that party or of another Party.

In the Inter-American system, any person, group of persons or NGO legally recognized in one or more Member State has *locus standi* to appear before the Inter-American Commission on Human Rights as petitioner on behalf of the victim of an alleged violation of the American Declaration or the American Convention on Human Rights. Particularly in cases of disappearances where families of the victim may be under threat, NGOs often have provided a safer intermediary through which victims, and families of victims, can lodge a complaint.

The African Commission on Human Rights is authorized to receive and examine "communications" from States and "other communications". NGOs can participate in the African human rights system through: informal cooperation with the African Commission; formal cooperation with the African Commission; or

(45) European Convention on Human Rights, adopted 4 November 1950 in Rome, entered into force 3 September 1953.

(46) The new European Court of Human Rights system came into operation on 1 November 1998 with the entry into force of Protocol N° 11 which terminated the European Commission of Human Rights on 31 October 1999. Protocol 11 establishes that NGOs enjoy *locus standi* directly before the Court.

(47) Adopted on 24 April 1986, entered into force on 1 January 1991. The Convention had been ratified by 9 States as of 7 November 2003.

submission of communications according to Article 55 of the African Charter. As Umozurike notes:

It was even doubted in some quarters at the early stage of the (African) Commission that the Charter allows complaints from individuals and NGOs. Over the years, the Commission has interpreted "other communications" in Article 55 to include this category and this has in fact been the main, and so far the only, source of communications. Complaints have come from individuals, groups of individuals as well as NGOs. (48)

Now that the Protocol on the Establishment of an African Court on Human Rights and Peoples' Rights has entered into force, individuals, NGOs, State Parties, the African Commission, as well as intergovernmental organizations, will be able to access the new Court directly. (49)

#### VIII. — CONCLUDING REMARKS

NGO involvement has become recognized as an essential and integral part of international human rights monitoring at all levels, to counterbalance Government accounts about human right observance, with views independent of Government. NGOs have always been acutely aware that their independent character remains key to their legitimacy and hence to their potential contribution to international human rights monitoring efforts as well. Many NGOs have become so well organized, so vocal and so effective at monitoring and reporting on human rights, that Governments can no longer exercise any kind of monopoly over human rights discussion. In this sense, NGOs have enlarged the possibilities for genuine critical debate over human rights issues and they have contributed immensely to elevating human rights in public consciousness worldwide, and in the international community's political agenda.

The contribution of NGOs has become interwoven into the fabric of international human rights monitoring from treaty bodies to special procedures, investigations into individual responsibility for

crimes under international law, human rights field presences, technical cooperation, and at regional and domestic levels. NGOs have completely transformed international human rights monitoring from a primarily diplomatic, intergovernmental exercise, to a much more independent process that can expose any Government to sharp criticism and international condemnation for shortcomings in human rights. As well, NGOs have become an essential source of media reports and attention on human rights issues. NGO involvement has forced international human rights monitoring in all its facets to be less compliant to the will of Governments and it holds out promise that the gap between official rhetoric, and practical reality, can be bridged. The fact that today, no credible and legitimate international human rights monitoring activity can be carried out without the active involvement of NGOs, ensures a certain level of empowerment for the disadvantaged, disenfranchised and dispossessed, who most need to be heard. Human rights NGOs are to here to stay and all Governments would do better to cooperate with them as fully as possible rather than to wish them away or seek to limit or restrict their activities and influence.

(48) Oji UMOZURIKE, "The Complaint Procedures of the African Commission", *International Human Rights Monitoring Mechanisms* (eds. Gudmundur Alfredsson et al.) (2001) 707-712 at 708.

(49) Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human Rights and Peoples' Rights, adopted 9 June 1998, entered into force 25 January 2004.