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ADMINISTRATION OF JUSTICE, RULE OF LAW AND DEMOCRACY

The universal implementation of international human rights treaties

Final report prepared by the Special Rapporteur responsible for conducting a detailed study of the universal implementation of international human rights treaties, Emmanuel Decaux

* Pursuant to General Assembly resolution 60/251 of 15 March 2006 entitled "Human Rights Council", all mandates, mechanisms, functions and responsibilities of the Commission on Human Rights, including the Sub-Commission, were assumed, as of 19 June 2006, by the Human Rights Council. Consequently, the symbol series E/CN.4/Sub.2/_, under which the Sub-Commission reported to the former Commission on Human Rights, has been replaced by the series A/HRC/Sub.1/_ as of 19 June 2006.

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Summary

In its decision 2004/123, adopted on 21 April 2004, the Commission on Human Rights, "taking note of Sub-Commission on the Promotion and Protection of Human Rights resolution 2003/25 of 14 August 2003, decided, without a vote, to approve the decision of the Sub-Commission to appoint Mr. Emmanuel Decaux special rapporteur to conduct a detailed study of the universal implementation of international human rights treaties based on his working paper (E/CN.4/Sub.2/2003/37), the comments made and the discussions that took place at the fifty-fifth session of the Sub-Commission … The Commission also endorses the request to the Secretary-General to provide the Special Rapporteur with all necessary assistance to enable him to carry out his mandate, inter alia in his contacts with States".

The aim of the preliminary report submitted to the Sub-Commission at its fifty-sixth session (E/CN.4/Sub.2/2004/8) was to define the scope of the study, in theoretical and practical terms, and then to formulate working hypotheses in the two main subject areas, namely universal ratification and universal implementation. In its resolution 2004/26, adopted without a vote on 12 August 2004, the Sub-Commission thanked the Special Rapporteur, Mr. Emmanuel Decaux, for his preliminary report (para. 1) and requested the Secretary-General to continue to provide the Special Rapporteur with the necessary assistance to enable him to carry out his mandate, particularly in his contacts with States, national institutions for the promotion and protection of human rights and international governmental and non-governmental organizations, by enabling him to send them a questionnaire at the appropriate time to help in the preparation of his interim report (para. 2).

The interim report submitted to the Sub-Commission at its fifty-seventh session (E/CN.4/Sub.2/2005/8 and Corr.1 and Add.1) focused on the question of the universal ratification of the international human rights instruments and on developing the first set of working hypotheses proposed in the preliminary report. The aim was to give an overview of the situation and consider developments since the World Conference on Human Rights held in Vienna in 1993.

This information is updated in the final report, in order to clarify the various commitments undertaken by States and what remains to be done to fully attain the goal of universal ratification States set themselves in 1993. The recent creation of the Human Rights Council was an opportunity for candidate States to make a series of pledges, including on ratification, thereby bringing the goal of universal ratification a little closer. The report also looks at the legal challenges that lie ahead regarding the nature and scope of international human rights law.

The final report also discusses the question of the universal application of international human rights instruments, drawing in part on information from the questionnaire prepared by the Special Rapporteur. It deals first with the prior issue of the applicability of international instruments in domestic law, distinguishing dualist from monist systems, and then with the question of the effective fulfilment of obligations, which presupposes the existence of contentious and non-contentious guarantees, but also a real spirit of political determination on the part of Governments and all "organs of society".

CONTENTS

	Paragraphs	*Page*
Introduction	1 - 5	4
I. MOVEMENT TOWARDS UNIVERSAL RATIFICATION	6 - 39	5
A. Quantitative analysis: progress to date	10 - 24	6
1. Technical developments	10 - 15	6
2. Political commitments	16 - 24	7
B. Qualitative analysis: the challenges ahead	25 - 39	10
1. The institutional framework	25 - 29	10
2. The legal scope of universal commitments	30 - 39	11
II. THE QUESTION OF UNIVERSAL IMPLEMENTATION	40 - 57	14
A. The applicability of international instruments	46 - 51	15
1. Dualist systems	47 - 48	16
2. Monist systems	49 - 51	17
B. The effective implementation of international instruments	52 - 57	18
1. Contentious guarantees	53 - 55	18
2. Non-contentious guarantees	56 - 57	19
Conclusions	58 - 65	20

Annex

Replies to the questionnaire prepared by the Special Rapporteur 23

Introduction

1. In its decision 2004/123, adopted on 21 April 2004, the Commission on Human Rights, "taking note of Sub-Commission on the Promotion and Protection of Human Rights resolution 2003/25 of 14 August 2003, decided, without a vote, to approve the decision of the Sub-Commission to appoint Mr. Emmanuel Decaux special rapporteur to conduct a detailed study of the universal implementation of international human rights treaties based on his working paper (E/CN.4/Sub.2/2003/37), the comments made and the discussions that took place at the fifty-fifth session of the Sub-Commission … The Commission also endorses the request to the Secretary-General to provide the Special Rapporteur with all necessary assistance to enable him to carry out his mandate, inter alia in his contacts with States".

2. The initial aim of working paper E/CN.4/Sub.2/2003/37 was to identify "issues and modalities for the effective universality of international human rights treaties". The debate that led to the adoption of Sub-Commission resolution 2003/25 made a useful contribution to broadening the scope of the study, as may be seen from the title of the resolution, which stresses not only "effective universality" but also "the universal implementation" of the relevant instruments. Accordingly, the study must address two indissociable concepts: the international obligations of States under international public law and the effective implementation of these commitments, in both legal and practical terms, at the domestic level. The aim of the mandate expressly given to the Special Rapporteur is therefore to transcend any legal duality in order to take account of the implementation of international commitments, beyond the formal aspects of treaty law, focusing on "universal respect for, and observance of, human rights and fundamental freedoms for all …", in accordance with Article 55 of the Charter of the United Nations.

3. The aim of the preliminary report submitted to the Sub-Commission at its fifty-sixth session (E/CN.4/Sub.2/2004/8) was to define the scope of the study, in theoretical and practical terms, and then to formulate working hypotheses in the two main subject areas, namely universal ratification and universal implementation. In its resolution 2004/26, adopted without a vote on 12 August 2004, the Sub-Commission thanked the Special Rapporteur, Mr. Emmanuel Decaux, for his preliminary report (para. 1) and requested the Secretary-General to continue to provide the Special Rapporteur with the necessary assistance to enable him to carry out his mandate, particularly in his contacts with States, national institutions for the promotion and protection of human rights and international governmental and non-governmental organizations, by enabling him to send them a questionnaire at the appropriate time to help in the preparation of his interim report (para. 2).

4. The interim report submitted to the Sub-Commission at its fifty-seventh session (E/CN.4/Sub.2/2005/8 and Corr.1 and Add.1) focused on the question of the universal ratification of the international human rights instruments and on developing the first set of working hypotheses proposed in the preliminary report. The aim was to give an overview of the situation and consider developments since the World Conference on Human Rights held in Vienna in 1993. The charts and tables provided in the addendum helped to clarify the various commitments undertaken by States and what remained to be done to fully attain the goal of universal ratification States set themselves in 1993. The report also reviewed the annual initiatives within the United Nations to encourage universal participation in the treaties, discussed good practice in this regard in other international organizations and made suggestions to revive the movement towards universal ratification. More recently, the creation of the

Human Rights Council was an opportunity for candidate States to make a series of pledges, including on ratification, thereby bringing the goal of universal ratification a little closer.

5. In its resolution 2005/4 of 8 August 2005, adopted without a vote, the Sub-Commission thanked the Special Rapporteur for his interim report and requested him to submit a final report to the Sub-Commission at its fifty-eighth session. The present report responds to that request: part I supplements the earlier analyses of universal ratification, while part II discusses the issue of implementation of international instruments and its theoretical and practical implications, to the extent permitted by the study format.

I. MOVEMENT TOWARDS UNIVERSAL RATIFICATION

6. The methodological considerations discussed in the first two reports will not be revisited in the final report, whose purpose is basically to provide an update of the earlier analyses. Such an update is all the more necessary as the framework of reference for States' commitments has been doubly modified over the past year, firstly by the abolition of the Commission on Human Rights and the creation of the new Human Rights Council, and secondly by the current debate over the establishment of a unified standing treaty body.[1] It is also worth noting that concern to improve the procedures for monitoring Member States' international commitments is not confined to the United Nations; the United Nations Educational, Scientific and Cultural Organization (UNESCO), too, is now giving some thought to these issues.

7. Turning to substantive matters, it is important to bear in mind that the notion of "core instruments" is rather simplistic. It is true that the tables and comments contained in the report relate to these instruments, but this is for the sake of convenience and clarity; they do not imply a hierarchy of international human rights treaties.[2] The list of treaties that would need to be considered in any systematic analysis would be far longer and would require a cross-cutting study involving the organizations of the United Nations system such as the International Labour Organization (ILO) and UNESCO, but also the International Committee of the Red Cross (ICRC) and even the competent regional organizations. Without prejudice to the particular responsibilities and priorities of each organization, open dialogue on this area would be useful. One much-needed first step would be to decompartmentalize the standard-setting work done by the United Nations in the area of human rights in New York, Geneva and Vienna. Two preliminary comments are called for at this point.

8. Firstly, we must not forget what we have called the "orphan conventions", i.e. those treaties that have not established their own monitoring body. The Sub-Commission has been given responsibility for monitoring certain treaties drafted by the League of Nations and the United Nations, through the Working Group on Contemporary Forms of Slavery, but this Working Group has never succeeded in establishing a method of work that would permit the substantive consideration of State party reports or constructive dialogue with States parties and concerned NGOs. What is more, the list of conventions to be monitored by the Working Group has never been brought up to date to include, for example, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (the Palermo Convention). Any reform of the Sub-Commission should take account of this particular mandate, which cannot simply be jettisoned, for example in the context of the universal periodic review. The UNESCO model is worth citing in that regard. Alongside the specialist bodies that deal with

education, for example, there is a general body responsible for the periodic review of UNESCO instruments on the basis either of the UNESCO Constitution or of the provisions of the treaties themselves. There is thus no risk of a legal vacuum arising. Even so, the full potential of such monitoring can only be realized by an independent body, as has been shown by the monitoring of the implementation of the International Covenant on Economic, Social and Cultural Rights. A convention that is not monitored systematically, be it on a specific or a general basis, quickly becomes a forgotten convention, a Sleeping Beauty of a convention, where international commitments are no longer sustained by the lifeblood of accountability.

9. Moreover, the list of instruments that have a monitoring body (currently seven) is by no means closed. The Human Rights Council, in adopting and referring to the General Assembly the draft international convention for the protection of all persons from enforced disappearance, has opened up the possibility of creating an eighth monitoring body. The question of the nature of such a body was the subject of lengthy discussions during the last meeting of the Intersessional Open-ended Working Group to elaborate a draft legally binding normative instrument for the protection of all persons from enforced disappearance (E/CN.4/2006/57, in particular paras. 69-84), which culminated in the drafting of article 26, providing for the establishment of a Committee on Enforced Disappearances, consisting of 10 independent experts. However, article 27 includes a review clause that would allow the monitoring function to be transferred to some other "body". The idea of adopting an additional protocol to the International Covenant on Civil and Political Rights and entrusting the Human Rights Committee with the role of monitoring was not accepted for technical and practical reasons, not least the fact that it would be necessary to increase the number of members of that Committee in order to allow it to set up a subcommittee. The issue takes on even greater significance in relation to the convention on the rights of persons with disabilities currently being elaborated, for the credibility and effectiveness of the new instrument will depend in part on the international monitoring of States' commitments.

A. Quantitative analysis: progress to date

1. Technical developments

10. The past year has seen no major changes in the overall figures presented in 2004 and 2005.[3] Progress has been steady but slow, with no regression and, this year, significant advances.[4]

11. The two International Covenants were ratified in 2006 by Indonesia and Kazakhstan, following the earlier ratifications by Liberia, Mauritania and Swaziland in 2004. Pakistan signed the International Covenant on Economic, Social and Cultural Rights in 2004. The Optional Protocol to the International Covenant on Civil and Political Rights was ratified by Honduras in 2005 and the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, was ratified by Canada and Liberia in 2005 and by Turkey in 2006.

12. While the International Convention on the Elimination of All Forms of Racial Discrimination seemed to reach a plateau some years ago, the Convention on the Elimination of All Forms of Discrimination against Women was ratified by Kiribati, Micronesia (Federated States of), San Marino, Swaziland and the United Arab Emirates in 2004, by Monaco in 2005

and by Brunei Darussalam, the Marshall Islands and Oman in 2006. The Optional Protocol to that Convention was ratified by Bangladesh, Belarus, Belgium, the Libyan Arab Jamahiriya, Lesotho, Lithuania, the Niger, Nigeria, the Philippines, Poland, Slovenia and The former Yugoslav Republic of Macedonia in 2004, by Burkina Faso, Cameroon, Gabon, San Marino and the United Kingdom of Great Britain and Northern Ireland in 2005 and by Antigua and Barbuda, the Republic of Moldova, Saint Kitts and Nevis and the United Republic of Tanzania in 2006.

13. The Convention on the Rights of the Child has already achieved near-universal ratification, while its two Optional Protocols[5] were ratified by Austria, Bahrain, Belize, Botswana, Brazil, Cambodia, El Salvador, Ecuador, Estonia, Kuwait, the Libyan Arab Jamahiriya, Lithuania, Madagascar, Mongolia, Oman, the Republic of Korea, Senegal, Slovenia, The former Yugoslav Republic of Macedonia, Timor-Leste and the United Republic of Tanzania in 2004, by Armenia, Benin, Bolivia, Canada, Eritrea, India, Japan, Maldives, Nicaragua, Poland, Togo and Turkmenistan in 2005 and by Belarus, Belgium, Latvia and Thailand in 2006. Some States have ratified only the Optional Protocol on the involvement of children in armed conflict - Luxembourg in 2004, Germany, Israel and Liechtenstein in 2005 - or the Optional Protocol on the sale of children, child prostitution and child pornography - Estonia, Malawi, the Niger and Slovakia in 2004, Angola, Saint Vincent and the Grenadines and Yemen in 2005, and Burkina Faso, Cyprus and Nepal in 2006.

14. The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families was ratified by Burkina Faso, Kyrgyzstan, the Libyan Arab Jamahiriya and Timor-Leste in 2004, by Chile, Honduras, Lesotho, the Syrian Arab Republic, Turkey and the United Republic of Tanzania in 2005, and by Nicaragua and Peru in 2006.

15. The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment was ratified by Liberia, Maldives, Mauritania, Swaziland and the Syrian Arab Republic in 2004, by Nicaragua in 2005 and by Madagascar in 2006, but it is in respect of the entry into force of the Optional Protocol to the Convention that progress has been particularly marked, with ratifications by Argentina, Denmark and Liberia in 2004, by Costa Rica, Croatia, Georgia, Mali, Mauritius, Mexico, Norway, Paraguay, Poland and Sweden in 2005, and by Albania, Bolivia, Honduras, Maldives, Malta, Spain, the United Kingdom of Great Britain and Northern Ireland and Uruguay in 2006.[6]

2. Political commitments

16. However, this progress is also reflected at the political level. Rather than set objective criteria for election to the Human Rights Council - for example in terms of ratification of international instruments - the General Assembly, in resolution 60/251 establishing the Council, provided for a subjective procedure based on voluntary pledges by the candidates. By appealing to States' own determination, this approach goes beyond a mere checklist of minimum requirements while allowing great flexibility. The candidate States' aides-memoires alone are worthy of an in-depth study. Many of them contain original thinking, innovative approaches and good practices which could usefully be explored and perhaps disseminated more widely.

17. Yet the lack of a well-defined frame of reference makes any systematic analysis of these statements difficult. In the first place the references to treaties are quite inconsistent: the most commonly cited are the 7 "core treaties", but Argentina refers to the "12 basic instruments of the

universal system for the promotion and protection of human rights" and Cuba to the 15 "main international instruments" it has ratified and the two it has signed, though these do not include the 2 International Covenants and their Protocols, in respect of which Cuba remains a third State. Mexico recognizes "the main human rights treaties of the United Nations" and "other important instruments for the effectiveness and respect of human rights at the universal level", such as the Rome Statute of the International Criminal Court. Finland mentions some 60 human rights conventions and other States, such as Armenia, Azerbaijan, Poland and Tunisia, provide even longer lists. Some of these States refer to ILO and humanitarian conventions or to the regional instruments to which they are signatories.

18. The formulas used vary greatly, too, ranging from specific time frames - as when Senegal refers to a ratification in 2006 or France foresees a ratification "during its term of office" - or clear pledges - "working towards early ratification" (Pakistan) - to simple statements of intent to "take account of" or "consider signing". The strength of political commitment in this regard depends greatly on the individual State's constitutional system and legal culture. States' situations vary greatly in terms of undertakings already made, and these statements are in many cases made in passing. Yet, allowing for these differences, one must acknowledge the success of this innovative approach, which, like the 1993 World Conference on Human Rights, has brought effective universality considerably closer. It naturally remains for States to fulfil their pledges, but it is clear that the political momentum has been regained. It is to be hoped that the impetus will be maintained and the focus sharpened with future elections to the Human Rights Council.

19. Bahrain and Pakistan have made specific undertakings to ratify the two International Covenants. For its part, China, which is a signatory to the International Covenant on Civil and Political Rights, has stated that it is "in the process of amending its criminal, civil and administrative laws and deepening judicial reform to create conditions for ratification at an early date". South Africa notes that it is in the process of ratifying the International Covenant on Economic, Social and Cultural Rights. Brazil has announced its intention to ratify the two Optional Protocols to the International Covenant on Civil and Political Rights; Albania its intention to ratify the Optional Protocol and Ukraine the Second Optional Protocol, aiming at the abolition of the death penalty; Djibouti its intention to ratify the International Covenant on the Elimination of All Forms of Racial Discrimination; and Georgia, Indonesia and South Africa their intention to ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

20. Several countries have announced their intention to ratify the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women: Armenia, Indonesia, Morocco - which specifies in very clear detail which reservations to the Convention it intends to withdraw - and the Republic of Korea, which has announced its intention to review its reservations to the Convention. Similarly, many States intend to ratify the Optional Protocols to the Convention on the Rights of the Child, whether both Protocols together, like Albania, Djibouti and Indonesia, or the Protocol on the involvement of children in armed conflict, like the Netherlands, or the Protocol on the sale of children, child prostitution and child pornography, like Finland, Germany, Greece and Sri Lanka. Lastly, a number of States, such as Finland and Greece, also refer to the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (the Palermo Convention).

21. Pakistan and Iraq have undertaken to ratify the Convention against Torture, while, more cautiously, Thailand says it is "considering becoming party" to the Convention. Firm commitments have been made to the Optional Protocol to the Convention against Torture by Armenia, Azerbaijan, Brazil, the Czech Republic, Finland, France, Germany, Hungary, Indonesia, the Netherlands, Portugal, Romania, Senegal, Slovenia, South Africa, and Ukraine. The Republic of Korea also envisages acceding to the Optional Protocol to the Convention against Torture "in the near future". However, specific commitments have also been made to other instruments, including - though this cannot be an exhaustive list - the Rome Statute of the International Criminal Court and the Convention on the Prevention and Punishment of the Crime of Genocide (Indonesia), the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity (Senegal), the conventions on trafficking and asylum (Indonesia), etc.

22. Conversely, some commitments seem to be formulated in more flexible terms, as when Canada "pledges to consider signing or ratifying other human rights instruments, such as the Optional Protocol to the Convention against Torture". Zambia intends to "speed up the process of signing" the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women and of the two Protocols to the Convention on the Rights of the Child. Bolivia announces the signature of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and of the Optional Protocol to the Convention against Torture, as well as the International Convention against the Recruitment, Use, Financing and Training of Mercenaries. Iraq has given as "within its first priorities the consideration of ratifying all the optional protocols".

23. Lastly, several States make explicit or general reference to instruments in even more cautious terms. The Philippines, for example, "seek to strengthen domestic support" for the Optional Protocol to the Convention against Torture and the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty. The Islamic Republic of Iran is "considering accession" to the Convention on the Elimination of All Forms of Discrimination against Women, the Convention against Torture and the Optional Protocol to the Convention on the Rights of the Child on the sale of children, and is "reconsidering its reservation" to the Convention on the Rights of the Child. Nigeria says it will "examine the possibility" of ratifying international instruments to which it is not yet a signatory, including the Convention on the Prevention and Punishment of the Crime of Genocide. Bangladesh "contemplates adhering" to a number of unspecified instruments, although it makes a specific commitment to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

24. In some cases the States go much further, as when Morocco commits to ratification of the new instruments currently being elaborated, such as the international convention for the protection of all persons from enforced disappearance and the future convention on the rights of persons with disabilities. Other States, like Zambia, undertake to incorporate the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women and the Convention against Torture into domestic law. There are also some original suggestions, such as Bolivia's proposal to draft an additional protocol to the Convention on the Rights of the Child in order to establish a system

of individual communications, or, even more ambitious, South Africa's proposal to amend the two International Covenants to incorporate the right to development. It remains to be seen whether these political undertakings will stand the test of legal reality.

B. Qualitative analysis: the challenges ahead

1. The institutional framework

25. It must be recognized that international law - and a fortiori international human rights law - occupied a very small place in the activities associated with the 2005 World Summit. The report of the High-level Panel on Threats, Challenges and Change[7] referred to human rights only from the functional standpoint, by calling into question the Commission on Human Rights, and not from the normative standpoint. At most, it focused on certain instruments in connection with certain priorities: "The most obscene form taken by organized crime is the traffic in human beings […] Member States should sign and ratify the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, and parties to the Protocol should take all necessary steps to effectively implement it" (para. 175). Likewise, it stated that: "All Member States should sign, ratify and act on all treaties relating to the protection of civilians, such as the Genocide Convention, the Geneva Conventions, the Rome Statute of the International Criminal Court and all refugee conventions" (para. 233).

26. The report of the Secretary-General entitled, "In larger freedom: towards development, security and human rights for all",[8] after first discussing the idea of the responsibility to protect, then dealt more briefly with the development of the rule of law: "Support for the rule of law must be strengthened by universal participation in multilateral conventions. At present, many States remain outside the multilateral conventional framework, in some cases preventing important conventions from entering into force. Five years ago, I provided special facilities for States to sign or ratify treaties of which I am the Depositary. This proved a major success and treaty events have been held annually ever since. This year's event will focus on 31 multilateral treaties to help us respond to global challenges, with emphasis on human rights, refugees, terrorism, organized crime and the law of the sea. I urge leaders especially to ratify and implement all treaties relating to the protection of civilians" (para. 136). At the same time, attention was drawn to the simplification of the human rights treaty body system: "The treaty body system remains little known" (para. 147), noted the Secretary-General 12 years after the adoption in 1993 of the Vienna Declaration and Programme of Action, which might sound like a disavowal.

27. The outcome document of the 2005 World Summit (General Assembly resolution 60/1, dated 16 September 2005) devotes one of its four chapters to human rights and the rule of law, but gives them even shorter shrift than the previously mentioned reports. The section on international law appears under the heading of the rule of law: "Recognizing the need for universal adherence to and implementation of the rule of law at both the national and international levels, we [heads of State and Government]: […] (b) Support the annual treaty event; (c) Encourage States that have not yet done so to consider becoming parties to all treaties that relate to the protection of civilians […]" (para. 134). The goal of universal ratification set by the World Conference on Human Rights in Vienna in 1993 is far from being met. The

reference to the "protection of civilians", taken out of context from the Secretary-General's report, may even be seen as a step backwards from the standpoint of international human rights law and international humanitarian law.

28. Even more curiously, legal issues seem to be absent from current efforts at reflection on the treaty body system, which are being carried out primarily from a structural viewpoint. The concept paper on the High Commissioner's proposal for a unified standing treaty body[9] nonetheless states that "specific issues", such as "legal considerations", will be examined at a later date (para. 1). Yet, at the same time, the concept paper also embraces the notion of "core United Nations human rights treaties" (para. 3), thereby introducing an artificial unity that may seem unfounded in theory and limiting in practice. For all that, the paper emphasizes, from a purely procedural perspective, the difference in scope between these instruments: "As universal ratification has yet to be achieved and Member States have different ratification patterns, the establishment of a unified standing treaty body poses a number of procedural challenges. These include how the membership of a unified standing treaty body would be determined, and whether members of the body could participate in deliberations and decision-making on substantive treaty obligations that their own country has not accepted" (para. 60).

29. Without interfering in a debate on which the Sub-Commission has not been consulted, it should be recalled that international human rights instruments are far from having achieved universality. Political will remains necessary in order to achieve universal or quasi-universal ratification. However, it would be particularly dangerous to weaken the increasingly fine weave of erga omnes treaty obligations through expedients that would modify existing treaties by means of a mere General Assembly resolution (see paragraph 64). The example of the United Nations Convention on the Law of the Sea hardly seems convincing, when the concept paper concludes as follows: "At a minimum, a simplified ratification procedure, or the provisional application of the new monitoring regime pending the entry into force of the amendments (amending protocol), as in the case of the Agreement relating to the implementation of Part XI of the United Nations Convention on the Law of the Sea, could be envisaged" (para. 65). One might even wonder whether the notion of the "inter se agreement" is applicable - as had been the case with the Single Convention on Narcotic Drugs - in terms of treaties that establish erga omnes objective rights that fall outside the principle of reciprocity.

2. The legal scope of universal commitments

30. The nature of universal commitments in the area of human rights should be elucidated, particularly as regards the "International Bill of Human Rights", formed by the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights and its protocols, as the Human Rights Committee recalled in its general comment No. 26 (1997), by laying emphasis on the continuity of obligations to the International Covenant on Civil and Political Rights. Apart from this statement of position of principle, reflection is still required on customary norms and obligations erga omnes and *jus cogens*, along the lines of the work conducted under the auspices of ICRC.[10] It is to be hoped that the efforts undertaken by Mr. Vladimir Kartashkin will be successfully completed in due course.[11] Furthermore, it might be necessary to request the International Court of Justice to give an advisory opinion on ways of revising universal or quasi-universal human rights treaties.

31. As regards substance, States' commitments are encumbered by reservations, as Ms. Françoise Hampson underlined in her stimulating studies for the Sub-Commission.[12] In this connection, it would be useful to continue the successful dialogue conducted with the Special Rapporteur of the International Law Commission, Mr. Alain Pellet, particularly in the light of the addendum to his tenth report on reservations to treaties (A/CN.4/558/Add.1 and Corr.1 and 2) concerning reservations incompatible with the object and purpose of the treaty, which was the subject of a preliminary discussion by delegations from the Sub-Commission and the International Law Commission, and of the addendum considered during the 2006 session (A/CN.4/558/Add.2).

32. With regard to form, commitments are all too often restricted by the absence of international monitoring mechanisms. The widespread use of the communications procedure, either through optional declarations or additional protocols, must thus continue to be accorded priority. In particular, the drafting of an optional protocol to the International Covenant on Economic, Social and Cultural Rights should at last place the two International Covenants on an equal footing, by ensuring the gradual justiciability of economic, social and cultural rights. Discussions under way on reform must not be a pretext for calling into question the goal set by the World Conference on Human Rights. The consideration of periodic reports and the individual communications procedure are two complementary methods of ensuring the effective fulfilment of States' commitments. While the system of State reporting was originally conceived as a minimum obligation, for want of a system of individual or collective complaints, it does provide an overall view of the situation in the country in question, either at the stage of the preparation of the report through a dialogue with key sectors of society, particularly national institutions, or at the monitoring stage, through the implementation of concluding observations. State reporting also gives a picture of changes over time by allowing for the assessment of progress made between the submission of one periodic report and another, given a regular rate of reporting. On the other hand, the consideration of complaints entails examination of specific cases revealing particular instances of non-observance or even mass and systematic violations of guaranteed rights.

33. It is, however, the whole follow-up process that should be taken into account. The nature and scope of the views, concluding observations and general comments of the committees are such as to warrant greater elaboration from the legal standpoint, in line with the work of the International Law Association. In this regard, the concept paper on the High Commissioner's proposal for a unified standing treaty body merely states: "Despite the fact that treaty bodies' decisions in this context are not legally binding, individual complaints procedures have often resulted in individual relief for victims. Through the decisions in individual cases, the Committees have also developed a body of jurisprudence on the interpretation and application of human rights treaties, which is referred to more frequently by national and regional courts and tribunals.[13] In its resolution No. 4/2004, adopted at the 71st Conference (Berlin, 16-21 August 2004), the International Law Association goes further by recognizing "that effective use of findings of human rights treaty bodies by domestic as well as international organs will contribute substantially to the realization of human rights". It also makes the very useful recommendation that:

"(a) the Office of the UN High Commissioner for Human Rights and the Division for the Advancement of Women consider preparation of a Fact Sheet or similar publication which would provide judges, legal practitioners and policymakers with information about how national courts and tribunals have drawn on the jurisprudence of the treaty bodies;

…

(c) the treaty bodies, with the secretariat assistance of OHCHR and DAW, specifically request States parties through Lists of Issues and, if necessary through follow-up oral questioning and Concluding Observations to provide a comprehensive catalogue of cases over the reporting period in which treaty body jurisprudence has been cited in national courts and tribunals …

(d) the OHCHR and DAW prepare a regularly updated list of instances where national courts and tribunals have cited treaty body jurisprudence, drawing on the information supplied through paragraph (c) above, other sources and their own research (…)."[14]

34. In conclusion, it is regrettable to see the fragmentation and loss of impetus that has beset the movement towards universal participation that was launched in 1993, and the collective lack of will on the part of the States concerned, despite the many efforts described in the interim report (E/CN.4/Sub.2/2005/8 and Corr.1) to revive the vision of the Vienna Programme of Action. At a time when the reform of the United Nations in the human rights field is taking shape, it is worth recalling that: "The World Conference on Human Rights strongly recommends that a concerted effort be made to encourage and facilitate the ratification of and accession or succession to international human rights treaties and protocols adopted within the framework of the United Nations system with the aim of universal acceptance. The Secretary-General, in consultation with treaty bodies, should consider opening a dialogue with States not having acceded to these human rights treaties, in order to identify obstacles and to seek ways of overcoming them."[15]

35. The absence of any proper review of the situation, such as might have been provided by a summit marking the tenth anniversary of the World Conference on Human Rights, which never materialized, calls for a new spirit of determination. The drive for transparency must become a drive for consistency. This will require not only a concentration of hitherto disparate efforts and initiatives, in a spirit of cooperation on the part of all concerned, but also constant follow-up and evaluation. All too often, the lack of real insight into situations, resulting partly from the compartmentalization of information and partly from over-specialization within the relevant bodies, facilitates misrepresentation. An overall view is a sine qua non for genuine accountability in respect of States' international human rights commitments.

36. In the same vein, Philip Alston also advocated four measures aimed at universal ratification: "(a) consultations with the leading international agencies to explore their potential involvement in a ratification campaign … (b) the appointment of special advisers on ratification and reporting and the earmarking of funds for those purposes … (c) special measures should be explored to streamline the reporting process for States with small populations … and (d) particular attention should be paid to other substantial categories of non-parties."[16]

37. The debates on reform in the United Nations now make it necessary to further develop the thinking on universal acceptance of the international human rights instruments. In the first place, the question of rationalizing the reporting system has highlighted the excessive burden placed on States parties, and there is a danger that States with limited resources might be put off ratifying more instruments. This would affect not just the treaties endowed with a monitoring body but also the entire collection of human rights instruments, and it is precisely the overall level of commitment that must be considered in any new system of universal periodic review.

38. While the treaty bodies may not be best placed to work with States non-parties, a renewed Sub-Commission, as a subsidiary body of the Human Rights Council, could play a useful role in sensitizing such States, by studying the legal, political, economic and cultural obstacles hindering universal ratification. The immediate need for systematic follow-up could be met by reviving the Sub-Commission's working group, which functioned from 1979 to 1984 and giving it not only a role as an intermediary between the treaty bodies and States non-parties, but also a more structured mission in respect of the "orphan conventions", that is, those conventions that have been abandoned despite their importance.

39. Any such initiative would depend in the first instance on a policy of transparency among Member States. The objective listings could be accompanied by information campaigns in the countries concerned and exchanges with the national human rights institutions as well as NGOs. It would also be necessary to make technical assistance available to facilitate compliance with the obligations undertaken. However, this proactive approach must be accompanied by a willingness to identify the practical difficulties and technical obstacles that all too often hinder effective implementation.

II. THE QUESTION OF UNIVERSAL IMPLEMENTATION

40. From the outset of this study the Sub-Commission has laid emphasis on the effectiveness of commitments. Positive action to promote universal and total ratification will be meaningless if it does not result in the effective implementation of the commitments undertaken by States, through a set of rights and guarantees.

41. In order to deal with this crucial issue in a practical way, the Special Rapporteur requested that a questionnaire be addressed to States and other parties concerned, as authorized by successive decisions of the Commission on Human Rights. In its decision 2004/123, the Commission endorsed "the request to the Secretary-General to provide the Special Rapporteur with all necessary assistance to enable him to carry out his mandate, inter alia in his contacts with States". In his interim report, the Special Rapporteur recalled that he had not employed the questionnaire technique for his first two reports, considering it more important to establish the scope and approach of the study, but noted that it would now be a useful means of establishing contact with States as such, either directly through government channels, or indirectly through the network of human rights institutions. In view of the time frame required by such a procedure, the Special Rapporteur expressed a desire, with the active support of the Secretariat, to embark upon this next stage by the end of 2005, to enable the information received in timely fashion to be used in drafting this final report.

42. The questionnaire which the Special Rapporteur sent out in the autumn - under OHCHR cover - received around 30 replies (see annex). This figure is particularly significant given the uncertainty surrounding the fate of the Commission on Human Rights, and, a fortiori, the future of its subsidiary bodies, which raised a doubt among those to whom the questionnaire was addressed, above all Member States, not only concerning the time frame for, but also the usefulness of, such an exercise. The Special Rapporteur can only regret this impediment, bearing in mind the mandate conferred on him for a period of three years by the Commission on Human Rights in its decision 2004/123, with the Secretary-General's full support, and is therefore particularly thankful to those States and institutions that took the trouble to provide substantive replies. Such a questionnaire is an invaluable source of information on the practice of States, their constitutional organization and their external legal policy.

43. At this juncture, the replies to the questionnaire furnish useful information, with 19 replies from Member States, 10 from national institutions and 5 from local NGOs. The geographical distribution of the replies also provides a fairly balanced sample:

(a) *Africa*: Burkina Faso, Cameroon, Ghana, Mauritius, Morocco, Senegal, Sudan;

(b) *Latin America*: Argentina, Bolivia, Colombia, El Salvador, Guyana, Jamaica, Mexico (2), Nicaragua, Venezuela (Bolivarian Republic of);

(c) *Asia*: India, Japan, Jordan, Philippines, Republic of Korea, Syrian Arab Republic;

(d) *Eastern Europe*: Armenia, Croatia, Kazakhstan, Romania;

(e) *Group of Western European and Other States*: Andorra, France, Germany, Ireland, Norway, Portugal, Turkey.

44. Nevertheless, the incompleteness of the replies submitted means that if this research is to be continued the exercise should in due course be carried out again in a more systematic fashion, and in the appropriate form. Official replies and information from NGOs must now be cross-checked and supplemented by scientific investigations already conducted at the international or regional levels and by the latest research.[17] Moreover, the activities of other international organizations, for example within the framework of the Council of Europe,[18] and the International Organization of la Francophonie, must be taken into account.[19]

45. On such bases, this final report can merely provide a general outline of the question of universal implementation by drawing a distinction between two essential legal aspects: the applicability of international instruments in domestic law and their effective implementation.

A. The applicability of international instruments

46. The aforementioned prior issue of the applicability of international instruments is a well-known subject of legal theory through the traditional distinction drawn between monism and dualism, but it illustrates clearly the various different ways in which international human rights instruments are implemented.

1. Dualist systems

47. States with a dualist system-or one associated with dualism-must incorporate treaties into domestic law in order for them to have the force of law, in line with the British system. As Norway states in its reply: "*Treaties are not a part of the national legal system unless [they are] incorporated or transformed by law. If a treaty is incorporated or transformed by law, it will have the same status as other national legislation unless the precedence rule is used. The precedence rule is used in the Human Rights Act of 1999, and precedence is given to the conventions implemented into Norwegian law through this act. The only conventions that are given such precedence in Norwegian law are: the UN [covenant] on civil and political rights, the UN [covenant] on economic, social and cultural rights, the UN convention on the rights of the child and the European Human Rights Convention.*" One can see the advantage of the system, which has the merit of clarity, but it may sideline important international commitments. The issue may be more complex when there is selectivity at the time of incorporation, as Ireland's example shows: "*In some cases the entire contents of an international agreement are transposed into domestic law by providing that the agreement shall have the force of law within the State. In other cases it is not necessary to transpose or to transpose only certain provisions of an agreement because other provisions are either already covered in domestic law or are of a nature not requiring incorporation.*" As a result, international treaties are overshadowed by domestic law, and cannot be invoked as such in the national courts.

48. The reply of Mauritius, however, shows clearly that the situation must be qualified, insofar as treaties that have been incorporated may be invoked before a judge "… *if they are incorporated in our national law. However, treaties that have only been signed may also be invoked before our Courts as a persuasive authority but they are non-binding*." What is more, in a common law system, like that of India, "*the Supreme Court of India has said that international human rights law can be applied in domestic jurisdiction, so long as it is not inconsistent with any national law (...) The Supreme Court of India, in a case, has held that provisions of international conventions, treaties or covenants which elucidate and effectuate fundamental human rights which are also guaranteed by the Constitution of India can be relied upon by the courts in India as facets of those fundamental rights and hence enforceable as such (PUCL v. Union of India [(1997) 3 SCC 433])*". Similarly, the dualist system which prevails in the Philippines, based on "the doctrine of incorporation", makes the principles of international law "*part of the law of the land*", which enabled the Supreme Court to apply directly the Universal Declaration of Human Rights (*Borovsky v. Commissioner of Immigration and Director of Prisons* case). There remains the problem of applying a treaty which, like the Convention against Torture, has not been incorporated into domestic law: "*Advocates have taken the 'enabling law' route by endorsing legislation that would directly translate the provisions of the CAT into domestic law while others including the [Commission on Human Rights of the Philippines] have advocated to invoke directly provisions of the CAT in a prominent case which is still before the courts.*" A further difficulty is that of a contradiction between international and domestic law. As Jamaica states in its reply: "*In accordance with the national 'principle of incorporation', national Courts take judicial notice of international customary human rights principles which are applied, only to the extent that they are not contrary to domestic law, that is Acts of Parliament (statutes) or judicial decisions of final Courts. Therefore, in order to ensure that international human rights treaties form part of Jamaican law, they are implemented via statute.*" This brings us back to square one.

2. Monist systems

49. Conversely, States that belong to a monist system - or one which is predominantly monist - view treaties that are duly ratified and published as part of the legislative hierarchy, most often with an infra-constitutional and supra legislative status, as in the case of France. This has recently become the case in Turkey: *"… the treaty becomes part of the domestic legislation and acquires direct effect in national law. Therefore, judges at national level are obligated to apply the provisions of the ratified international human rights treaties as they apply the provisions of regular laws. Besides, judges also have to take into consideration the stipulation inserted in May 2004 into Article 90 of the Constitution that, in the case of a conflict between international agreements in the area of fundamental rights and freedoms duly put into effect and the domestic laws due to differences in provisions on the same matter, the provisions of international agreements prevail*." The same applies to Senegal: "In litigation in Senegalese courts, the parties may refer to the applicability of a human rights instrument." All the same, it should be noted that "in addition to the provisions of article 98 of the Constitution, the provisions of human rights treaties often need to be transposed into domestic law in order to give them full effect".

50. The principle of the primacy of treaties over laws thus depends in practice on whether or not the provisions of the treaty in question are self-executing. This leaves the judge with a considerable degree of discretion, as Germany stresses in its reply: *"In principle, after ratification, each single treaty provision can be invoked in any court proceeding. After invocation, it is up to the courts to decide whether the respective provision has any relevance, whether it can be applied in the respective case and which legal consequence might follow. In other words, the application of human rights treaty norms is decided on a case-to-case basis, no general statement is possible. In legal practice, courts have been very reluctant to consider human rights provisions and test their applicability. This has many reasons. For example, judges are not aware of the implications of ratified human rights law or are uncertain how to adequately deal with these instruments. Cautiously speaking, there is a tendency among courts to accept the task of the applicability test regarding civil and political rights rather than in cases where economic, social and cultural rights are invoked.*"

51. It might be thought that assessing applicability depended on specific criteria, as Japan notes in its reply: "It is generally considered that a concluded and promulgated treaty is domestically effective. However, concerning whether the provisions of an international human rights law are self-executing, the government should examine if the provisions are concrete enough to regulate the rights and duties of its nationals, taking into consideration the purpose, contents and wording of the provisions." However, such an assessment is eminently subjective, depends on the courts and varies over time, as illustrated by recent developments in French jurisprudence concerning the Convention on the Rights of the Child. Initially, the Court of Cassation had rejected the provisions of the Convention en bloc on the ground that "… this Convention gives rise to obligations for States parties only, and is not directly applicable in domestic law" (10 March 1993, Bull. No. 103; 2 June 1993, Bull. No. 195; 15 July 1993, Bull. No. 259; 4 January 1995, Bull. No. 2). However, in 2005, 15 years after the entry into force of the Convention, in two successive decisions, the First Civil Chamber of the Court of Cassation overturned its jurisprudence. In its decision of 18 May 2005 (Bull. No. 212), it applied the Convention, for the first time and in an explicit manner. As the Court of Cassation's 2005 report underlines: "The First Civil Chamber, which could have confined

itself to applying national provisions, elected, after having informed the parties concerned, to raise of its own motion the argument based on article 3, paragraph 1, and article 12, paragraph 2, of the Convention on the Rights of the Child, thereby affirming the supranational status of the instrument and associating itself with the position of the Council of State, which declared itself in favour of directly applying certain provisions of the Convention, in particular article 3, paragraph 1, by requiring the Government to make the best interests of the child a paramount consideration - in other words one that must take precedence over any other consideration. While the change of position of the First Civil Chamber may seem of major importance, it concerned only two provisions of the Convention. (…) The trend set in motion by these decisions (cf. also the decision of 14 June 2005, Bull. No. 245) is not at an end, and the Court of Cassation will doubtless have occasion to state its views on the self-executing nature of other provisions of the Convention." As can be seen, there is a degree of political will in assessing the direct applicability of treaties even in a monist system.

B. The effective implementation of international instruments

52. This means that, rather than the technical issue of applicability, the issue of effectiveness must be a central consideration. Whatever the system chosen, ratification of treaties is not sufficient to sustain them. States parties have the primary responsibility to respect, protect and implement human rights. This requires taking a range of measures, particularly in the areas of education, training and information. In this regard, some replies, such as that of Portugal, note the importance of national "action plans" established for the United Nations Decade for Human Rights Education (1995-2004). However, it is particularly necessary to underscore the importance of a general national action plan which deliberately sets out an overall policy covering all the relevant sectors, in countries as different as Argentina or Norway. This practice goes hand in hand with the development of ministerial or inter-ministerial structures, such as the State Secretariat for Human Rights established in Argentina, as well as that of national human rights institutions. This also involves active participation by all civil society bodies, particularly NGOs, and all human rights defenders. However, in this broad context, effective judicial guarantees can be established.

1. Contentious guarantees

53. The availability of "effective remedies" is essential to guarantee access to and effectiveness of human rights. It is furthermore a right in itself, declared as such in article 2, paragraph 3, of the International Covenant on Civil and Political Rights. Following the Human Rights Committee, legal opinion holds that "*the judicial protections necessary to enjoy the protection of other rights*" (D. Shelton) fall into the category of non-derogable rights.[20] Far from being a simple procedural rule - through the issue of exhaustion of domestic remedies - this is a substantive rule, which obliges public authorities to be accountable to persons placed under their jurisdiction. In fact, the right to an effective remedy is now without a doubt a general legal principle, common to all judicial systems.

54. Internal jurisprudence remains too segregated, and the examples given in the replies to the questionnaire should be systematized, in line with the recommendations made by the International Law Association at its 71st Conference held in Berlin in 2004. The compilation of national jurisprudence would have the effect of increasing the number of examples of good practices, such as was the case with the work carried out by the Office of the United Nations

High Commissioner for Human Rights regarding economic, social and cultural rights. The mutual influence of bodies of jurisprudence is clear in respect of common law systems: India's reply quotes a decision by its Supreme Court referring to Australia. However, this would be equally relevant to monist States, in order to give a common interpretation of the "parties' intention" regarding the question of whether or not treaty provisions are self-executing. It would be very useful to systematically compile judgments of principle by the sovereign jurisdictions of different States parties in respect of international human rights commitments. This work could be carried out by the Office of the United Nations High Commissioner for Human Rights, with the support of the network of national institutions for human rights protection.

55. However, alongside national contentious guarantees, international guarantees retain their full significance, in the very name of the principle of subsidiarity. It must be emphasized that the effective ratification of international instruments must go hand in hand with the strengthening of monitoring mechanisms. This entails, firstly, developing individual or collective communications procedures in the context of the existing treaty bodies. It also involves further reflection on the "guarantees" to be applied to universal human rights treaties that have not set up a special monitoring body. This means that, in the medium term, the quasi-jurisdictional nature of procedures for complaints by individuals and States will be strengthened and systematized. The collective protection of human rights requires the existence of effective guarantees, at the national level but also in the international context. In this regard, the jurisdictionalization of human rights would only be the culmination of the programme of work established in 1946, which gave rise to the Universal Declaration of Human Rights.

2. Non-contentious guarantees

56. The emphasis placed on the importance of contentious guarantees should not mean that non-contentious guarantees are overlooked - firstly, since contentious guarantees, by definition, can only be used after the violation has been committed, and the individual redress they bring is belated, incomplete and often inadequate. The existence of non-contentious remedies can be more favourable for victims, and can lead to general solutions by means of legislative reforms, as is the case with the work of ombudspersons, mediators and other public defenders. The role of specialized national institutions in combating discrimination, or that of "independent administrative authorities", should also be mentioned. As well as being readily accessible for ordinary citizens, who are thus afforded a prompt remedy to a violation of one of their guaranteed rights, these institutions also have a more general function of vigilance, warning and prevention.

57. In the final analysis, nothing can be done without the individuals themselves. Once the legal transposition of instruments has become a reality, their effective implementation involves considerable work in the area of information and training. The publication of universal treaties - and their translation into national languages - must take place concurrently with campaigns to raise public awareness. If not transmitted by these means to all levels of society, including its most marginalized and vulnerable members, the instruments are liable to remain theoretical and remote, having no bearing on people's daily life. It is not only on the legal playing field that the universal implementation of international human rights instruments has its place. An investigation of the historical, cultural, sociological, economic and other obstacles to the full implementation of universal treaties would be outside the limits of this study, but the extralegal dimension should nevertheless not be neglected.

Conclusions

58. At the end of this final report, the Special Rapporteur can only say that the area that remains to be explored is still vast. He considers it necessary for the Human Rights Council to mandate a working group of the Sub-Commission - or the body that replaces it - to carry out periodic and systematic monitoring of the status of international human rights instruments, in the context of the universal periodic review organized by the Council.

59. He recommends that States should maintain the current momentum in order to give international human rights instruments a universal, or quasi-universal character as soon as possible, in accordance with the objectives solemnly proclaimed by the World Conference on Human Rights in 1993. In the same spirit, the " reservation dialogue" with States parties should be encouraged, in order to promote the withdrawal of reservations to international human rights instruments.

60. The Special Rapporteur recommends developing technical assistance in the context of the United Nations, as well as specialized and regional organizations, to facilitate universal ratification and effective implementation of international human rights instruments.

61. In this regard, it might be useful to convene a seminar with support from interested States and NGOs along with the national institutions directly concerned, with a view to promoting dialogue with States concerning the ratification of universal treaties. Another useful aspect would be to take account of the specific contribution of regional organizations to the ratification and effective implementation of universal treaties through consultation and cooperation between Member States, by undertaking a more systematic review of good practice.

62. The Special Rapporteur recommends continuing collective reflection on the nature and scope of international human rights law, in the context of the Sub-Commission - or the body that replaces it.

63. He recommends strengthening international guarantees, through the development of individual and collective communications, and particularly through the adoption of an additional protocol to the International Covenant on Economic, Social and Cultural Rights.

64. He recommends that the Office of the United Nations High Commissioner for Human Rights, in cooperation with national human rights institutions, should establish a compilation of national jurisprudence in respect of the implementation of international human rights instruments.

65. He recommends the convening of a seminar on good practice, particularly plans and programmes of action established by States at the national level. He also encourages further reflection on the non-legal obstacles to the universal implementation of international human rights instruments.

Notes

[1] E. Decaux (ed.), *Les Nations Unies et les droits de l'homme, enjeux et défis d'une réforme* (Paris, Pedone, 2006). International seminar organized by the University of Paris II at the Human Rights and Humanitarian Law Research Centre (Centre de recherche sur les droits de l'homme et le droit humanitaire).

[2] E. Bribosia and L. Hennebel (eds.), *Classer les droits de l'homme* (Brussels, Bruylant, 2004).

[3] See tables in the addendum to the present report (A/HRC/Sub.1/58/8/Add.1) and, for a comprehensive account, J-B. Marie, "Instruments internationaux relatifs aux droits de l'homme, classification et état des ratifications au 1er janvier 2006", in National Centre for Scientific Research (Centre national de la recherche scientifique - CNRS), *Revue universelle des droits de l'homme* (forthcoming).

[4] For an overview of these developments, see the addendum to the present report (A/HRC/Sub.1/58/8/Add.1), table 4. The admission of Montenegro to the United Nations in June 2006 as the 192nd Member State is too recent to have been usefully taken into account.

[5] Where both instruments were not ratified simultaneously, the later date is given in order not to make the list longer than necessary. For exact dates of ratification, see the addendum to the present report (A/HRC/Sub.1/58/8/Add.1), table 6.

[6] The quicker pace of ratification in March 2006 was in part a reflection of pledges made by the candidate States to the Human Rights Council.

[7] "A more secure world: our shared responsibility", A/59/565, 2 December 2004.

[8] A/59/2005, 21 march 2005.

[9] HRI/MC/2006/2.

[10] J.-M. Henckaerts and L. Doswald-Beck, *Customary International Humanitarian Law* (ICRC, Cambridge University Press (vol. 3), 2005). Cf. also T. Meron, *Human Rights and Humanitarian Norms as Customary Law* (Oxford, Clarendon Press, 1989); O. de Frouville, *L'intangibilité des droits de l'homme en droit international (régime conventionnel des droits de l'homme et droit des traités)* (Paris, Pedone, 2004). Cf. also the work being done by the International Law Association, with its *Interim Report on the Relationship between General International Law and International Human Rights Law* submitted to the Toronto Conference in 2006.

[11] Cf. Sub-Commission decision 2005/105 on human rights and State sovereignty. Earlier efforts were mentioned in working paper E/CN.4/Sub.2/2003/37.

[12] For recent developments concerning the role of the depositary, see P. Kohona, "Some Notable Developments in the Practice of the UN Secretary-General as Depositary of Multilateral Treaties: Reservations and Declarations", *AJIL*, vol. 99, No. 2, April 2005, pp. 433 et seq.

[13] HRI/MC/2006/2, para. 13. Note 6 refers to the work of the Committee on International Human Rights Law and Practice of the International Law Association, (interim report of 2002 and final report of 2004).

[14] International Law Association, *Report of the 71st Conference*, London, 2004.

[15] Vienna Declaration and Programme of Action, A/CONF.157/23, chap. II, para. 4.

[16] E/CN.4/1997/74, para. 111.

[17] B. Conforti et F. Francioni (ed.), *Enforcing International Human Rights in Domestic Courts* (Martinus Nijhoff Publishers, 1997); P.-M. Eisemann (ed.), *The Integration of International and European Community Law into the National Legal Order: A Study of the Practice in Europe* (London, Kluwer Law International, 1996). See also C. Sciotti-Lam, *L'applicabilité des traités internationaux relatifs aux droits de l'homme en droit interne* (Brusssels, Bruylant, 2004).

[18] For the activities of the Committee of Legal Advisers on Public International Law (CAHDI), see www.coe.int/cahdi. Cf. also the European Commission for Democracy through Law (Venice Commission).

[19] Cf. the records of the symposium of the Association africaine des hautes juridictions francophones (AAHJF), organized in June 2003 in Ouagadougou on the topic, "The application of international law in the internal legal order of French-speaking African States". ("L'application du droit international dans l'order juridique interne des États africains francophones"). See also the Délégation aux droits de l'homme, à la démocratie et à la paix site of the International Organization of la Francophonie (OIF): http://democratie.francophonie.org.

[20] International Law Association *Interim Report on the Relationship between General International Law and International Human Rights Law*, Toronto Conference, 2006.

Annex

REPLIES TO THE QUESTIONNAIRE PREPARED BY THE SPECIAL RAPPORTEUR RESPONSIBLE FOR CONDUCTING A DETAILED STUDY OF THE UNIVERSAL IMPLEMENTATION OF INTERNATIONAL HUMAN RIGHTS TREATIES*

Questionnaire

1. Are you aware of the call for ratification of international human rights treaties made by the Secretary-General of the United Nations in 2005?

2. Who was the main recipient of this call at the national level?

3. Through what instances was the Secretary-General's call examined (inter-ministerial meetings, parliamentary interventions/questions, consultative bodies)?

4. What follow-up was proposed to the Secretary-General's call?

5. How do you evaluate the results in the national framework?

6. Does your country intend to sign and ratify those international human rights treaties which remain outstanding? Which ones and what is the time frame?

7. What legal, political and/or social obstacles have been identified that may hinder the ratification of human rights treaties in your country?

8. Is there a domestic periodic procedure through which the signature and ratification of these treaties are considered, and the appropriateness of reservations re-examined?

9. Does your country plan to withdraw existing reservations?

10. What status do international human rights treaties ratified by your country have in the constitutional order? What procedure governs the incorporation of these treaties into national law?

11. In what forms are treaties officially published and how are human rights treaties disseminated?

12. Do the treaties have direct effect in national law?

13. Can these treaties be invoked by parties to a suit, by non-governmental organizations, and by associations for the promotion of human rights?

14. How is the public informed of existing domestic and international remedies?

15. Which are the competencies of different judges at national level, vis-vis application and interpretation of international human rights treaties? How do you evaluate their role? (Please give one or more significant examples that illustrate it.)

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* Given its length, the document containing the replies can be consulted with the Secretariat.

CONTENTS

Page

Replies of Member States

1. Andorra 4
2. Argentina 12
3. Bolivia 24
4. Burkina Faso 28
5. Korea 30
6. Croatia 35
7. Guyana 36
8. Ireland 39
9. Jamaica 43
10 Japan 45
11. Kazakhstan 47
12. Morocco 52
13. Mauritius 55
14. Mexico 58
15. Portugal 61
16. Syrian Arab Republic 67
17. Romania 73
18. Senegal 75
19. Turkey 79

Replies of national human rights institutions

20. Germany 83
21. Armenia 85
22. Colombia..... 87
23. France 94
24. India 99
25. Jordan 102
26. Philippines 103
27. Sudan 109
28. Norway 114
29. Venezuela (Bolivarian Republic of) 117

Replies of non-governmental organizations and research centres

30. Cameroon (Human Rights Education and Information Centre) 124
31. El Salvador (FIDH) 127
32. Ghana (Foresight Generation Club) 130
33. Mexico (LIMEDDH, FIDH) 132
34. Nicaragua (CENIDH, FIDH) 136
