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Agenda item 6

REPORT ON OTHER MEETINGS AND ACTIVITIES

Report of the Secretary-General

Addendum

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Introduction

1. In its resolution 45/155, the General Assembly laid down the following as the objectives of the World Conference on Human Rights in 1993:

(a) To review and assess the progress that had been made in the field of human rights since the adoption of the Universal Declaration of Human Rights and to identify obstacles to further progress in this area and ways in which they could be overcome;

(b) To examine the relation between development and the enjoyment by everyone of economic, social and cultural rights, as well as civil and political rights, recognizing the importance of creating the conditions whereby everyone might enjoy these rights as set out in the International Covenants on Human Rights;

(c) To examine ways and means to improve implementation of existing human rights standards and instruments;

(d) To evaluate the effectiveness of the methods and mechanisms used by the United Nations in the field of human rights;

(e) To formulate concrete recommendations for improving the effectiveness of United Nations activities and mechanisms in the field of human rights through programmes aimed at promoting, encouraging and monitoring respect for human rights and fundamental freedoms;

(f) To make recommendations for ensuring the necessary financial and other resources for the United Nations activities in the promotion and protection of human rights and fundamental freedoms;

2. In its resolution 46/116, the General Assembly requested the Secretary-General to report to the Preparatory Committee on progress made on meetings that had been organized under the auspices of the United Nations human rights programme pursuant to resolution 45/155. The report listing the meetings which were organized by the Centre for Human Rights and those held by intergovernmental and non-governmental organizations to which the Centre for Human Rights has been invited may be found in documents A/CONF.157/PC/65, 43 and 22.

3. At its second session, the Preparatory Committee decided (PC.2/3) "to request the Secretary-General to prepare an analytical compilation of the recommendations, in extenso, of the meetings ... which might be held under the auspices of the United Nations human rights programme pursuant to General Assembly resolution 46/155, and to submit an initial analytical compilation to the Preparatory Committee at its third session and a final updated compilation to the Committee at its fourth session".

4. Also at its second session, the Preparatory Committee decided (PC.2/6), pursuant to General Assembly resolution 46/116, to take note of the report of the Secretary-General on studies and documentation for the Conference (A/CONF.157/PC/20), which comprised annotations to the themes for the studies.

5. The present report, containing the updated analytical compilation, is organized according to the list of objectives of the World Conference as set out in paragraph 1 above and includes recommendations from meetings, the reports and recommendations of which were received by 22 March 1993; those received after that date are included as additional addenda to document A/CONF.157/PC/42.

ANALYTICAL COMPILATION OF THE RECOMMENDATIONS OF OTHER MEETINGS RELATED TO THE PREPARATORY PROCESS OF THE WORLD CONFERENCE

Objective 1: "To review and assess the progress that has been made in the field of human rights since the adoption of the Universal Declaration of Human Rights and to identify obstacles to further progress in this area, and ways in which they can be overcome" (resolution 45/155, para. 1 (a)).

Consultation on Women's International Human Rights
(Toronto, 31 August - 2 September 1992)

6. This consultation brought together lawyers from Africa, the Americas, Asia, Australia and Europe and was held at the Faculty of Law, University of Toronto. The participants brought legal theory and practice to bear on the relationship between international human rights and women's rights in order to develop legal strategies to promote and protect women's international human rights.

7. The following paragraphs offer some idea of the multiple perspectives that emerged on the consultation themes. The themes were to review the progress of women's rights, and identify challenges and prospects; to recharacterize internationally protected human rights to accommodate women's experiences of injustice; to guarantee specific human rights of women; and to make international human rights law more effective for women.

8. The consultation began with a fundamental question: do legal rights really offer anything to women? Women's disadvantages are often based on structural injustice and winning a case in court will not change this. The consultation adopted the working presumption that there should be a relationship between international human rights and women's rights. However, no one lost sight of the limitations of a rights strategy and the fact that its effectiveness would vary from culture to culture. Participants stressed the importance of expanding understanding of the context of women's subordination, especially where oppression is exacerbated by poverty or ethnic status, and agreed that the means chosen to combat discrimination will need to be varied according to its particular contexts. A legal practitioner from Khartoum, Sudan, observed that while the nature of subordination and thus the means to combat it may vary, "we must not lose sight of the fact that we are subordinated because we are women" and that the goal of eliminating all forms of subordination of women remains universal.

9. In determining whether recharacterization might be effective to protect women's rights internationally, a second fundamental question was raised that pervaded discussions at the consultation: can women's rights be universal? Put another way, is the idea of women's international human rights, premised as it is on the fact that women worldwide suffer from patriarchy, misconceived? Is the pervasive devaluation of women's lives enough to link women in the effort to add a gender dimension to international human rights?

10. Three feminist approaches were set forth that might serve to recharacterize rights in order to make them more universally applicable by better accommodating women's pervasive experiences of injustice:

(a) Liberal feminism attempts to realize the equal treatment guaranteed by existing law, and thereby discounts intrinsic differences between men and women. A problem with this approach is that it fails to understand the structural imbalance of power between men and women and the systemic nature of discrimination;

(b) The goal of cultural feminism is to celebrate the differences between masculine and feminine ways of reasoning. This approach may lead to marginalization of women's rights because presenting them as different from men's needs may induce the response that they are less worthy of resources;

(c) The purpose of radical feminism is to transform the masculine world where inequality is based on systemic domination and subordination of women by men. This approach is problematic strategically when it requires revolutionary change in a conservative community that is ready at most for evolutionary change.

Participants agreed that these approaches or a mix of them might be useful in recharacterizing international human rights law to be more responsive to the degradation of women. However, they cautioned that feminist recharacterization of law in one type of society cannot be imported wholesale either into other types of societies or into the international human rights system.

11. The distinction between the public and private sectors of society offers an example of the insights and pitfalls of applying Western feminist theories to other social and legal systems. The distinction, long a target of feminist critiques in Western liberal societies for masking women's oppression, may manifest itself to different effect in other societies, and may illuminate areas of otherwise unobserved subordination.

12. The public/private distinction can be perceived in at least two ways. In the first, the public sector, where legal and political order exist, is contrasted with the private sector of home and family, to which regulation is deemed inappropriate. This distinction involves gender because women operate in the private sector, where abuses such as domestic violence and degradation are invisible and unregulated by the law. The second is similar to public and private ownership. The public sector is constituted by the State and its agencies, and the private sector is composed of the vast array of non-State activities.

13. It was thought that the second distinction is more important to international human rights law because it corresponds to the classical theory of State responsibility for human rights violations. It is the State that has to provide effective protection and remedies against human rights violations. International law of State responsibility requires governments to respect, ensure and protect women's international human rights, and that when they fail to do so, sanctions can be enforced. International law doctrine now goes beyond the classical State duty not to interfere with individual human rights, to hold States accountable for not acting positively to ensure rights. Moreover, international law now obligates States to use due diligence to prevent, investigate and punish systemic and egregious human rights violations between private actors.

14. A third fundamental question discussed throughout the consultation was how to legitimize universal human rights in radically different societies without succumbing to either homogenizing universalism or the paralysis of cultural relativism.

15. One speaker emphasized the need to avoid the "orientalist trap" of dividing the world into bipolar categories. Those in the West must guard against the idea that the West is progressive on women's rights and the East is barbaric and backward. Those in the East must be equally cautious not to subscribe to the reverse notion that accepts the East/West distinction, but believes that the East is superior, more communal and less self-centred, with no place for an "adversarial" concept of rights. She cited the coexistence of both traditions in South Asia to illustrate the dangers of oversimplification.

16. The speaker started from the presumption that, for human rights to be effective, they have to become a respected part of the culture and traditions of a given society. In South Asia, the institution of law is generally viewed with deep suspicion and often hatred because it is seen as the central instrument employed by colonizing powers to replace indigenous cultural, religious and social traditions with the mechanisms of the modern Western nation State.

17. The speaker proposed that the future of human rights in the South Asia region does not lie with the State, but with the confluence of the interests of the State and movements in civil society. She cautioned that "unless human rights values take root in civil society and unless civil institutions and non-governmental organizations take up the cause, then women's rights as human rights will have no resonance in the social institutions concerned".

18. Another speaker underscored the importance of cultural legitimacy of international human rights. It is not enough, he said, to rely on international law obligations to bring national laws, including religious and customary laws, into compliance with international human rights principles. He argued that unless international human rights have sufficient legitimacy within particular cultures and traditions, their implementation will be thwarted, particularly at the domestic level, but also at the regional and international levels. Without such legitimacy, it will be nearly impossible to improve the status of women through the law or other agents of social change.

19. Some participants questioned the effectiveness of his approach because religions and cultures are often sources of women's oppression. As a result they thought that "going secular" is the only option. His response was that in some countries women do not have the secular option because their frames of reference or discourse are religious. As evidence of the possibility of religious or cultural reformation, he pointed to the emergence of women's rights organizations within religious frameworks, such as Women Living under Muslim Laws and Catholics for a Free Choice.

20. International human rights and the legal instruments that protect them were developed primarily by men in a male-oriented world. They have not been interpreted in a gender-sensitive way that is responsive to women's experiences of injustice. Critical recharacterization of international

human rights is needed in order for women's distinctive human rights not to be marginal, and for the implementation of such rights to become part of the central agenda of human rights work. Women can develop the content of treaties on human rights through the "subsequent practice" that adds a gender dimension to those rights. Human rights may be divided into non-discrimination rights, civil and political rights, and economic, social and cultural rights. Developing the "subsequent practice" through recharacterization of all three kinds of rights to accommodate the particular nature of women's vulnerabilities to fundamental injustice is required if international human rights law is to be effectively applied to women.

21. What constitutes discrimination against women is not a point on which States readily agree. None the less, the legal obligation to eliminate all forms of discrimination against women is a fundamental tenet of international human rights law. Sex is a prohibited ground of discrimination in the international instruments.

22. An approach to clarifying what constitutes discrimination against women in international human rights law is through the development of General Comments or General Recommendations by the committees established under the different human rights conventions. For example, the Human Rights Committee, established to monitor States' compliance with the International Covenant on Civil and Political Rights has issued General Comment 18 on non-discrimination based upon the "similarity and difference" model of discrimination. The General Comment states that "not every differentiation of treatment will constitute discrimination, if the criteria for such differentiation are reasonable and objective and if the aim is to achieve a purpose which is legitimate under the Covenant".

23. A speaker suggested that a test of discrimination should be adopted that is based on powerlessness, exclusion and disadvantage, rather than on sameness and difference. A test adopted by the Supreme Court of Canada, for instance, determines discrimination in terms of disadvantage. If a person is a member of a persistently disadvantaged group and can show that a law, policy or behaviour continues or worsens that disadvantage, it is discriminatory. She explained that no comparator, male or otherwise, is required. Adoption of the test of "disadvantage", as opposed to the test of "similarity and difference", requires judges to look at women as they are located in the real world in order to determine whether any systemic abuse and deprivation of power that women experience is due to their place in the sexual hierarchy.

24. International and regional human rights tribunals have used the "similarity and difference" test for discrimination, not the "disadvantage" model that can capture the systemic nature of discrimination against women. The "disadvantage" model of discrimination is more consistent with the object and purpose of the Women's Convention in prohibiting all forms of discrimination against women.

25. Participants explored ways to recharacterize civil and political rights for women because as one speaker explained, the primacy traditionally given to civil and political rights by western international lawyers and philosophers

is directed towards protection from men within public life and their relationship with government. Recharacterization of civil and political rights needs to be done in a variety of ways. For example, the right to life is traditionally referred to as the obligation of States to observe due process of law before capital punishment is imposed. But this interpretation ignores the historic reality of women that persists in many regions of the world. Currently, at least 500,000 women die avoidably each year of pregnancy-related causes, such as lack of access to basic obstetric care. Another speaker pointed out that, in El Salvador, lack of availability of contraception causes women to have about twice the number of children they want.

26. Another speaker proposed ways to recharacterize the prohibition of torture and inhuman and degrading treatment to accommodate gender-based violence. She argued that gender-based violence is comparable to torture, and that its prohibition ought to be, like prohibition of torture, a principle of jus cogens.

27. Participants, particularly from Africa, were concerned about the way in which structural adjustment programmes of the World Bank and the International Monetary Fund (IMF) are negatively affecting the economic, social and cultural rights of women. Women, they noted, suffer in a unique and often invisible way.

28. A consensus emerged at the consultation that human rights have to be rethought to accommodate women's experience of disproportionate disadvantage under structural adjustment programmes. The first step to rethinking human rights with reference to structural adjustment is to recognize the double injury it causes women. Once recognized, this injury can be addressed in a number of forums in the international system. An additional approach is to confront the financial institutions themselves. It has been suggested that the World Bank and the IMF, as international actors, are bound by international law, including human rights norms and therefore are legally obligated to ensure that women share equally with men in the benefits of their loans.

29. A speaker examined how the Court of Appeal of Botswana in Attorney General v. Unity Dow applied international human rights principles to the nationality problem. The decision held unconstitutional the provision of the Botswana Citizenship Act, 1984, whereby a female citizen of Botswana who is married to a foreigner cannot convey citizenship to her children born in wedlock in Botswana, although a male citizen married to a foreigner can convey such citizenship. The Court of Appeal decided that this provision of the Citizenship Act infringed Unity Dow's fundamental rights and freedoms, her liberty of movement and her rights to non-discrimination.

30. He explained that women's disability with regard to citizenship is a problem in many countries, as underscored by the fact that, of the articles of the Women's Convention, Article 9 on nationality is one of the ones on which there are the greatest number of reservations. Women's legal inability to bestow their nationality on their children born of foreign husbands often leaves legitimate children stateless or unable to benefit from attributes of citizenship such as education, health care and employment. He hoped that this

decision might have a positive impact on draft legislation to amend such discriminatory nationality laws, such as is now pending in Egypt and Tunisia, and have persuasive authority for a case which, according to Rashida Patel, of the Legal Aid Centre in Karachi, is pending in Pakistan. It was pointed out that CEDAW, perhaps together with the committee established under the Convention on the Rights of the Child, might be encouraged to develop a General Recommendation on women's ability to convey nationality to their children, and that it might be made an issue during the 1994 International Year of the Family.

31. In some regions of the world, personal law governs legal relations in all matters regarding marriage, divorce, maintenance, child custody and guardianship, and inheritance, on the basis of religious identity.

32. One speaker addressed the potential for using the International Covenant on Civil and Political Rights and the African Charter on Human and People's Rights to challenge discriminatory aspects of the Sudanese Personal Law for Muslims Act (1991). She said that this Act rendered the meaning of equality "valueless". For example, this Act prevents women from contracting their own marriages, gives men unfettered rights to divorce while requiring women to prove in court some sort of specified harm, and prevents women from leaving their homes without permission of their husbands or guardians. Even if a divorce is granted, a women may "be returned" by her former husband without her consent within three months of divorce. She explained that interpretations of this Act that are consistent with modern realities of women's lives are harshly resisted, even though interpretations of other areas of Islamic law reflecting men's modernization are readily accepted. She pointed out that "women are prisoners of the old interpretations of the Koran and Sunna". She pointed out that personal law is the most impervious to change in favour of women's rights.

33. A speaker addressed the use of the African Charter to redress the disabilities that women face with respect to property under African customary law. In law and in fact, women are denied access to real and personal property, whether it be by discriminatory inheritance, divorce or customary law. If a person dies without a will, which is generally the case in many African countries, the customary law of that person's clan is applied to determine who inherits the assets. She explained that the customary law heir is normally the deceased's eldest son, which denies women not only the fruits of the land but also the incidents of land tenure such as its availability as collateral security for bank loans. Upon divorce, women's claims to matrimonial property are often rejected.

34. She said that the African Charter obligates States parties "to ensure that whatever cultural values and practices are permitted by domestic law must comply with the human rights principle of freedom from discrimination on the basis of sex". She explained that the issue of women's property rights has barely begun to be tackled, and recommended that it be addressed carefully and pragmatically at the national, regional and international levels.

35. At the national level, she said, most governments are not taking the necessary legislative steps to change laws, practices and customs with regard to women's property rights. Consequently States parties are failing in their obligations under the Charter to reform sex discriminatory laws.

36. The speaker explained how women's groups in Colombia used the Women's Convention to promote equality and reproductive health, observing that "the moment we used an international treaty, the government saw that our claims were legitimate and began to take us seriously". The Colombian women's movement lobbied for incorporation of the principles of the Women's Convention into the 1991 Constitution, and within that context sought new laws and policies for the promotion of women's reproductive health. As a result, the Women's Convention was transformed into Colombian law, and some of its principles were adopted in the new Constitution, including a provision on the right to decide freely and responsibly the number of one's children.

37. A speaker explored a range of strategies to combat all forms of violence against women. Forms of violence include domestic violence (murder, rape and battery) by husbands or other male partners, genital mutilation, gender-based violence by police and security forces (including torture of detained women), gender-based violence against women during armed conflict, gender-based violence against women refugees and asylum seekers, violence associated with prostitution and pornography, violence in the workplace, including sexual harassment and, for example, forced abortion and sterilization.

38. No issue raises in inherent limitation of the gender-neutral approach to equality more acutely than domestic violence against women. She pointed out that a "special treatment" approach is needed, as opposed to formal equality, to recognize that women exist in concrete contexts. This has been suggested in the CEDAW Recommendation 19 on Violence against Women, the European Parliament and the draft Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women, as well as the United Nations Crime Prevention and Criminal Justice Branch.

39. The international law of State responsibility makes a State legally accountable for breaches of international obligations that are attributable or imputable to the State. In other words, only a State and its agents can commit a human rights violation.

40. A speaker explored the feasibility of applying different theories of State accountability developed in other areas of international human rights law to violations of women's human rights. The international human rights movement has used three distinct theories of government accountability: government agency, government complicity by failure to act and government responsibility for the unequal application of the law. He argued that the same theories of governmental accountability that were invoked for State complicity in various forms of violence by non-State actors should be applied to domestic violence against women.

41. A speaker explained that the methods of international protection of women's human rights range from recourse to limited international judicial or quasi-judicial processes to the application of broader means of furthering States parties' accountability, such as through reporting requirements. He

noted that the application of human rights norms to national laws and practices that are alleged to violate women's rights has to be approached in a variety of ways. Any one method may be fragile and inadequate, but there are cumulative ways in which "women can make rights their own".

42. A speaker explained that all major human rights treaties provide for a system of reporting. States parties are required to make regular reports to the responsible supervisory bodies on the steps taken to implement their obligations and the difficulties they have experienced in doing so. All such committees receive information informally from non-governmental organizations, which they may use in their questioning.

43. All human rights treaty bodies, he explained, have the power to make General Comments or General Recommendations but, with the exception of CEDAW, gender plays a relatively minor role in the General Comments of most committees.

44. Domestic protection of women's human rights is usually the first line of defence for women. As one speaker explained, the international machinery for the protection of human rights is subsidiary to the national machinery. A general rule in international law is that domestic remedies (where they exist) have to be exhausted before international or regional tribunals will take up a case. This rule requires the State to afford a prior opportunity to redress alleged violations by its own means and within the framework of its domestic legal system.

45. She noted that there are alternative general theories about the relationship between municipal law and international law, and one has to look to municipal law to determine which theory is embraced by each country: "The adoption theory states that international law is part of domestic law automatically, that is without an act of incorporation, except where it conflicts with statutory law, or well-established rules of the common law. The transformation theory states that international law is only part of domestic law when it has been incorporated into domestic law."

46. When human rights treaties are directly adopted into internal law, they may be invoked before and enforced by municipal courts and administrative authorities. Domestic protection of women's rights can be strengthened in States that favour the latter theory by the transformation of international human rights treaties, either in whole or in part, through legislation or presidential decrees.

47. Participants at the consultation focused on the goal of achieving women's equal human rights, and the role that international law could play in achieving this end.

48. Prerequisites to reform include improved education and training in human rights law and processes, provision of legal services for women's empowerment, development of capacities to research facts and publicize findings, and promotion of the feminist presence on human rights committees, courts and commissions.

49. One of the themes that emerged from the consultation was that effective application of women's international human rights depends on both vertical and horizontal interactions. Vertical interaction involves both working down and working up. Working down refers to the process called "bringing the international back home", meaning increasing the use of women's international human rights at the domestic level in legal and political contexts. Working up means introducing legal developments favourable to women, such as the Andrews decision, and the diversity of women's experiences within different cultures, into international human rights law.

50. Horizontal interaction refers to the exchange of experiences among regional human rights systems and among national courts or systems of the same region. For example, one speaker believed that the experience gained in the Inter-American system is particularly useful for application of the African Charter. Another person spoke of the importance of non-governmental organizations filing amicus curiae briefs in cases that might have important implications for women fighting similar causes in other countries, as was done by the Cincinnati-based Urban Morgan Institute in the Unity Dow case. States do not have to wait for laws and practices to be challenged, or for human rights tribunals to consider alleged violations of rights, before moving to protect women. They can begin by changing their laws and policies that are similar to those of other countries that have been successfully challenged under human rights conventions to which they are party.

51. Many recommendations made during the consultation depend for effectiveness on the political will of the State. It must be kept in mind that relationships between women and the State vary from country to country, and are evolving.

52. The nature and extent of violations of women's international human rights continue to be cruel and pervasive. In many countries, violations remain not simply unremedied, but unnoticed as discriminatory or as an affront to human dignity. This widespread failure to honour international obligations poses a challenge to the credibility, universality and justice of international human rights law.

Conclusions of the Meeting of Attorneys-General/Ministers of Justice of East, Central and Southern African States on the Administration of Justice and Human Rights*
(Nairobi, 5-7 October 1992)

53. We affirm the standards set forth in the International Bill of Human Rights and the African Charter on Human and Peoples' Rights. While affirming the universal validity of the international human rights standards it is nevertheless clear that the implementation of these standards must take account of the history, culture, traditions, and values of each State. Equally, human rights and other internationally recognized rights are whole and indivisible and interdependent, and accordingly, none should take precedence over the rest.

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* See document A/CONF.157/AFRM/5.

54. There is a special duty incumbent upon the chief legal advisers of Governments to ensure protection and promotion of human rights.

55. While it is true that there have been many instances of violations of human rights in Africa, such violations are not necessarily deliberate: in many cases, they arise from constraints in the resources available to Governments for the administration of justice and lack of knowledge about these rights. In order to improve the performance of African Governments in this area, external assistance is needed urgently. Such assistance would be utilized in training and equipping the police; improving access to the judiciary and making its services more efficient; improving prison conditions in terms of infrastructure and training of personnel; building the capacity of Offices of the Attorneys-General/Ministries of Justice to cope with the demand placed on them for efficiency in dealing with human rights matters; the establishment of legal aid services, etc.

First International Colloquium on Human Rights in La Laguna: The Reform of International Institutions for the Protection of Human Rights*
(La Laguna, Spain, 1-4 November 1992)

56. The universal value of human rights requires the various competent institutions to interpret and apply all international norms on human rights in such a way as to ensure that constitutional principles of human rights are upheld.

57. Proposal: That the following constitutional principles be defined and adopted by the United Nations General Assembly as guidelines for the application and interpretation of all human rights norms:

(a) The principle of equality and the principle of non-discrimination which have already been recognized by the international community;

(b) The principle of indivisibility of human rights, whatever the category or nature of human rights involved, since there must be no hierarchy nor priority given to one human right over another;

(c) The principle of general opposability of human rights, whatever the source of power which may violate them: the State, public or private entities, international organizations, individuals, those with de facto power, or even with illegitimate power;

(d) The most-favoured individual principle, whereby where conflict exists between several applicable norms, the one which offers the individual the most favourable treatment shall always be applied, irrespective of whether it is a national, regional or universal legal norm;

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* See document A/CONF.157/LACRM/7.

(e) The principle of stand-still and the unacceptability of backtracking in the field of human rights, by which the protection of human rights shall be consolidated within a State, hic et nunc, at its present level, through the application of national, regional or universal norms, and by which backtracking is no longer acceptable, so that they only direction in which States may move in the field of human rights, is forward.

58. The universal and impartial respect for human rights presupposes that special measures shall be taken in favour of minorities, specifically targeted in Article 27 of the International Covenant on Civil and Political Rights, measures which go further than simply reiterating the principles of equality and non-discrimination, on the understanding that the positive role which minorities play, or could potentially play, in bilateral relations between States needs to be recognized, as it was in the Helsinki Final Act of 1 August 1975.

59. Proposal:

(a) The speeding up of the process by which the Council of Europe's Charter on Regional and Minority Languages will be implemented and by which a European Convention on National Minority Rights and effective means of implementation will be established with the assistance of national ombudsmen;

(b) The following up of the Vienna Conference between the Heads of State and Government of the 27 Member States of the Council of Europe, in October 1993, by measures taken on these States' initiative, permitting the progressive extension of the field of application of decisions affecting minorities of non-Member States, with the agreement and cooperation of the United Nations;

(c) The consolidation and application and implementation in full of the norms and institutional measures taken concerning human rights and minority rights within the framework of the Conference on Security and Cooperation in Europe (CSCE), with specific reference to the Copenhagen, Paris, Geneva and Moscow Documents;

(d) The drafting by UNESCO of an international instrument with regard to cultural rights, and more specifically to linguistic rights, which should be regarded as being both individual rights and rights which are exercised in the interest of the community in so far as culture is by its very nature part of the common heritage of mankind;

(e) The addition to the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, of a definition of cultural genocide;

(f) The drafting of a typology of minorities reflecting their needs in relation to the various categories of rights and with regard to "positive discrimination" which would lead to new-found equality between the majority and minorities within a given population, both in legal terms and in practice, as well as protecting the minority's identity;

(g) The study and application of preventive measures with regard to potential conflict involving minorities, through early warning of possible conflicts (essentially via human rights non-governmental organizations, and through the education and the teaching of history (primarily through UNESCO). (La Laguna Declaration)

Programme of Action against Child Bondage adopted by the Asian Regional Seminar on Children in Bondage*
(Islamabad, 23-26 November 1992)

60. Child bondage is one of the most reprehensible practices of our time. Millions of children continue to work as forced labour in a wide range of sectors, industries or occupations either in payment for the debts of their parents or drawn under false pretexts into work from which they are not allowed to leave.

61. Bonded child labour is part of a wider insidious system of servitude. It is a situation where children are caught up in two systems of exploitation: that of child labour and that of servitude. It is the ultimate stage in the exploitation of child labour. The effective and immediate abolition of child bondage should therefore be a priority goal of a national policy on children.

62. Child bondage is illegal. It violates the Universal Declaration of Human Rights that no one shall be held in slavery or servitude; the ILO Forced Labour Convention (No. 29), 1930, which provides for the suppression of the use of forced or compulsory labour in all its forms; and the ILO Minimum Age Convention (No. 138), 1973, which, among others, prohibits the employment of children in hazardous work and employment. It is also a violation of the United Nations Convention on the Rights of the Child, 1989, which requires countries: (a) to provide for the protection of the child from economic exploitation and from performing any work that is likely to be hazardous to or interfere with the child's education, health or physical, mental, spiritual, moral or social development; (b) to take all measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form; and (c) to protect the child against all forms of exploitation prejudicial to any aspect of the child's welfare.

63. Legislation prohibiting bonded labour exists in some countries but in others it is inadequate or virtually non-existent. Enforcement is generally weak, and official programmes of action to protect or rescue children from bondage are far too few or just emerging.

64. Child bondage persists because of illiteracy, poverty, traditional beliefs, values, customs and attitudes. But it is also sustained by the absence of political will, public apathy, and resistance from powerful vested interests.

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* See document A/CONF.157/ASRM/4.

65. But who are these children? Given their invisibility and the admittedly limited attention paid to them, we can only draw a rough silhouette of who they are. In general this group includes: children born of generations of slaves; children born of bonded parents or directly bonded by their parents; children working as forced labour; abducted children; "beggars", i.e. children forced to work without payment; and children who are directly sold.

66. These children in bondage are found in several countries of the Asian region. They often are victims of social malpractices which affect larger groups and segments of the population, especially their parents. They are found in a variety of sectors and industries, especially in agriculture, carpet-weaving, brick-kilns, stone quarrying, and construction.

67. Sometimes bonded or forced to work alone, separated from their families, they are by far the most vulnerable of all workers. They are "recruited" for work in plantations. They are kidnapped from their families, or forcibly confined in sweatshops or in brothels. They are exported as prostitutes or as camel riders. Further still, they may be deliberately maimed and forced into beggary or similar rackets run by criminal gangs. They are certainly the most lonely and tragic workers of the world.

68. The problem of bondage is not a random social occurrence. Girls may be the primary victims in some situations, and boys in others. A common denominator, however, in all cases is that the problem of bondage is almost exclusively confined to the illiterate, the very poor, and the socially disadvantaged groups.

69. If illiteracy, poverty and social structures are the cause, they are also the major obstacles to action against bondage. If, therefore, the struggle against child bondage, and bonded labour in general, is to be won, it has to be fought at several levels and by several means. It must encompass prevention, prohibition and rehabilitation. There must be a firm political commitment - a clear and unambiguous declaration against bondage - and a comprehensive national policy and programme of action covering legislative reforms, effective enforcement systems, and a system of compulsory and free education. These policy commitments and interventions, which can help unblock the structural bottle-necks impeding progress, must also be complemented by a vigorous media campaign aimed at changing social attitudes and values and at engaging the public in the larger cause of freedom and respect of human rights. The problem hitherto hidden must be exposed in its total ugliness and reality. Studies must be carried out and publicity campaigns launched.

70. Governments are not alone in their struggle against bondage. They have and can make alliances. They should link up with and try to involve human rights groups, non-governmental organizations, the judiciary, lawyers, employers' and workers' organizations, religious leaders and teachers both as an agent of change and as a vehicle for monitoring and facilitating effective enforcement.

71. The problem of child bondage is very serious in many parts of the region but there are promising signs of a new beginning. The last few years have witnessed a remarkable awakening of public concern and governmental commitment. The task now is two-fold: to ensure that the momentum generated

in the last few years is sustained, and that the commitment expressed by Governments to put children first is translated into a new era of education and freedom for all children.

72. The issue of child bondage should be approached through two different, but mutually reinforcing, avenues of action: the establishment and enforcement of effective laws; and the initiation of practical programmes for the prevention, prohibition, and rehabilitation of bonded child labourers.

73. The most direct approach to the problem of child bondage is the adoption of legislation. National legislation reflects public commitment to abolish child bondage, placing the authority of the State behind the protection of children.

74. Under Article 25 of the ILO Forced Labour Convention (No. 29), 1930, "the illegal exaction of forced or compulsory labour shall be punishable as a penal offence, and it shall be an obligation on any Member ratifying the Convention to ensure that the penalties imposed by law are really adequate and are strictly enforced". Most countries in the world have incorporated the principle of the prohibition of forced labour into their Constitution or labour legislation. However, within the Asian region, only India and Pakistan have adopted specific legislation outlawing bonded labour, in 1976 and 1992, respectively. Legislation in other countries relates to slavery or child labour, rather than to the prohibition of bonded labour as such.

75. Legislation is essential for waging an effective campaign. The establishment of a comprehensive and transparent legal framework would constitute a key weapon in the struggle against bondage. An important first task therefore in all countries is a review of existing legislation. This may call for strengthening current provisions contained in various laws or their consolidation into a single comprehensive legislation. In all cases, however, national legislation must: specify what is bonded child labour; prohibit bondage in all its forms; stipulate appropriate sanctions; provide for liquidation of debts and other obligations; specify authority and responsibility for monitoring and enforcement; include enabling provisions for the establishment of special courts and for the expeditious disposal of cases ("justice delayed is justice denied"); and provide for the establishment of rehabilitation schemes.

76. Enforcement is a major problem in almost all the countries of the Asian region. There are several reasons: the informality and invisibility of bonded labour and the difficulty of reaching children in bondage; the long delay between identification, prosecution and release; the inadequacy of financial resources for inspection and enforcement, and the lack of coordination among concerned agencies; the lack of cooperation from employers and, in some cases, the bonded child workers and parents themselves who, because the practice is illegal, may collaborate in concealing the problem; and the prevalence of public apathy.

77. The range of problems in enforcement is quite vast, and their solution requires a comprehensive approach. It calls for a coherent inspection policy, including modifying the organization of inspection services, training of inspectors in new methods of work, and providing inspectorates with the

resources they need. But it also requires a legal machinery and judiciary which can facilitate identification, prosecution, release and rehabilitation.

78. Specifically, a comprehensive national programme aimed at effective enforcement will include the following components: establishment of a mechanism - a national authority or task force - especially mandated to promote, facilitate and ensure effective enforcement; strengthening the judiciary; imposition of penalties to deter violation of national law; adverse publicity of convicted violators; provision of free legal aid; conducting an aggressive public awareness campaign; extensive training and information dissemination activities such as seminars, workshops and conferences for all concerned groups including the judiciary, religious groups, and parliamentarians; and provision of rehabilitation and counselling services.

79. Inspection and enforcement can succeed only if they are accompanied by an information campaign aimed at mobilizing the support of all groups. Employers' organizations can play a key role by educating their members and establishing a code of good employment practices. Workers' organizations too can assist in identifying abusive work situations and employment relationships.

80. Education is a basic need and a basic right of all children. Education is essential in preventing and restricting child bondage and in rehabilitating released bonded child workers. Where education is compulsory, and where attendance and enrolment are effectively enforced, children are no longer available for work, at least during school hours, and child labour can thereby be effectively eliminated or restricted. Moreover, it is largely through the education system that children are given opportunities to develop skills and attitudes which will enable them to participate in productive and remunerative work.

81. Indeed, the principle of free and compulsory education is recognized in all the countries of the Asian region but is seldom respected in practice. The reasons are fairly well known. They include: inadequate provision of schooling and related facilities; the very low priority given to education in the national budget; and the economic compulsions which force parents to send their children to work rather than to school, as well as the immediate attraction provided by the availability of income-earning opportunities for their children.

82. These obstacles can be overcome, and they have been overcome even by very poor countries. Once again, however, it requires a reaffirmation at the highest level of the principle enunciated in the Universal Declaration of Human Rights and the Convention on the Rights of the Child, namely, the principle of compulsory and free education for all children irrespective of their historical origin, economic status and sex. Indeed, there is no other option if the enormous problem of child labour and the even more unacceptable practice of bonded child labour are to be effectively tackled.

83. The implication therefore is clear: government must put education high on its agenda. It must provide the schools required. It must also make them attractive not only in content but also in terms of the services they provide

by way of, for example, school feeding and health services. Once again, this has been done even by very poor countries and there is no reason why it cannot also be successfully implemented by the countries of the Asian region.

84. Such a policy will undoubtedly contribute towards reducing dramatically the incidence of child labour. It also facilitates reaching children who otherwise cannot be reached through conventional labour inspection and enforcement, namely, children in bondage and children in the vast and complex informal sector.

85. Special measures are also needed to address the needs of freed and released bonded children. Unless appropriate measures are taken, released children are likely to return to bondage. Rehabilitative measures or programmes should therefore be a critical component of a national programme of action against child bondage. Unfortunately, however, such programmes are either non-existent or just emerging. The only exception in this respect is India which has considerable experience in the design and implementation of such programmes, and this experience should be studied as it could provide some lessons for other countries facing similar problems.

86. Bondage is traumatic; freedom, devoid of support, is perhaps no less so. Therefore, rehabilitation programmes should aim at addressing the psychological, physical and economic needs of released bonded children. They could include counselling, transit and shelter facilities, non-formal education and vocational training, financial support, and protected work opportunities. In all these cases, workers' and employers' organizations and non-governmental organizations can play a supportive and catalytic role.

87. Child bondage is the result and indeed a mirror of political, economic and social forces and historical developments. Even with the best of intentions and good will, the daunting task of eradicating child labour and bonded child labour cannot be left to technical solutions or administrative fiat. The State is powerful and has considerable potential to effect and influence change. But it can succeed only if it is backed by the support of those sectors of society committed to the welfare of the child and respect for the dignity of the human person. Everyone has a stake in the establishment of a humane social order. A strategy of community mobilization and public awareness can contribute significantly towards solidarity against bonded child labour.

88. A community mobilization strategy should address at least three important questions: What should be the message? Who should be the target groups? How could the target groups be reached?

89. A public mobilization strategy against child bondage should have a clear and direct message. It should, among other things, stress: that child bondage is reprehensible and unacceptable and a violation of basic human rights; that society has the obligation to bring about the immediate abolition of child bondage and, ultimately, the effective elimination of child labour; that society has the moral duty and obligation to recognize, promote and protect the rights of children, including the right to education and to grow up in conditions of freedom; that all human beings, irrespective of their

economic, social and political status, are equal; and that no one shall be discriminated against and prevented from enjoying available benefits and opportunities on the grounds of sex or social origin.

90. Given the fact that the welfare of children should be the concern of all, a strategy of public mobilization should try to reach all sections of society. Priority, however, should be given to employers, parents, government officials including the judiciary and parliamentarians, political and religious leaders, workers' organizations and the media.

91. In so doing, an important step is to carry out investigative studies so as to make visible the many hidden faces of child labour and to expose the exploitative nature of bondage. The media - both electronic and print - can be a powerful ally. Training activities geared to the needs of specific groups, such as teachers, employers and other powerful groups, should be conducted.

World Conference on the Establishment of an International Criminal Tribunal to Enforce International Criminal Law and Human Rights
(Siracusa, Italy, 2-5 December 1992)

92. Nearly half a century after the establishment and work of the first International Criminal Tribunal, specialists in international criminal justice, government officials, and parliamentarians, coming from all continents, assembled at ISISC, at Siracusa, Italy (2-5 December 1992). The purpose of the meeting was to take stock of developments in international criminal justice, to assess its failures, and to note the persistent, but slow progress toward the establishment of an international criminal justice system, noting particularly the recent progress of the International Law Commission toward formulating the statute for an international criminal court and drafting an international criminal code of crimes against the peace and security of mankind. However, it had become all too obvious that advances by the academic community had far outstripped the drafting efforts of intergovernmental bodies, and the capacity of those bodies to benefit from scholarly progress.

93. The point had been reached at which academic advances should and could be put to profitable use at the intergovernmental level. Once regarded as esoteric academic exercises, these advances are now at the disposal of the world community which has become keenly aware of massive and widespread crimes against the peace and security of mankind on nearly all continents. This international criminality increasingly challenges the international community to set up an international system of criminal justice so as to prevent further international crimes and to bring to justice those responsible. Not since 1945 has there been such a massive, worldwide public call for international criminal justice. Not since then has there been such an opportunity for the world community to institutionalize an effective system of international criminal justice.

94. Several participants emphasized the causes of past failures and, thus, the potential obstacles in the path toward achieving universal criminal justice, and all participants fully shared the concerns of these colleagues.

Among these obstacles were: continuing conflict among national interests; the changes inherent in the establishment of yet another international bureaucracy with possibly minimum benefits to the world community; the reluctance of States to yield any part of their sovereignty; chauvinism in regarding one's own national laws as superior; the difficulty in agreeing on the subject-matter jurisdiction of an international tribunal; concerns about the selection of an international judiciary; the conflict of an international system of criminal justice with national jurisdictions; the remoteness of an international criminal justice system from the peoples of the world; the difficulty of agreeing on a general part; the difficulty of agreeing on procedural rules; the role which individual States should play in the international criminal justice process; the problem of invoking (initiating) the international criminal justice process; the cost to the international community; and the lack of enforcement power of an international criminal tribunal.

95. Participants recognized that, in the minds of some policy makers, the legacy of past obstacles still lingers. But they noted that some of these problems had been resolved, some were non-existent to begin with and others could be overcome if the political will to impose international criminal justice could be mustered. Thus, by way of examples, the cost issue is insignificant if the administrative apparatus of the International Court of Justice could be extended to service the international court of criminal justice. As to differences in legal systems, the Nuremburg tribunal had little difficulty in accommodating principles of common law and civil law. As regards the selection of a judiciary, in the case of the International Court of Justice, such problems had long been overcome (but the system could be improved). Solutions to many of the procedural issues had been proposed long ago in the draft statute of an international criminal tribunal and other documents.

96. It was agreed that the current obstacles were of a rather different sort, legal and technical issues not being insurmountable. Foremost among current problems is that of the political will.

97. Both parliamentarians and academics were encouraged by the new political support which an international criminal court has attracted from many governments over the past few years, and the recent call in the United Nations for stronger action toward its establishment. Notwithstanding the legal complexities and the difficulties ahead, the question of a court was essentially political. Progress depends upon the political will of governments.

98. The key to success will lie in intensifying the dialogue amongst academics, parliamentarians, government officials and diplomats, relying heavily on the support of the mass media. Politicians will respond to public awareness and pressure, calling upon their governments to act. In the past, academics had talked to academics. This conference afforded one of the first opportunities for academics to share their views with parliamentarians.

99. The interest of the public in international criminal justice has been aroused by widespread abuses in the former Yugoslavia, Somalia, Cambodia, Liberia and elsewhere, even though in some countries media attention is

limited. It is necessary, therefore, to increase public awareness of current abuses and the potential role of international criminal justice to provide remedial action. It was noted that no country is in fundamental opposition to the establishment of a system of international criminal justice. Sceptical governments will be moved to intensify their efforts only when the call for international justice becomes strong and international criminal justice had been given a chance to prove its objectivity and effectiveness.

100. The participants noted with great satisfaction the progress made by the International Law Commission during the past three years, commenting favourably on the report of the Commission to the forty-seventh session of the General Assembly. Indeed, this progress is highly encouraging, given the fact that the Commission's efforts during the preceding four decades had been persistently doomed to ineffectiveness for political reasons. The participants encourage the Commission to continue their work and to redouble their efforts, in the hope that the work on the creation of the international criminal court and the code can be completed swiftly. There remains the danger that failure to make progress on either the court or the code might affect progress on the other. The assembly therefore strongly endorses the trend to separate these issues, without detriment to progress on either.

101. There have been three traditional views on the initial jurisdiction of an international criminal court: (a) Jurisdiction over all international crimes; (b) Jurisdiction over the most serious international crimes (aggression, war crimes, genocide, etc.); (c) Jurisdiction over some specified international crimes, such as terrorism and international drug trafficking. In the case of (b) and (c), it is the general view that jurisdiction should gradually be increased to cover additional international crimes. But there continues to be a difference of views as to whether to adopt option (b) or option (c). It may be necessary and possible to negotiate a pragmatic compromise on the question of initial jurisdiction. There are advantages and disadvantages to both approaches (b) and (c), it being generally agreed that the wholesale international approach (a) might tax a fledgling international criminal court.

102. It was agreed that the international criminal court should have universal jurisdiction, but not exclusive jurisdiction. Any country with territorial (or other internationally recognized) jurisdiction could, under the most recent conventions, institute its own proceedings, extradite the defendants to a requesting country with jurisdiction, or to the international criminal court. Under these circumstances, the question of consent does not arise. It was left open whether the international criminal court should have original and exclusive jurisdiction with respect to the most serious international crimes (crimes punishable directly under international law).

103. The international criminal court should apply international law and fashion its own rules of procedure consistent with its statute, with international law and with United Nations standards, norms and guidelines in criminal justice and human rights. There was a preference for the court's applying a truly international law in interpreting the definitions outlined in the conventions and in codifying the general part, until such time as these may be elaborated by convention. To that extent the court, in fashioning its law, may have to rely on propositions of relevant national laws.

104. There are a variety of transnational crimes which could be likened to crimes under international law. It may be feasible to invest an international criminal court with jurisdiction over such crimes on the application of countries with jurisdiction. Such crimes may include transnational economic crimes, environmental crimes, the selling of children for organ transplants, and others.

105. It was agreed that the jurisdiction of the court could be invoked by any State with jurisdiction, and it was furthermore suggested that international agencies, especially the Security Council, could likewise invoke this jurisdiction.

Services of an international criminal court

106. It was agreed that an international criminal court needs the personnel for the investigation (police), accusation and prosecution of international crimes. It also needs an appellate division, in accordance with international law.

107. An international criminal court must be invested with enforcement power, to be exercised or supervised especially by the Security Council.

108. There was general agreement that an international criminal court needs a correctional system for the execution of sentences which cannot be executed in the home State of a defendant.

109. It was suggested that the court might be invested with a mechanism to seek conflict resolution and conciliation, or even an ombudsman-type process for the avoidance of impending conflict.

110. It was recommended that international criminal justice could be achieved by the establishment of: (a) regional chambers of the international criminal court; or (b) separate regional international criminal courts to be established by regional intergovernmental organizations. In the case of (a), decisions could then be referred on appeal to the international criminal court, particularly so as to achieve uniformity of law. It was also suggested that the regional tribunals should exercise jurisdiction over all but the most severe international crimes (crimes punishable directly under international law), over which the international criminal court should have jurisdiction.

111. It was also suggested that the judges of the international criminal court could sit on assignment at the various regional chambers, as the need arises. Under no circumstances should support for regional criminal courts or chambers detract from the primary emphasis of achieving the establishment of an international criminal court.

112. The proposal was made that States should be able to accede to the jurisdiction of the international criminal court as to only some crimes, but not as to others. There was considerable concern about this proposed approach which could lead to an uncontrollable disregard of recognized crimes which, to begin with, are universal. The idea was rejected.

113. To avoid any semblance of discriminatorily selective enforcement, individuals from all countries, rich and poor, strong and weak, shall be subject to the jurisdiction of the international criminal court, even though, in some cases, it may only be possible to indict a defendant without the possibility of trying him or her. Any notion of "victor's justice" should be avoided.

114. It was agreed that States party may wish to constitute a standing committee to deal with purely financial and administrative aspects.

115. Regret was expressed about the failure of Members States of the United Nations to constitute, through the Security Council, an international ad hoc criminal tribunal to deal with the question of the Iraqi aggression against Kuwait. The hope was expressed that this mistake would not be repeated in the case of the alleged war crimes in Croatia, and Bosnia and Herzegovina. Unless criminals under international law can foresee that they will be held accountable under international criminal law, they are not likely to desist from offending, nor would other potential offenders. Consequently, it is deemed necessary that an international ad hoc criminal tribunal should be constituted as soon as possible, under either of two auspices, as hereinafter described.

116. The Security Council has already established a Commission of Inquiry into violations of the Geneva Conventions and other international crimes reported to have been committed in the former Yugoslavia. The Security Council has appointed five experts to constitute the Commission, which has assumed its task. However, note was taken of the fact that the Commission would need far greater resources to achieve its tasks expeditiously. Concern was expressed that under these circumstances the Commission might not be able to accomplish its task within a reasonable time. Even if the Commission is able to complete its assignment and produce evidence that war crimes have been committed, an ad hoc tribunal for the trial of persons charged would have to be established. The assembly wishes to urge that the Security Council take all necessary steps in order to accomplish international justice in the case of war crimes and crimes against humanity committed in the former Yugoslavia.

117. Fearing that the United Nations may be unable rapidly to take the steps suggested above, the assembly urges the Conference on Security and Cooperation in Europe to follow-up on the appointment of its own commission of inquiry by establishing, in the shortest possible time, an ad hoc system for the judicial determination and disposition of alleged international crimes in the former Yugoslavia by creating an expert body to investigate all relevant facts, providing for electronic access to all evidence (assembled facts) for the purpose of submitting them to a prosecuting organ (to be established) and an accusation chamber which would prepare the case to be put before an ad hoc tribunal for trial, with the possibility of appeal to an appellate tribunal.

118. As to either of the above two possible ad hoc tribunals, if their efforts turn out to be successful, the constituting body may wish to consider keeping them in place for possible conversion into permanent international criminal courts.

119. The assembly wishes to emphasize that what once was vision has now become a necessity. These recommendations are made with the sober realization that just a few hundred kilometres from here, international criminal law, and the human rights of millions, are being violated constantly, systematically, and without fear of consequences on the part of the offenders. The time to act is now. We appeal to the conscience of all those whose political will is necessary for achieving international criminal justice now and for all the future.

(Siracusa Conference)

"La Nuestra": Analysis and Strategies for Women's Human Rights
(San José, 3-5 December 1992)

120. The women assembled here recommend and request that:

(a) Our needs and demands as women should be reflected in the existing instruments and mechanisms for the protection and promotion of human rights, since these needs and demands have gone unnoticed due to the fact that their denial is not regarded as a violation of human rights. Consequently, it is necessary to evaluate the forums and machinery for the protection and promotion of rights, in order to ensure that the rights of women are incorporated in human rights and thereby to guarantee access by women to these mechanisms;

(b) The World Conference on Human Rights should guarantee the full participation of non-governmental organizations that work with women and the implementation of effective formal machinery to foster exchanges between the NGOs and the representatives at the fourth Preparatory Meeting and at the United Nations World Conference on Human Rights;

(c) Each country should incorporate the gender perspective in all its reports and analyses on the status of human rights which it prepares for the World Conference;

(d) Consideration of all items on the agenda for the World Conference should include the need to recognize and to increase the exercise of the human rights of women;

(e) The United Nations should adopt measures to guarantee that all the mechanisms whose objective is the protection of human rights take into account the human rights of women, including specific gender abuses in its investigations, findings, training and reports;

(f) The United Nations should authorize a female or male thematic rapporteur, with experience in the gender perspective, to investigate, report and reply effectively to allegations concerning gender discrimination and gender violence;

(g) The United Nations should promote the ratification of the Convention on the Elimination of All Forms of Discrimination against Women by those countries which have not yet ratified it, and recommend machinery in

order to examine and remove the reservations to the Convention as obstacles to its effective implementation as well as in order to guarantee the effective implementation of the Convention at the State level;

(h) The United Nations should consider the need for an optional protocol, which would allow women and NGOs to submit individual complaints on the implementation of the Convention, to the Committee on the Elimination of Discrimination against Women;

(i) The United Nations should assure the equal representation of women in all the mechanisms which investigate and implement human rights; and until women occupy 30 per cent of posts, countries should undertake to designate only women when there are vacancies;

(j) The United Nations should recognize the responsibility of each State to implement these mechanisms for achieving equality at the national and local levels;

(k) In the mechanisms envisaged in the humanitarian law instruments, the United Nations should consider the specific impact of gender with regard to recommendations and that measures should be adopted that take into account the special vulnerability of women in situations of armed or ethnic conflict;

(l) The status of "female refugee" and "political asylum" should include the category of persecution on the basis of gender as a criterion for the granting of that status;

(m) The United Nations should adopt mechanisms in order to provide gender perspective training to all persons who work for the United Nations or who collaborate as independent experts so that in their work they draw attention to specific violations against women, encourage the implementation of mandates in a non-sexist form and adopt measures to evaluate the effectiveness of the mechanisms that are being promoted;

(n) The United Nations should extend the exceptions to the requirement of exhaustion of internal remedies, taking into account that this mechanism often becomes an obstacle to women submitting their cases to international forums;

(o) The United Nations should declare that violence against women (in all public and private spheres) is a violation of human rights;

(p) The United Nations should rapidly adopt the Draft Declaration on Violence against Women, that it should initiate consideration of a convention to punish, prevent and eliminate violence against women, which would recognize the right of women to live free from violence and the responsibilities of States to prevent and punish gender violence committed by private individuals as well as by State officials and would contain effective mechanisms for implementing these rights and responsibilities at the international level;

(q) Once appropriate and effective mechanisms for the elimination of any violence against women have been established, work should begin on preparing a convention which will be submitted for approval by the United Nations at the Conference on Women, China 1995;

(r) Measures should be defined in order to eliminate and punish violence against women as a prerequisite for a sustainable peace in the processes, agreements and platforms for political solutions negotiated among opposing parties in the quest for peace;

(s) The specialized agencies (UNESCO, ILO, UNHCR, WHO, etc.) and substantive programmes (such as UNDP) whose work has an impact on the realization of human rights should include a gender perspective in all their work; and they should extend the participation of women from the rank and file and the NGOs that work with women in formulating and implementing their research activities.

(t) Exchange mechanisms should be developed among these agencies and the organizations specifically responsible for the implementation of human rights;

(u) The Special Rapporteur on the realization of economic, social and cultural rights should be requested to make a detailed summary of existing studies on the impact of neo-liberal policies on the status of women;

(v) Consideration should be given to an optional protocol to the International Covenant on Economic, Social and Cultural Rights to allow complaints and investigations to be made of violations of those rights;

(w) Mechanisms should be set up to allow investigations, reports and complaints to be made about the policies of international institutions like the World Bank and the International Monetary Fund;

(x) The United Nations should punish internationally-genetic manipulation as a new form of colonialism and domination;

(y) In the International Year for the World’s Indigenous People, the United Nations should take steps:

(i) to integrate the experience and knowledge of the indigenous peoples in developing a sustainable life in harmony with the survival and reproduction of nature;

(ii) to ensure that indigenous peoples have their own voice in the United Nations;

(iii) to ensure recognition of the special rights of indigenous women as stated by them in a variety of statements and petitions;

(z) The United Nations should define clear policies with prescribed time-limits for the total demilitarization of the air and land as a means for the protection and survival of humanity and the planet; similarly, it should encourage progress in the quest for negotiated political solutions of existing armed conflicts;

(aa) The United Nations should recognize the contribution made by women throughout history to environmental conservation, and their knowledge of these processes and of decision-taking, which has been repeatedly disregarded;

(bb) The United Nations should redefine sustainable development policies by incorporating the concept of sustainable life;

(cc) The United Nations should ban the importation, marketing and interchange of toxic and nuclear wastes, as well as of contaminated products and foodstuffs;

(dd) The United Nations should ban the marketing and trade in native species of flora and fauna, which are threatened with extinction or are in danger, as well as the importation of alien species which may undermine our ecosystems and replace their genetic stock;

(ee) States should develop machinery in order to inform the World Conference on Women, China, 1995, of the matters approved and sponsored by the World Conference on Human Rights;

(ff) States should define clear policies with prescribed time-limits for the total demilitarization of the air and land as a means for the protection and survival of humanity and the planet. Similarly, progress should be made in the quest for negotiated political solutions of existing armed conflicts;

(gg) In their reports, States should inform the Commission on the Status of Women of the United Nations Economic and Social Council of the levels of participation of women in decision-making posts or areas;

(hh) States should promote and guarantee the recognition and incorporation, in conditions of equality, of women in all fields of employment;

(ii) In their policies aiming at the protection, promotion and defence of the domestic environment, States should distinguish between those that benefit the family and those that benefit women;

(jj) States should legislate to ensure that not less than 40 per cent and not more than 60 per cent of administrative posts in social and public entities are filled by each gender;

(kk) States should recognize that work in the domestic reproductive sphere forms part of the national wealth and should be included in the Gross National Product;

(ll) States should sponsor the organizational development of women;

(mm) States should assume the acquired obligations of guaranteeing basic health care services, free education, sources of employment, housing and environmental conservation, targeting the entire population and respecting the principle of non-discrimination on the grounds of race, ethnic group, sex, sexual preferences, disabilities, civil status and nationality;

(nn) States should formulate and implement programmes for the protection and promotion of women in all areas of economic, political and social life, including equal opportunity programmes and/or the adoption of positive action measures in those areas in which such action is imperative;

(oo) States should create the material, economic and social conditions for active participation by women in decision-taking and in working out policies that contribute to the development of a sustainable life for humanity and the conservation of nature;

(pp) States should recognize the contribution of women in the campaign for environmental protection by generating conditions conducive to incorporating grass-roots organizations in plans, policies and programmes for the development of sustainable life;

(qq) States should recognize the right of women to hold title deeds to their land and to be eligible for credit;

(rr) States should adapt existing legislation and promulgate new laws to regulate the use of natural resources and the preservation of bio-diversity as part of the heritage of peoples, as established in the International Covenants on Economic, Social and Cultural Rights and on Civil and Political Rights. The regulatory mechanisms should consider the creation of bodies in which civil society plays a role;

(ss) States should ban the importation, marketing and interchange of toxic and nuclear wastes, as well as of contaminated products and foodstuffs;

(tt) States should recognize the contribution made by women throughout history to environmental conservation and their knowledge of these processes, which has been disregarded;

(uu) States should define policies of sustainable development incorporating the concept of sustainable life;

(vv) States should ban the marketing and trade in native species of flora and fauna which are threatened with extinction or are in danger, as well as the importation of alien species which may undermine our ecosystems and replace their genetic stock;

(ww) States should guarantee the right of indigenous populations to preserve their culture and their land as a fundamental part of their vision of the cosmos and to make use of the knowledge and experience of indigenous peoples in respect of living in harmony with the survival and reproduction of nature.

Objective 2: "To examine the relation between development and the enjoyment by everyone of economic, social and cultural rights as well as civil and political rights recognizing the importance of creating the conditions whereby everyone may enjoy these rights as set out in the International Covenants on Human Rights" (resolution 45/155, para. 1 (b))

(Conference on Regional Systems of Human Rights Protection in Africa, America and Europe)
(Strasbourg, France, 15-19 June 1992)

121. Africa was confronted with a titanic fight for democracy, human rights and development. The improvement of the socio-economic condition of the people, i.e. development, was considered of crucial importance for human rights and sustained democracy which should also be social democracy. In addition, the control of the military was crucial. The needs of identity of ethnic groups had to be brought in line with the general interest.

122. The interrelatedness of democracy, human rights and the rule of law was emphasized and the linkage to development cooperation by donors generally welcomed. Besides minimum conditions, like a written constitution, representative parliament, separation of powers, independence of the judiciary and freedom of the press, the concept of democracy had to include participation beyond casting votes or establishing multi-party systems. Although the underlying idea of democratic society was fundamental to the human rights system, there could be no direct equation between democracy and human rights. Elections do not make democracy, however, the promotion of human rights did also mean the promotion of democracy.

123. A culture of democracy and human rights also needed a strengthening of civil society. There was a need for a redefinition of the role of non-governmental organizations, i.e. regarding their relationship to the power in the process of transition towards democracy as well as in cases of political retrogression.

124. Particular problems did exist in the process of transition towards and consolidation of democracy, which had to be addressed by positive measures of international cooperation. Poverty was the biggest threat to democracy. Major obstacles were also foreign debt and structural adjustment programmes (SAP) conditions. This was also recognized and addressed by the European Community and its new development policy.

Fifth Human Rights Conference of the International Academy for Development in Freedom*
(Sintra, Portugal, 14-25 June 1993)

125. The end of the Cold War gives us the first opportunity this century to depoliticize the implementation of human rights norms in their entirety, as set forth in the International Bill of Human Rights. Much progress has been made in the evolution of standards and mechanisms on many aspects of the protection of civil and political rights; there remains, however, a need for the effective implementation of these standards. Of equal importance is the further elaboration of these standards and the development of mechanisms for the more effective implementation of economic, social and cultural rights. There is today, furthermore, an urgent need to reassert and reinforce the indivisibility of all human rights in practice.

126. There is a close interrelationship between human rights, democracy and development. Particularly in this period of transition, the responsible management of change requires the active participation of all concerned in the democratic life and the full observance of all human rights. Free and fair elections are one component of the democratic process but, in addition, this process must lead to the regular functioning of institutions which will oversee the provision and implementation of the full range of civil, political, economic, social and cultural rights. The democratic process should furthermore provide means to secure its own sustainability. Emergency measures should only be invoked in conformity with international standards and subject to international scrutiny.

127. There is a need to find ways to render operational the formulation of the right to development as expressed in the 1986 United Nations Declaration on the Right to Development in order to ensure that the human being remains at the centre of the integral process of development, encompassing civil, political, economic, social and cultural rights. To that end, effective action is needed on the part of all those involved in the process, particularly international financial institutions.

128. The recent recognition of new human rights, such as the right to development and the right to a healthy environment, is part of a continuing evolution of international human rights standards. Such new rights should be elaborated so as to enrich existing fundamental rights and not to restrict them.

129. The observance of human rights is essential to the United Nations objectives of the creation and maintenance of peace and equal rights. The United Nations human rights programme should accordingly be given the material and financial resources commensurate with its role.

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* See document A/CONF.157/LACRM/8.

130. In order to strengthen the human rights mandate of the United Nations, it is recommended that the post of Special Commissioner on Human Rights be established as a new high-level political authority to bring great effectiveness, coherence and coordination into the field of international human rights promotion and protection.

131. New problem areas in the field of human rights should promptly be addressed. These include:

(a) the affirmation of the rights of minorities and indigenous peoples to preserve their identity and enjoy equality of rights with the majority population;

(b) the provision of means of protection for internally displaced persons and victims of internal armed conflicts not covered by international humanitarian law;

(c) the provision of effective implementation of existing norms and better protection for children, women and other particularly vulnerable groups such as migrant workers, the elderly, HIV or AIDS infected persons, the extremely poor, refugees, displaced persons and the disabled, among others.

132. Further progress is dependent upon continued efforts on the part of United Nations Member States and non-governmental actors in the field of education for the further promotion of human rights at all levels. In order to encourage respect for human rights in States, democracy at the national level should be parallelled at the international level, starting with the United Nations system and with particular attention to the international financial institutions. Further progress is also dependent upon the recognition of the accountability and accessibility of the United Nations system to non-governmental organizations (Sintra Conference).

Expert Seminar on Appropriate Indicators to Measure the Realization of Economic, Social and Cultural Rights
(Geneva, Switzerland, 25-29 January 1993)

133. This Seminar on Appropriate Indicators to Measure Achievements in the Progressive Realization of Economic, Social and Cultural Rights, convened at the recommendation of the Special Rapporteur on the Realization of Economic, Social and Cultural Rights appointed by the Sub-Commission on Prevention of Discrimination and Protection of Minorities, was held at Geneva in January 1993. The recommendations of the meeting are reproduced below. The full report has been issued as document A/CONF.157/PC/73.

134. The Seminar calls for remedying the continuing neglect of economic, social and cultural rights. It strongly recommends that the United Nations system, including the United Nations specialized agencies, governments, and non-governmental organizations accord the attention and invest the resources necessary to promote the progressive realization of economic, social and cultural rights.

135. The Seminar recommends that priority be given to defining the content and clarifying the obligations related to specific economic, social and cultural rights. Further intellectual development of the rights is necessary to be able to determine the most appropriate way to assess progressive achievement.

136. The Seminar recognizes the key and indispensable role played by NGOs in bringing forward concerns arising from economic, social and cultural rights. It urges that NGOs become even more involved with the conceptual development and monitoring of these rights.

137. There is a need to develop data and information consistent with a human rights approach to enable assessment of the progressive realization of economic, social and cultural rights. The Seminar recommends that greater priority should be given to the collection and interpretation of appropriately disaggregated data from a wide range of sources, including governments, NGOs, academic and research institutions, and in particular from the groups most affected by the non-realization of these rights. Attention should also be given to the preparation of case studies to supplement statistical data.

138. The Seminar recommends that an inventory be developed of statistical data collected by the Statistical Division of the United Nations Secretariat, United Nations specialized agencies, and international financial bodies relevant to assessing the progressive realization of economic, social and cultural rights in specific countries.

139. Utilizing indicators on a scientific basis for purposes of assessing the realization of economic, social and cultural rights will require the development of an appropriate information management system, including computerization, for evaluating a complex series of data on a disaggregated and time series basis. The computerized information system should be designed in such a manner that it provides access to statistical data collected by the United Nations system, including the specialized agencies, stores and cross references States parties' reports to the human rights treaty monitoring bodies, and facilitates the organization and cross-referencing of both statistical data and States parties' reports on a country basis.

140. The Seminar recommends that the question of indicators to evaluate both economic and social development and the achievement of economic, social and cultural rights be considered by the World Conference on Human Rights (1993) and by the Social Summit (1995).

141. The Seminar recommends that ILO, UNICEF, UNESCO, WHO, UNFPA and other United Nations agencies should seek to contribute to the intellectual development of human rights covered by their mandates, including the identification of appropriate indicators. This should be done in close cooperation with any special rapporteurs appointed, the United Nations human rights bodies and relevant NGOs. In particular, specialized agencies should strengthen their cooperation with the Committee on Economic, Social and Cultural Rights.

142. The Seminar recommends that each of the United Nations bodies and specialized agencies consider the role of human rights in guiding their work, in particular by devoting attention to this subject in their annual

conferences or assemblies. It also recommends that the findings should be widely disseminated in order to keep all United Nations bodies and agencies well informed.

143. Steps should be taken to strengthen the partnership between United Nations agencies (including the financial institutions), other international organizations, research institutes, NGOs and others so that they might share resources and work jointly to identify what precisely needs to be measured and the most appropriate methods and techniques for doing so.

144. The Seminar recommends that the Department of Economic and Social Information and Policy Analysis and the Statistical Division of the United Nations Secretariat assist in the provision of statistics and research available at the international level and of expertise in methodology needed to develop improved statistics and indicators.

145. The Seminar noted with interest the publication of the World's Women 1970-1980: Trends and Statistics, prepared by the Statistical Division in collaboration with the United Nations Division for the Advancement of Women, UNICEF, UNFPA and UNIFEM. It recommends that similar publication on other economically and socially disadvantaged groups be prepared by the Statistical Division with the collaboration of appropriate United Nations bodies.

146. The Seminar welcomes the appointment by the Sub-Commission on the Protection of Minorities and the Prevention of Discrimination of the Special Rapporteur on the right to adequate housing. It recommends that the Sub-Commission consider the appointment of additional Special Rapporteurs to study specific rights contained in the Covenant in greater depth, with a view to making recommendations to the Committee on Economic, Social and Cultural Rights on legal obligations under the Covenant, appropriate human rights indicators for monitoring compliance with the Covenant, and information required for their effective monitoring.

147. The Seminar recommends that the Committee on Economic, Social and Cultural Rights review and make use of these studies by special rapporteurs and specialized agencies to continue its work of adopting general comments on each of the rights enumerated in the Covenant and in revising its reporting guidelines to States parties.

148. The Committee on Economic, Social and Cultural Rights should further revise its guidelines in order to request States parties to develop plans with explicit goals for the progressive realization of each right. States parties should be encouraged to develop these plans through participatory processes.

149. The Seminar recommends that the United Nations Centre for Human Rights facilitate the participation of NGOs in the work of the Committee on Economic, Social and Cultural Rights. This should include notifying NGOs with consultative status as to the schedule of country reports and inviting them to submit relevant data.

150. The Seminar further recommends that the United Nations Centre for Human Rights make appropriate staff resources available to the Committee on Economic, Social and Cultural Rights. This should include the compilation and analysis of statistical data within the United Nations system relevant to the assessment of the progressive realization of economic, social and cultural rights for each country under review.

151. The Seminar further recommends that the United Nations Centre for Human Rights make available expert assistance to States through its advisory services programme for purposes of developing mechanisms for monitoring and evaluating economic, social and cultural rights and of formulating appropriate plans for the implementation of economic, social and cultural rights.

152. The Seminar recommends that the United Nations Centre for Human Rights convene a meeting of international financial institutions, United Nations specialized agencies and United Nations bodies, and relevant NGOs to initiate the process of formulating criteria for the elaboration of policies and development project, within a human rights framework.

153. In view of the crucial role that the United Nations Centre for Human Rights is expected to play in the progressive realization of economic, social and cultural rights, it is important that adequate resources be made available to strengthen and professionalize its staff.

154. To achieve the objectives outlined in paragraph 30, particularly to continue to clarify the content of specific rights and the nature of States parties' obligations, as well as to achieve improved coordination within the United Nations system, the Seminar recommends that the United Nations Centre for Human Rights convene an expert seminar or series of seminars, focused on specific economic, social and cultural rights, for representatives of Specialized Agencies, chairpersons of treaty monitoring bodies, and NGOs collecting data relating to economic, social and cultural rights.

155. States should ensure that a serious commitment to human rights is reflected in all policies, allocation of resources, and actions. Commitment to the full realization of economic, social, and cultural rights is as fundamental a human rights principle as respect for equality between women and men, the principle of non-discrimination, individual freedom and autonomy, human dignity and cultural diversity, and democratic participation. Priority should be given to meeting the rights and needs of those people and communities who are socially, economically, politically and ecologically disadvantaged.

156. All States parties to the International Covenant on Economic, Social and Cultural Rights should ensure that documents relating to their national economic, social and cultural policies should restate their commitment to the rights contained in the Covenant, and ensure that the development and implementation of policies and legislation fully reflect their obligations under the Covenant.

157. The Seminar recommends that States parties prepare plans with specific goals on the progressive realization of each right enumerated in the Covenant on Economic, Social and Cultural Rights. In doing so, they should seek the active participation of communities affected by the non-realization of these rights and from NGOs.

158. The Seminar underscores that monitoring and reporting on the progressive realization of economic, social and cultural rights are obligations of States parties to the International Covenant on Economic, Social and Cultural Rights. To be able to fulfil these obligations, States parties should strengthen their data gathering and the statistical and analytical work that is needed to improve monitoring with the assistance of international experts when needed. It is particularly important that States have the capacity to disaggregate data in ways that will facilitate evaluating the status of the most vulnerable and disadvantaged groups and regions.

159. The Seminar urges that States parties facilitate broad participation of NGOs in the preparation of reports to the Committee on Economic, Social and Cultural Rights.

(Geneva Seminar on Appropriate Indicators)

Objective 3: "To examine ways and means to improve the implementation of existing human rights standards and instruments" (resolution 45/155, para. 1 (c))

160. The universal value of human rights, recognized and formally stated in the Universal Declaration of Human Rights of 10 December 1948, has largely been strengthened through international instruments subsequently adopted in this field, by both United Nations and regional organizations, in conventions addressing a whole category of human rights, or one specific human right. The universal nature of human rights which is nothing more than the logical consequence of the unity of the human species, can be seen to be undermined by an over-readiness to accept reservations on the numerous human rights treaties.

161. Proposal:

(a) New human rights treaties must categorically exclude the possibility of making reservations in respect of these treaties;

(b) States which have made reservations should be called upon at once to withdraw them;

(c) International organizations should hold regular meetings with States which have expressed reservations, in order to discuss the possibility of withdrawing such reservations.

162. We must be fully aware of the repercussions of the fact that human rights issues (including, for example, the question of minorities) no longer fall within the scope of States' domestic affairs, as may have been the case in the past, and as defined by Article 2, paragraph 7 of the United Nations Charter. To this end, due attention has to be given to the positions adopted in the CSCE Final Documents of Geneva and Moscow.

163. The unity of human rights throughout the world should be emphasized through the drafting of a World Code on Human Rights incorporating all existing human rights treaties. The same should be done in the case of Regional Codes on Human Rights.

164. The United Nations Security Council, which has found itself obliged to concern itself increasingly with the respect for human rights, should make full use of the means placed at its disposal under Article 39 of the United Nations Charter and be fully aware of the threat which gross violations of human rights pose to international peace and security. The issue of whether the right of veto should be applied in such situations ought to be discussed.

165. The colloquium calls for the ECOSOC stage of the human rights decision-making process to be bypassed, and instead, for the position and role within the United Nations system of the Commission on Human Rights to be strengthened.

166. Every specialized agency, institution and United Nations programme should - if it has not done already - set up a clearly identifiable administrative unit responsible for human rights issues falling within the scope of the institution, agency or programme concerned. Coordinators' meetings ought to be held at appropriate levels within the frame work of the ACC, especially during situations of emergency in the field of human rights, in a particular country or region.

167. The same cause for concern lies behind the proposal to integrate both the universal and the regional branches of the various international human rights institutions, into a coordinated system which would function like a real human rights "keyboard". The task of setting up this type of protection "system", in the spirit of "in service reform", could be entrusted, in the first instance, to a small group of prestigious, independent experts, brought together each year by UNESCO, to provide input, and then to the United Nations Commission on Human Rights, which together with all organizations concerned, would examine the issue of an international protection "system" for human rights and its "reform", as an item on the agenda of each session.

168. To give more scope to individuals and NGOs within international human rights institutions, the right to denounce human rights violations by "any individual or group of individuals or any NGO which has reliable knowledge of such violations being committed", must become more widely available. NGOs should at least have the right to intervene as an "amicus curiae" in pending cases, as is already the case in the European and American institutions for the protection of human rights.

169. International institutions for the protection of human rights must be granted the power to recommend and, where necessary to order interim measures to prevent an irreversible situation from occurring, which, before all else, would jeopardise human rights.

170. Despite the fact that parliamentary assemblies were the first to champion human rights, the role of national and international assemblies in the treaties on human rights is almost non-existent. However parliamentary bodies tend, by their very nature to take their own initiatives on human rights issues.

171. Guidelines for "reform", in terms of the parliamentarization of human rights, should aim to create a specialized commission on human rights within each national and international parliament, responsible not only for drafting national and international legislation in this field (in conjunction with the relevant NGOs), but also empowered to take appropriate action in the face of human rights violations, in other countries.

172. The appointment of a parliamentary ombudsman who would be completely independent of the Executive and of other powers of the State should be encouraged.

173. Henceforth, gross violations of human rights should lead to sanctions being swiftly applied against the true perpetrators. These measures which have been proposed in the light of the sickening events which are taking place at this moment, should allow the swift elaboration of general guidelines, which find their origin in the 1948 Genocide Convention:

(a) The definition of some of the most common international crimes committed against human rights, in terms of crimes against humanity and the crime of genocide;

(b) The widespread acceptance of the principle of universal jurisdiction, for the pursuit and punishment of human rights criminals;

(c) The creation of an International Penal Court, already referred to in 1948, which could, in the first instance, be competent as a court of appeal, and in cases where a national court is not seized.

174. In the interim, provisional measures must be taken to ensure that when gross violations of human rights are brought to the attention of the international bodies of inquiry, the perpetrators may be quickly pursued and punished in accordance with the national law of the country in which the crime was committed.

175. Every effort must be taken to ensure that the same human rights issues are not dealt with in several human rights treaties, in identical, or almost identical terms, as has happened in the case of torture, which is the subject of three specific conventions, (United Nations, Council of Europe and OAS), not to mention the provisions on torture contained in general conventions on human rights. It would be beneficial, when a human rights issue of global significance is not being investigated internationally but is being discussed at regional level, for a regional treaty to be given a universal dimension so

that eventually, through "delegation", it will become an international treaty open to signature by all Member States of the international community. This idea should first be put into practice in relation to the Council of Europe's Convention on Bioethics, since the principles discussed during its preparation faithfully reflect international concerns.

176. Participants expressed great interest in the draft legislation on organ transplants, which was presented at the Colloquium.

177. It should always be remembered that the most prominent international institution for the protection of human right is and will probably always be the national judge. It is his job to redress situations in which human rights have been violated, by identifying the victim, paying him compensation and punishing the perpetrator where required. International protection of human rights, will therefore, always remain a second source of protection, though sometimes a more effective one than that offered by the national courts, because if its complete independence (if this is indeed the case), from the acts performed by a repressive, dictatorial State, or one which abuses its role.

178. However, in order for this process to be highly effective, the national judge must have at his disposal specific human rights legislation, which is directly applicable, and which is, indeed, applied. The principle of equality between States should lead, in this instance, to the direct application by the national judge of international human rights law within the national legal order.

179. The reform should therefore establish the compulsory requirement of direct application of new human rights treaties at national level and insist that States which have not incorporated other human rights treaties into their national law, should do so.

180. With the same aim of associating national human rights institutions with their international counterparts, when gross violations of human rights are detected, national parliamentary ombudsmen should have the right, to bring a case before international human rights institutions, where they see fit. This is especially important with regard to international implementation mechanisms for conventions protecting minorities or directly related issues, such as the use of minority languages.

181. Recognizing that women are largely underepresented in international and regional institutions for the protection of human rights and that women have yet to achieve full enjoyment of their civil, political, economic and social rights, the Colloquium:

(a) Reaffirms the fundamental nature of the principles of non-discrimination and equality between the sexes;

(b) Calls upon all international institutions concerned with the protection of human rights to undertake as a matter of urgency all necessary measures to promote full respect for the human rights of women; and

(c) Calls for increase participation of women in all international human rights institutions, including the 1993 World Conference on Human Rights.

182. In order to increase the effectiveness of international protection of human rights the Colloquium calls for:

(a) States to become Contracting Parties to the various treaties on human rights and to recognize the optional clauses, especially in the General Conventions on human rights.

(b) The various institutions to be allocated adequate financial resources and human capital to enable them to fulfil their obligations effectively, especially with regard to the procedure for examining complaints about violation of human rights and with regard to their role in providing aid and assistance, as is the case of the High Commissioner for Refugees. (La Laguna Declaration).

Objective 4: "To evaluate the effectiveness of the methods and mechanisms used by the United Nations in the field of human rights" (resolution 45/155, para. 1 (d))

183. The universal value of human rights presupposes that the international community shall draw up human rights norms embracing the universal values which have gained recognition from the whole of mankind. In addition to the right to development and the right to a healthy environment, the right of every individual to humanitarian assistance should also be included, the need for which is increasing daily, in the light of the tragic situations which exist in both Africa and Europe.

184. Proposal: The right to humanitarian assistance, raised to the status of a human right could be worded as follows:

> "The right to humanitarian assistance is the right of every man, woman or group of individuals to assistance when their lives and health are seriously threatened, and is a right which is both opposable to States, individuals and public and private bodies and which can be required of them.
>
> The right to humanitarian assistance, therefore, includes the right to seek and be granted such assistance, without discrimination."

185. The Colloquium recognizes that the most serious violations of human rights take place during armed conflicts or during other situations of public emergency. It is of paramount importance that parties to an armed conflict respect international humanitarian law and that States take seriously their duty to ensure the respect of this law as required under common Article 1 of the 1949 Geneva Conventions.

186. Although human rights law and international humanitarian law stem from different treaties, both the hard core of human rights law and a large part of international humanitarian law clearly form an integral part of international customary law and are therefore the "sine qua non" of a civilized society.

Human rights are indivisible not only in peacetime but also in times of armed conflict and their protection and observation at all time is essential for the survival of mankind.

187. In public emergencies which do not amount to armed conflicts, the World Conference should recognize the fact that a number of norms of international law remain applicable. In addition to the non-derogable rights that are identified in the United Nations Civil and Political Rights Covenant and in regional human rights treaties, the Conference should take into account international case law and practice that have evolved in this field and which do not allow the individual State to be final arbitrator of its actions in times of public emergency. Particular note should be taken of the need for the respect of basic judicial guarantees which are essential in order to preserve in practice non-derogable rights. This has been reaffirmed in the Declaration of the Body of Principles for the Treatment of All Detained Persons adopted by the United Nations General Assembly in December 1989 and has been stressed by several special rapporteurs to the United Nations Human Rights Commission.

188. Note should also be taken of the Tokyo Declaration on minimum humanitarian standards, which indicates the norms that must remain applicable during a public state of emergency.

189. The Colloquium recommends that the Conference address the following legal and pragmatic needs which have arisen in practice:

(a) Provide the objective criteria needed for impartial determination as to when a state of public emergency, (other than armed conflict), exists, in order to prevent illegitimate derogation of human rights;

(b) Prescribe binding rules governing conduct at times of internal strife not amounting to armed conflict, under common Article 3 of the 1949 Geneva Conventions, or the 1977 Second Protocol;

(c) Establish modes of interaction between different mechanisms generated by human rights conventions and international humanitarian law;

(d) Inclusion in all human rights treaties of a provision of a time limit beyond which derogations will cease to be applicable, unless renewed under the conditions laid down by the treaties. (La Laguna Declaration)

Poznań Declaration on Academic Freedom
(Poznań, Poland, 7-9 January 1993)

190. The following Declaration was adopted by the participants of a seminar held at the Poznań Human Rights Centre in January 1993:

Considering the international standards in the field of human rights established by the United Nations, in particular in the Universal Declaration of Human Rights (1948), the International Covenant on Economic, Social and Cultural Rights (1966) and the International Covenant on Civil and Political Rights (1966);

Considering also the UNESCO instruments in the field of human rights and education, in particular the Convention against Discrimination in Education (1960), the Recommendation concerning the Status of Teachers (1966), the Declaration of the Principles of International Cultural Cooperation (1966) and the Recommendation on the Status of Scientific Research (1974);

Stressing that certain rights recognized therein are of particular importance to academic freedom, such as the freedoms of thought, conscience, religion, expression, assembly, association and movement;

Recognizing that academic freedom is an essential precondition for those educational, research, administrative and service functions with which universities and other institutions of higher education are entrusted;

Bearing in mind that, by pursuing truth and developing scientific knowledge, members of the academic community carry a special responsibility towards society;

Convinced that every state is obliged to guarantee academic freedom without discrimination on any ground, such as race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, birth or other status;

Paying tribute to the contributions made by the Lima Declaration on Academic Freedom and Autonomy of Institutions of Higher Education (1988), the Magna Charta of European Universities (Bologna 1988), the Dar es Salaam Declaration on Academic Freedom and Social Responsibility of Academics (1990) and the Kampala Declaration on Intellectual Freedom and Social Responsibility (1990);

Recognizing that the academic community consists of all persons working or studying at an institution of higher education;

Participants agreed upon that members of the academic community shall enjoy, individually or collectively, the following rights:

Article 1

1. Every person has the right, on the basis of ability and competence and without discrimination of any kind, to become a member of the academic community, to be promoted and protected against arbitrary dismissal from any institution of higher education.

2. Temporary measures aimed at accelerating de facto equality for those disadvantaged in the access to or in the life of the academic community shall not be considered as discriminatory.

Article 2

1. Members of the academic community with research functions have the right to freely determine the subject and methods of their research in accordance with the acknowledged principles of scientific inquiry.

2. They have the right to communicate the findings of their research freely and to publish them without censorship.

Article 3

1. The members of the academic community with teaching functions have the right to freely determine, within the framework established by the institution of higher education, the content and methods of instruction.

2. They shall not be forced to instruct against their own best knowledge and conscience.

Article 4

1. Students of institutions of higher education have the right to study, to choose field of study from available courses and to receive official recognition of the knowledge and experience acquired.

2. They have the right to participate in the governance of institutions of higher education and in the organization of educational process.

3. States shall provide adequate resources for students in need to enable them to pursue their studies.

Article 5

1. All members of the academic community have the freedom, regardless of frontiers, to seek, receive, obtain and impart information and ideas of all kinds and in all forms, including by electronic means.

2. In case of restrictions special facilities shall be granted to members of the academic community carrying out research functions in order to enable them to accomplish their tasks.

3. States and intergovernmental organizations shall actively support the mutual exchange of information and documentation for the advancement of research and education.

Article 6

1. All members of the academic community have the right to cooperate freely with their counterparts in any part of the world.

2. To this end they shall enjoy freedom of movement within the country and to travel outside and re-enter their country. This freedom may be restricted only on grounds of national security or public health provided such restrictions are established by law and are necessary in a democratic society.

3. States and intergovernmental organizations shall actively support cooperation between members of the academic community.

Article 7

1. The exercise of the rights provided above implies special responsibilities towards society and may be subject to certain restrictions necessary for the protection of the rights of others.

2. Research, teaching, collection and exchange of information shall be conducted in accordance with ethical and professional standards.

Article 8

The proper enjoyment of academic freedom and the compliance with the respective responsibilities demand autonomy of institutions of higher education. Such autonomy shall be exercised with the participation of all members of the academic community.

191. The Conference on Regional Systems of Human Rights Protection in Africa, America and Europe brought together, for the first time, all three regional human rights commissions with their respective presidents. The main focus of the conference was on the new opportunities created by the changing political environment in Africa for a strengthening of the African human rights system.

192. The concept of human rights could not be dissociated from the concepts of the rule of law and of pluralist democracy, now extending also to the States of Central and Eastern Europe. Although the Council of Europe was very much engaged in assisting the new democracies in Europe, it was also prepared to assume its responsibilities in respect to other parts of the world as could be seen from the establishment of the North-South-Centre in Lisbon, Portugal.

193. It was explained that human rights were of vital importance to OAU. A wave of democratic changes was apparent now in Africa. OAU was criticized, however, by participants for not being active enough in supporting the movement towards democracy and the strengthening of human rights institutions in Africa, like the African Commission. However, it was noted positively that the OAU no longer unconditionally subscribed to the principle of non-interference.

194. Regarding achievements and problems of the three commissions on human rights, the European Commission, through its case law, has had an important impact on the development of a common standard of human rights in Europe but the increased case-load necessitated a revision of the system most likely towards a single European Court. The Inter-American Commission, by its denouncements of violations of human rights often based on its fact-finding missions had contributed towards the development of a culture of human rights in the continent, but was still confronted with the problem of political instability and violence. The African Commission as the youngest commission was still preoccupied with developing a proper infrastructure and improving its performance. It was giving particular attention to the promotion of human rights but was hampered by an appalling lack of resources.

195. A comparative analysis of the African system with the other regional systems showed certain imperfections and possibilities of improvement. This concerned in particular certain rights like fair trial and habeas corpus, the communication procedure and the lack of publicity. More effective protection would also have a promotional effect. Qualifications of rights should be limited to what was reasonably justifiable in a democratic society. The Charter should be incorporated into municipal legal systems. The African Commission was encouraged to use its powers more vigorously by giving a more dynamic interpretation to the African Charter and reviewing its rules of procedure accordingly.

196. There was widespread support for the need to establish an African Court of Human Rights except from the African Commissioners who found that the idea was premature. All participants agreed that the African Commission needed to be strengthened first. There was also a need to strengthen the national judiciary. The members of the Inter-American and European courts and commissions pointed out that "regional systems of human rights protection could not properly function without a genuine judicial body vested with compulsory jurisdiction, not at least because of its authority with national courts".

197. NGOs had a crucial role in denouncing violations and assisting victims as well as by commenting on state reports or doing promotional activities like human rights education and standard-setting. A series of workshops on NGO participation in the activities of the African Commission organized by the International Commission of Jurists was to stimulate cooperation between NGOs and the Commission. However, NGOs were experiencing restrictions in their national activities as shown by the dissolution of the Tunisian League of Human Rights or even threats to their lives which made it necessary to give more international protection to human rights defenders. There was a need for the professionalization of NGOs and for an enlargement of their number in particular in Africa.

198. Generally there was a need to strengthen promotion of human rights, in particular through human rights education. There were suggestions for a more structural analysis of the root causes of human rights violations like lack of democracy or of the rule of law, environmental degradation, war, etc., as well as for more research in human rights issues including the role of the military. Among the challenges for the future in the field of human rights the conference identified the need for more attention to economic, social and cultural rights, the rights of peoples, minorities and indigenous peoples, the problem of disappearances as well as "atypical cases of human rights violations" like internal armed conflicts and violations by para-military groups which raised the issues of the legitimate use of force by the State and of the legitimate application of derogation clauses.

199. There was general agreement that the human rights of women had to be given more attention. Different opinions existed on the use of the special provision on women in the African Charter as discrepancies and contradictions remained between the de jure and the de facto treatment of women’s rights and between the universal and regional standards. African values and traditions must not be used to discriminate against women or curtail their equal rights.

Educating women on their rights was a first priority. Women's organizations should be encouraged and assisted. States should put forward nominations of women for the African Commission to fill vacant seats.

200. The positive experience of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment was introduced as an innovative mechanism for protection by a system of preventive visits to places of detention that provided a model also for other regions or the universal level.

201. The growing importance of the social rights in particular for countries in transition towards market economy was emphasized. The experience of the European Social Charter, the implementation mechanism of which had been strengthened recently, could be of interest also for other regions.

202. The right to a generally satisfactory environment was of particular relevance to Africa as could be seen from the example of hazardous waste brought into Africa which had prompted the adoption of the Convention of Bamako. Given the fact that international environmental law was still in a process of formation and that African States lacked the means necessary to control their laws, there was a particular responsibility of the North. Human rights activists should include environmental issues on their agenda and report violations of the right to environment to the African Commission which could act on the basis of Article 24 of the African Charter (Strasbourg Meeting, June 1992).

Objective 5: To formulate concrete recommendations for improving the effectiveness of United Nations activities and mechamisms in the field of human rights through programmes aimed at promoting, encouraging and monitoring respect for human rights and fundamental freedoms (resolution 45/155, para. 1 (e))

Workshop on the role of voluntary organizations in emerging democracies
(Prague, 21-24 June 1992)

203. The Prague workshop adopted the following conclusions addressed to the World Conference on Human Rights.

204. NGOs were defined in terms of their democratic role, their non-profit and non-State character, and their adherence to a socially useful cause.

205. It was argued that NGOs perform a dual role in a democratic society. They constitute a precondition for, as well as a supplement to, the constitutionally defined political process and the formal bodies of the democratic state.

206. A number of common functions of NGOs were outlined:

(a) Articulating the demands of citizens;

(b) Encouraging diversity and growth of opinions;

(c) Being agents of political mobilization;

(d) Being agents of political socialization;

(e) Providing early warning mechanisms, on a national as well as an international level;

(f) Being a buffer against the State and against the market.

207. A number of potential pitfalls to the smooth functioning of NGOs were stressed:

(a) The underrepresentation of NGOs defending the interests of weak, but large, groups such as children;

(b) The domination of a few big and professionalized organizations in the landscape of NGOs;

(c) The cooptation of NGOs into the apparatus of the State or the market economy.

208. It was suggested that an important task for NGOs is to represent the citizens, not only in their relationship to the State, but also to the commercial sector.

209. It was stressed that NGOs face specific challenges in times of transition from authoritarian to democratic rule, mainly:

(a) Charting new relations with governments;

(b) Helping formulate new legal frameworks supportive of civil society;

(c) Generating policy options and public information;

(d) Monitoring the transition process itself;

(e) Providing a reservoir of talents from which new ranks of political and government leaders can be drawn as the transition proceeds.

210. Strong emphasis was put on the need for NGOs to ensure their own internal democratic accountability.

211. It was suggested that the differences in the socio-economic and political context determine the role, the function, the strategy, and the policy of NGOs.

212. Some urged that NGOs avoid getting too closely identified with political groupings. Political organizations compete for political power and are potential governments. NGOs closely tied to political organizations risk losing the independence and credibility required for the effective performance of the essential roles and functions that have been mentioned.

213. The meeting considered the notion that the relation between the civil society and the State need not automatically be either adversarial or cooperative. It was agreed, that NGOs should not assume activities which are the legitimate responsibility of the State. The role of NGOs in setting the framework of democratic debate and the ensuring of the public good was emphasized.

214. The interventions and the debates showed that all States had seen a veritable explosion in the formation of NGOs since the revolutionary changes of recent years.

215. The participants agreed that the very factor of repression itself had been the mobilizing force for and key element in the formation of NGOs whose role would need re-evaluation given the demise of the ideological underpinning of the struggle. Some questioned whether there could be sufficient human rights and humanitarian engagement with efficiency and consensus to fill the resulting vacuum.

216. Participants described an often uneasy and sceptical relationship between the NGOs and the authorities, press and public opinion. It was argued that this phenomenon could be explained partly by the present overpolitization of all societal questions, as well as to the lack of understanding of the role of NGOs and the lack of trust toward these organizations.

217. The situation of NGOs in Eastern and Central Europe was characterized as being one in which the vocabulary of voluntarism has not yet been adopted by the people. NGOs are at the present stage looking for a role between the paternalistic values promoted by the communist regimes which were hostile to charity or other voluntary actions, and the spirit of self-centred individualism, laissez faire capitalism equally hostile to giving and to non-profit actions.

218. All participants pointed to an inadequate, evolving and sometimes chaotic legislative framework in which they were supposed to operate. Problems of cooperation and coordination among NGOs themselves and in relation to local and national authorities were highlighted.

219. It was a common theme of the session that virtually all NGOs were in need of "management" help, be it in administrative techniques, fund-raising, marketing, or computer technologies.

220. Many participants reported serious financial limitations and heavy dependence on foreign funding. The tax system, which will be described below, may partly provide an explanation to this.

221. A variety of views were expressed about the advantages and dangers attached to assistance from outside donors. For some it was the sine qua non of their existence; for others it implied a threat of interference by unquestioned Western European values. Contributions from South African participants underlined the unhealthiness of long-term dependence on outsiders.

222. In the Eastern and Central European countries constitutions or/and laws allow NGOs and guarantee them rights of freedom of association, freedom of assembly, and freedom of expression, but other necessary elements are missing such as a specific and clear legal framework and favourable economic conditions.

223. In apartheid South Africa there have been inadequate legal or constitutional guarantees for NGOs, and the freedom of association, freedom of assembly, and freedom of expression have been severely curtailed. The laws have created an environment in which it is possible for NGOs to be established legally, but there still is substantial governmental control on their functioning.

224. The participants agreed upon the fact that even though the state of law differs between the countries, the freedom of association is a de facto reality.

225. In the Eastern and Central European countries problems of transition include implementation, a lack of clarity of the position of NGOs because of a mixture of old and new laws, and attempts to interpret old laws in modern circumstance. Legislation has sometimes been hastily drafted and passed without appropriate consideration.

226. In South Africa the "policing" of NGOs, e.g. through control over fund-raising has characterized the situation. NGOs thus risk being banned or limited in their area of operation. International links were said to have provided some protection against banning in many cases.

227. It was stressed that the emergence of democracy does create new space for NGOs but does not automatically create the structures that promote dialogue and cooperation between the political and the civil sector. It was agreed that the political sector should facilitate and establish conditions for this dialogue to take place, and that NGOs should be invited to participate in the draft-making process of laws and regulation whenever these touch upon issues of relevance for the conditions of the organizations.

228. There seems to be, as yet, no consistent legal framework in the Eastern and Central European countries for receiving donations or gifts or on fund-raising. In some countries the same rules apply to "foundations", which fund projects, and "associations", which implement them. There are limited benefits for giving to NGOs, but in some cases there are exemptions and tax deductions for donations. Problems arise when it comes to commercial or profit-making activities, as well as when NGOs supply services for a fee instead of free.

229. NGOs in South Africa have experienced substantial control over the collection and receipt of funds. Taxation policies fully supportive of private and corporate support for NGOs has not yet been enacted.

230. It was argued that if institutions are to be built on firm foundations, careful thought and planning is essential:

(a) The specific socio-economic and political context in which NGOs are operating should be identified in order to shape the organizations according to the challenges they will meet;

(b) The organizations should embrace in their own terms such valuable tools from other sectors as strategic planning, bearing in mind that the process of building the institutions should always be democratic in style.

231. It was proposed that the statute of any NGO should lay down the structures in which both the form and the substance of the organization should be reflected. Two approaches as to how the organization can be structured were outlined:

(a) The traditional approach, or the top-to-bottom paradigm, premised on the assumption that substantial development can only be initiated by individuals or units in position of power or authority and bring about change on a wide scale;

(b) The participatory approach, or the bottom-to-top paradigm, based on the assumption that those who would benefit most from the development, the grass roots, are the best people to initiate, determine, and sustain these initial efforts. This approach embodies principles such as self-reliance, social and political maturity, and self-determination.

232. It was also argued that NGOs need to develop a common ethic. NGOs must:

(a) Be transparent in their structure and functioning;

(b) Accountable to their members and supporters;

(c) Practise and monitor equal opportunity policies;

(d) Ensure that there is a pluralist approach in their decision-making and programming;

(e) Avoid the marginalization of other organizations and their issues.

233. Participation and consultation with the constituency were also stressed as important elements in the institution building as well as in the "every day life" of the institution.

234. If the civil society is to be involved in a democratic process, it can only flourish in the context of educated and informed citizens, and hence it is a specific responsibility of NGOs to educate and to inform the public. Techniques of strengthening the constituency of an organization were explored and these include seeking allies within or outside the State, and organizations acting in unity. The need for systematic leadership development efforts was similarly stressed.

235. Education and training were two recurrent themes in discussing institution building. Needs in training should embrace not only staff, but also volunteers. The range of options suggested includes:

(a) Exchanges of staff;

(b) Sharing experience and good practice;

(c) Bringing in experts;

(d) Sharing expertise among organizations.

236. In the wide-ranging debate it was recognized that the education, training and development of the governing board should not be forgotten.

237. Other fundamental elements in the institution building process were stressed as well:

(a) Consultation;

(b) The need for better understanding of planning;

(c) The development of a strong public relations or communication system, and of clear fund-raising policy;

(d) Financial and basic management, marketing, and computerization.

238. Starting from the position that the relationship between the State and the NGO is a crucial ingredient in a democracy, the following suggestions emerged aimed at furthering the mutual understanding:

(a) Improvement of the education of local and central governments as to the nature of organizations, their needs, and how they can be effective counterparts;

(b) Governments should promote an environment where lobbying is seen as democratically important, with a clear and constructive purpose for many NGOs, giving voices to the voiceless.

Conversely,

(a) Education of NGOs in the methods of government may also be helpful;

(b) NGOs should seek to recognize successes as well as failures in State activities, if their critical evaluation is to be credible and honest.

239. With a few exceptions the participants all agreed that foreign funding may be essential for the NGO’s existence, due to the specific socio-economic conditions which prevail in times of transition.

240. Issues relating to dangers in institution building included the danger of dependency, and more specifically that of financial dependency of private as well as governmental funding. The dilemma when engaging in fund-raising was said to be that of creating a dependency on external sources.

241. In order to maintain their independence and avoid distortion in the objectives and work of NGOs, it was suggested that they diversify their funding sources. However, it was admitted that the paucity of alternative sources of funds in fragile economies leave few choices for organizations that require guaranteed, long-term funding to build sustainable projects.

242. The interconnectedness between the respect for human rights, an open civil society and the existence of a well-established democracy, was implicitly acknowledged by the participants, and there was a unanimous view of the value to the democratic process of an organized civil society.

243. The existence of well-functioning NGOs is certainly in itself evidence of at least minimal respect for such basic human rights as freedom of expression, freedom of assembly, and freedom of association. Some NGOs explicitly have among their tasks the defence of other human rights issues and are thus important promoters of the respect for human rights standards.

244. In periods of transition to democracy, the need for organizations defending the basic rights of the people, civil and political as well as economic, social and cultural, is urgent. However, limitations of governments, as well as of NGOs, represent a barrier to the creation of the optimal conditions for such organizations to emerge in periods of major political and societal changes.

245. To ensure the continuing progress of democracy, it is a precondition that the establishment of NGOs is not only made possible but indeed facilitated by governments.

246. In order to do this, the meeting agreed that the following steps should be taken:

(a) In accordance with the Universal Declaration of Human Rights, articles 19 and 20, the right to freedom of expression, freedom of assembly, and freedom of association should be included by the governments in their constitutions;

(b) Governments should promote an environment where lobbying is seen as democratically important, with a clear and constructive purpose for NGOs;

(c) NGOs should have access to participate actively in the constitution-making and law-drafting process when it comes to setting conditions of importance for the legal, political or economical framework of NGOs;

(d) Governments should promote a legislative framework in which NGOs can operate. In the field of tax-regulations, the need for clear and appropriate legislation is particularly urgent;

(e) It should be possible for NGOs to chose between a variety of possible legal forms. There should be no requirement of registration of NGOs, unless this is related to a functional need;

(f) Governments should increase their knowledge of the nature of NGOs, their needs, and how they can be effective counterparts. Conditions for a constructive dialogue between NGOs and the political sector should be established.

247. It was suggested that the key word when facing the above-mentioned problems is openness; oppenness toward the constituency, to the people that the organization is servicing, as to where the money is coming from, and openness in the relation between donor and recipient, in order to avoid "hidden agendas".

248. Participants emphasized the need for NGOs not to move from one fashionable issue to another, but to develop "staying power" to influence attitudes and environments in order to change the root causes of the particular problems that are being dealt with.

249. It was agreed that "decentralization" and "pluralism" are two important key words in the creation of an open civil society and the building of NGOs. If the orgnaizations are highly decentralizaed there is obviously a need for communication among them. Similarly, if the advantages of pluralism are to be realized, there has to be some kind of device for sharing the natures and outcomes of these many diverse experiments.

250. It was suggested that networks are vehicles for sharing or gaining access to much needed technical information about particular fields that an organization may be engaged in. Networks can also provide the possibility of exploiting available technology which is not readily useful, unless the activity can be linked to a wide community of organizations.

251. Networks may also be a vehicle for assuring a person that his or her work in an NGO is important and for providing solidarity, particularly in periods when the environment may not be entirely hospitable to the work of these organizations.

252. Networking can also help in building consensus among groups that are approaching a common set of demands or issues. The network can in that context play the role of bringing people of common objective closer together in determining what their priorities are and what their underlying approaches should be.

253. Networks can increase the effectiveness of NGOs in bringing their views to bear on a host of processes, e.g., on the framework-setting process, establishing the constitution, as well as the basic laws affecting the civil sector. Similarly, networks are useful in providing advice on a host of policy issues on which the civil society organizations work. They may also serve as vehicles for providing an effective voice in gaining access to funding from local government sources, from bilateral foreign donors, from ultilateral donors or foundations.

254. Networks may have the function of alerting people to impending crises. They may also perform a role in helping bring in resources from outside, not only financial resources, that are necessary to respond quickly to the problems of for example human rights violations, drought or famine.

Commonwealth workshop on national Human Rights Institutions*
(Ottawa, 30 September - 2 October 1992)

255. The Ottawa workshop recommended that:

(a) Where they have not already done so, Commonwealth Governments, should establish national institutions specifically responsible for the promotion and protection of human rights. The form of such institutions is a matter for determination by each country, in the light of national conditions and circumstances (including international and - where applicable - regional instruments on human rights, particularly those instruments to which each country concerned is a party). Possible alternatives include the establishment of a separate national human rights commission, or addition of specific responsibilities in relation to human rights to the charter of an appropriate existing body, such as the Office of the Ombudsman;

(b) Where national institutions have already been established, Commonwealth Governments (in cooperation with those institutions) should review their structure, jurisdiction, independence and powers to ensure their full effectiveness and appropriate linkage to international and - where applicable - regional instruments on human rights;

(c) In the establishment and further development of effective national institutions appropriate to national conditions, attention should be given to the experience of other national institutions;

(d) In particular, regard should be had in the establishment and operation of national institutions to the Principles Relating to the Status of National Institutions, annexed to Commission on Human Rights resolution 1992/54, particularly in relation to:

the jurisdiction and functions of national institutions, dealing with the complaints, review of legilsative and administrative measures, and public education and promotion of awareness of and respect for human rights;

the need for national institutions to provide effective and accessible remedies in relation to complaints of violation of human rights;

the need to ensure that national institutions are accessible and credible to individuals and groups in disadvantaged sanctions of society;

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* The report of this consultation was prepared by Professor Rebecca J. Cook and has been printed in Human Rights Quarterly, vol. 15, No. 1 (1993).

the need for national institutions to be able to work with non-governmental organizations; and

the possibility, where appropriate, of such institutions, monitoring national compliance with international and regional instruments.

(e) The independence of national institutions should be guaranteed and be seen to be guaranteed, including preferably by entrenchment in the constitution or by legislation. This independence should be respected and ensured by governments;

(f) National institutions should be provided with adequate and adequately secure resources for the discharge of their functions. Provision of adequate resources should preferably be guaranteed by legislation or by entrenchment in the constitution;

(g) National institutions should have adequate freedom and resources to publish and disseminate the results of their enquiries;

(h) Commonwealth Governments and relevant international organizations should recognize that the establishment and operation of national institutions for promotion and protection of human rights is an important subject for international cooperation, including by the provision of technical assistance where requested and by facilitating cooperation directly between national institutions of different countries;

(i) The Commonwealth Secretariat Human Rights Unit and the United Nations Centre for Human Rights should continue and intensify their efforts to promote the dissemination of information on, and facilitate the establishment and strengthening of national institutions, including in cooperation with existing national and regional organizations.

256. The Consultation on Women's International Human Rights adopted the following recommendations.

257. Regional human rights conventions have been applied only sparingly to violations of women's human rights. There have been five cases concerning the violation of women's human rights before the European Court of Human Rights, and one case before the Inter-American Court of Human Rights. In addition, the European Commission of Human Rights, the Inter-American Commission of Human Rights and the Court of Justice of the European Communities, established under the Treaty of Rome, have all considered complaints concerning women's legal status. And yet there are many ways at regional levels beyond specifically judicial approaches to enhance the norm of the prohbition of all forms of discrimination against women. Advocacy at the regional level provides opportunities that do not necessarily exist at the international level. Geographic proximity, cultural similarity and economic interdependence can all facilitate the development and application of human rights standards. Regional systems can provide opportunities to establish legitimacy of women's human rights within the cultures of the region.

258. One speaker advised women to concentrate their efforts on the institutions in which they can most meaningfully participate. In the European human rights system, for instance, she characterized the Conference on Security and Cooperation in Europe and the European Economic Community as less woman-friendly than the Council of Europe and the Nordic Council of Ministers, where recipes for the protection and promotion of women's rights are exchanged and refined with regularity.

259. Another speaker stressed the importance of using the sexual equality provisions of the African Charter, because most national constitutions in Africa do not include sex as a prohibited ground of discrimination. He explained that the African Charter requires the elimination of all forms of discrimination against women, as stipulated in international declarations and conventions, including the Women's Convention.

260. He observed that the African Charter obliges the African Commission to draw inspiration from the international law of human rights and international human rights instruments, which enables it to establish a collaborative relationship with the CEDAW. Collaboration is appropriate, since some African states are parties to both the African Charter and the Women's Convention. Furthermore, collaboration would facilitate the African Commission to undertake an investigation into ways and means of protecting women's rights in Africa, which he considered to be a top priority for the African Commission.

261. A third speaker stated that it is important to broaden the basis of comparison. She explained that the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights have the authority to minitor the conduct of States with regard not only to the American Convention but also to all other obligations in the field of human rights, including the Women's Convention. She observed tht the Inter-American Commission on Human Rights might be assisted in its task of protecting and promoting the human rights of women if it had working ties with the Inter-American Commission on Women.

262. The Commission on Women has the power to consult the Inter-American Court on matters concerning the application of human rights treaties to women. The Commission could seek an Advisory Opinion from the Court on the permissibility of reservations to the Women's Convention filed by countries that are parties to the Organization of American States. She cautioned, however, that a prerequisite of effective use of the Inter-American system for the protection of human rights of women is education and training of women's groups, judges and lawyers. (Toronto Meeting).

West African Advisory Meeting on Human Rights*
(Lomé, 15-17 October 1992)

263. The Lomé Meeting adopted the following resolutions:

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* See document A/CONF.157/AFRM/4.

1. To promote, encourage and support the public and private human rights institutions by granting them a status of protection likely to enable them to fully play their role;

2. To implement a programme of teaching, training, research and literacy campaigns in national languages in connection with human rights;

3. To ratify the international instruments related to human rights and insert them into their national legislations.

4. To develop a regional and subregional cooperation in the field of human rights through the medium of national institutions and by harmonizing laws and regulations;

5. To recognize in the national and international human rights institutions the automatic duty of interference in case of massive and blatant violations of human rights and create within the existing structures at subregional, regional, and international levels, mechanisms of guarantee and follow-up; and

264. The La Laguna Declaration contains the following recommendations concerning UNESCO.

265. The Colloquium calls for a re-examination of UNESCO's complaints procedure in the case of the violation of human rights, as instituted in Decision 104EX/3.3 of the Executive Council in 1978. Care must be taken above all to prevent this procedure from becoming imbalanced as a result of the change in the status of members of the Council who as of 1993 will be the exclusive representatives of their Governments. The State therefore runs the risk of being seen as both judge and party.

266. The colloquium calls on UNESCO to clarify the issue of cultural rights through the preparation of appropriate norms and effective implementation measures to ensure that culture is considered to be a fundamental element of the common heritage of mankind. Special attention should be paid to the right to language and linguistic freedom.

267. Cultural property and its protection during armed conflict which is provided for by the 1954 Hague Convention, has increasingly become a victim of conflicts, especially internal conflicts, in recent times. Since UNESCO is often prevented from intervening, on legal grounds, its work must be supplemented, or even preceded by action taken by competent non-governmental organizations. These NGOs should be organized along the same lines as the existing ones which work alongside the ICRC in the humanitarian field. "Artists without Frontiers", or "Intellectuals of the World", could be created alongside UNESCO to work in the spirit of the 1954 Hague Convention, and use this Convention's symbol.

268. Global revision of UNESCO's normative instruments in the field of human rights is needed in order to simplify them, especially in terms of their wording, so that at least some recommendations can be transformed into conventions, for example, the Recommendation on the teaching profession.

269. UNESCO is called upon to clarify the concept of human rights and associated concepts, through philosophical research.

270. UNESCO will host the 1993 World Congress on Human Rights Education, the conclusions of which ought to:

(a) Remind States of their undertaking in 1948 to distribute, circulate and teach the Universal Declaration on Human Rights;

(b) Take appropriate measures to ensure that human rights teaching does not only take place in the Law Faculties of Universities, but is generally available throughout the education system, and that vocational training programmes in human rights are made available.

271. UNESCO should consider the possibility of creating a Committee on Ethics, which would be primarily concerned with developing the spirit of human rights in Pure and Natural Sciences.

272. It should be noted that the ILO has for many years now been applying its own multi-dimensional machinery to the human rights issues for which it is competent.

273. The ILO is already in the process of reforming, amongst other aspects, the procedure for requesting periodical reports, with a view to making it more efficient.

274. It would appear that the ILO has obtained positive results in settling disputes, with the aid of good offices, provided for in the Organization's Constitution. However, it is worth considering whether disputes resulting in public settlements, because of their exemplary value and the precedent they set, could not contribute to improve human rights protection.

275. In the light of the special procedure for trade-union freedom, the Colloquium supports the creation of a similar procedure concerning discrimination in the field of employment and occupation.

276. The obligation for all ILO Member States to submit the instruments adopted to the competent authorities for approval and to inform the public of them, is of great constitutional significance and should be extended to all organizations responsible for drafting and applying treaties on human rights.

277. The relationship between human rights issues and health is becoming an increasingly acute problem. The Colloquium calls for the WHO to take immediate action to ensure it fulfils its obligations in this respect through:

(a) The creation of a high level administrative unit, working closely with the Director General and responsible for all aspects of human rights falling within the Organization's sphere of activities;

(b) The launching, in conjunction with UNESCO, of a programme, lasting several years, for the development of specialized human rights education and the teaching of medical ethics in Faculties of Medecine and in all other institutes and schools involved in the training of staff for the medical profession, (nurses, etc.).

278. The WHO is called upon to launch a worldwide awareness campaign on torture, aimed at the medical and paramedical professions, which makes much of the fact that a doctor's neutrality is no excuse for either active or passive complicity in acts of torture, which constitute blatant crimes against humanity. States should treat such complicity as a criminal offence, on the grounds of the failure to assist persons in danger, if nothing more.

279. Bioethics raise significant and urgent problems as far as human rights are concerned. The WHO should cooperate actively with the Council of Europe in the drafting of a Convention on Bioethics and to ensure that from the outset the Convention is likely to be applied worldwide. The same should apply in the case of organ transplantation, given that there is wide international consensus on this issue.

280. The application of the European Convention of Rome of 4 November 1950 must result in the swift, extensive and effective protection of human rights.

281. Whatever the institutional machinery chosen for the reform of the organs of the Convention, either into a single organ or two - this machinery must have a judicial nature and render binding decisions. The individual and the State should be given equal status as a result of the solutions outlined in Protocol No. 9 (Individual right of unconditional appeal before the Court).

282. Friendly settlement and double examination of a case will be indispensible within the protection system, and will be valid whether the final decision is to merge the organs or to have two separate ones.

283. The role played at present by the Committee of Ministers under article 32, paragraph 2 of the Convention should be abolished in order to provide full judicial protection of human rights within the framework of the institutional machinery of Europe.

284. The reform should make provision for control procedures for the application of decisions taken by the organ or organs of the Convention, so as to avoid the creation of a "two-speed Europe" for human rights.

285. The European Social Charter is a useful complement to the protection of human rights provided by the Council of Europe. The efforts recently made to revitalize it and above all to facilitate the implementation of the new mechanism of collective complaint, deserves support.

286. The Colloquium notes that human rights have recently been given a central role and constitutional recognition in the Maastricht Treaty. Community law in the field of human rights is advancing rapidly, both through the case law of the Court of Justice and the Court of First Instance and through decisions, such as the European Parliament's Declaration and the European Charter on Children's Rights. One particular issue however has been left pending for

years - whether or not the European Communities as a whole should accede to the European Convention on Human Rights. In the light of the developments taking place, the only recommendation the Colloqium would make is to emphasize the need to resolve the issue of the relationship between the Community legal order and the European Convention, so that citizens of the Community may soon enjoy an indisputable, clear and accurate legal order with regard to human rights.

287. The European Communities ought to follow up and accelerate the drawing up of a compulsory legal instrument on social rights which are alone capable of giving a veritable human dimension to European unification.

288. All the Community Institutions should recognize the political, diplomatic and economic repercussions of the link which must be clearly established - and subsequently respected - between human rights and financial and technical assistance.

289. The advanced stage of development of the CSCE in the field of human rights is a remarkable phenomenon and one which deserves support, provided that adequate measures are taken to avoid duplication of effort, standards and organs.

290. Amongst the European organizations which work in the field of human rights, the CSCE has special responsibility for the protection of minorities. The CSCE should extend the means available to it in this field.

291. The recently created CSCE Parliamentary Conference should tackle human rights issues in coordination with other European assemblies, especially the European Parliament.

292. The Colloquium made reference to the important phenomenon of the "parliamentarization" of human rights in Europe, especially in recent years. This phenomenon is all the more noteworthy in the parliaments of certain old and newly democratic states in Europe, where human rights fall within the normative competence of these same parliaments.

293. In addition, reference was made to the role played by certain national parliaments due to their committees on petitions and committees of enquiry, as well as in their appointment of certain "Ombudsmen".

294. The phenomenon of parliamentarization of human rights may also be seen at a trans-European level, within the assemblies created by regional international organizations, such as the Council of Europe, the Western European Union, the North Atlantic Treaty Organization and the Conference on Security and Cooperation in Europe. In this section, special attention should be paid to the European Parliament, not simply because it is elected by direct universal suffrage, but also due to its growing role in human rights activities, both at Community and international level.

295. Despite the importance of this phenomenon, which is naturally warmly welcomed, there are several shortcomings which need to be amended. At parliamentary level, two different situations can be discerned: the absence of a parliamentary committee for human rights, or the fragmentary nature of the many organs which deal with human rights issues.

296. At trans-European parliamentary level, including within the European Parliament, the use of the "resolution" for the denunciation of human rights violations often makes it difficult to assess the true facts, and subsequently these resolutions have less of an impact on public opinion. In addition, when many parliamentary institutions adopt many resolutions on current human rights issues, there is a danger that in the long run this will lead to the "trivialization" of these resolutions, especially when there is no guarantee that they will be followed up.

297. On the basis of these observations, the Colloquium supports;

(a) The creation of parliamentary committees for human rights in those parliaments where they do not yet exist;

(b) The reunification, or at least closer coordination of the activities of the various committees dealing with human rights within a single parliament;

(c) A more accurate grasp of the facts contained in a parliamentary resolution on human rights, essentially through exchange of information between parliaments and through closer cooperation with NGOs;

(d) Guaranteed follow-up of parliamentary resolutions adopted in the field of human rights, especially in urgent personal situations;

(e) Extension of inter-parliamentary cooperation in the field of human rights, through, for example the Joint Conference between the European Parliament and national parliaments, established by the Treaty on European Union (Maastricht).

298. Finally, the Colloquium expresses its concern at the fact that not only national parliaments, but also international parliaments are playing a completely peripheral role in the preparation of the Second World Conference on Human Rights (Vienna, 14-25 June 1993). This is why there is urgent need for these parliaments to be able to express their opinions on the forthcoming Vienna Conference, through the adoption of a Declaration drawn up by the European Parliament, in view of its vast experience in this field, containing practical suggestions for the future. Therefore, because time is short, the Colloquium is calling upon the European Parliament, which due to its organizational structure and working methods, is in a position to call a European, national and trans-European parliamentary meeting at short notice, to discuss and approve such a Declaration.

299. With regard to human rights norms, the American continent enjoys an apparently comprehensive network of treaties for the protection of human rights, including, notably, the American Convention on Human Rights, together with the additional San Salvador Protocol on economic, social and cultural

rights, and the Protocol on the abolition of the death penalty. A first important step would be for every OAS Member State without any exception to ratify these treaties.

300. All these treaties should be applied in their entirety, under the supervision of the organs of control of the Convention, that is to say, the American Commission and the American Court on Human Rights. With regard to the Court, there should be greater participation than was the case in the past, in the implementation of the Convention, since it should be responsible for all the major problems of interpretation and application of the Convention, which may arise.

301. The issue of the legitimacy of a State Party to a general human rights treaty, such as the American Convention on Human Rights, denouncing that treaty in order to shirk the obligations it had assumed, especially those towards its own citizens, deserves urgent attention. It is clear that such a denunciation at best goes against the spirit of human rights, if not against the substance of the mandatory rules of international law (jus cogens).

302. All OAU Member States should promptly ratify the African Charter of Human Rights and People's Rights, which although only recently implemented, has already led to the consolidation of democratic regimes on the African continent.

303. To the same end, the African Commission for Human Rights and People's Rights should continue to adopt additional resolutions to the specific provisions of the African Charter which are, in places, too general.

304. The mechanism for the implementation of the African Charter needs to be supplemented by the creation of an African Human Rights Court.

305. The African Commission for Human Rights and People's Rights should undertake studies and provide conclusions and recommendations concerning the situation in African countries which are experiencing large population movements as the result of local warfare.

306. Given the difficult situation in which Africa finds itself at present, regional and international human rights institutions should do all within their power to provide aid and assistance to the African Human Rights Commission, in the context of broad cooperation between the Member States of the international community.

307. In broad terms, all appropriate means of aid and assistance must be employed to contribute to the consolidation of African democracies, since their existence and proper functioning is an essential prerequisite for the full guarantee of the human rights set out in the African Charter.

308. The Colloquium recognizes the lack of specific international institutions for the protection of human rights in the Arab world, and believes that this situation is unlikely to change in the near future. One may wonder whether at least a partial solution of this question cannot be seen in the decision of several Arab States to become Contracting Parties to the African Charter on Human Rights and People's Rights.

309. Measures undertaken should never lose sight of the following:

(a) The strengthening of national human rights law in Arab States, through the incorporation of international human rights treaties into national law;

(b) The creation of human rights leagues or associations at national level, which should work freely within the framework of national law;

(c) Progress in human rights education throughout society and not simply at university level.

310. The Colloquium recognizes that there are no specific, international human rights institutions for Asia and the Pacific Region. It seems unlikely that this situation will change in the near future, at least as far as the region as a whole is concerned, due to its diversity.

311. It should be asked whether the future of regionalism in the human rights field does not lie in a subregional approach and in the creation of common institutions concerned with such issues as information and education with regard to human rights.

312. Pending the birth of Asian regionalism in the field of human rights, all States should ratify the human rights treaties, notably the two Covenants and the Optional Protocol to the Covenant on civil and political rights, and should ensure that energy is devoted to the development and strengthening of national human rights institutions. To this end, the Colloquium stresses the need for:

(a) A judicial and a non-judicial approach to human rights;

(b) Complementarity between national and international human rights institutions, and between national and international law in this field;

(c) The individual always to be given due consideration, as a fundamental element of the community;

(d) The link which exists between human rights and the obligations of the individual and indeed, the State (as seen in the Draft Declaration drawn up by "LAWASIA"), so that all future definitions of human rights are accompanied by the corresponding definition of human duties.

313. So that the greatest benefit may be derived from the considerable knowledge gained through the work of the First International Colloquium in La Laguna, the Colloquium proposes:

(a) The creation, with an appropriate status within the University of La Laguna, of a Tri-Continental Institute or Centre on Parliamentary Democracy and Human Rights (Europe, Africa and America). The choice of La Laguna as the home to such an institute stems from the fact that the Canary Islands, from a geographical standpoint, are part of Africa; are European in terms of population and culture, and may also be considered as being American due to their historical role and their vocation. The parliamentary and governmental

authorities of both the Canaries and of Spain would certainly support such a proposal, as would UNESCO, the European Communities and other European, African, American and international organizations;

(b) To host a Colloquium on "The Reform of International Institutions for the Protection of Human Rights" in La Laguna every two years (the first to take place the year after the World Conference on Human Rights in 1993), in order to provide regular appraisal of the application of measures of reform already taken and to propose appropriate new measures of reform, and thus make La Laguna University a "capital of human rights reform". (La Laguna Declaration).

314. In order to assist the World Conference in its deliberations and decision-making the Sintra Conference resolved to recommend that the World Conference should:

(a) Establish the post of Special Commissioner on Human Rights;

(b) Affirm with new vigour the rights of minorities and indigenous peoples;

(c) Extend the existing humanitarian conventions to cover all the victims of internal armed conflicts;

(d) Give close attention to the implementation of existing norms for the persons belonging to particularly vulnerable groups;

(e) Resolve that all regions should adopt instruments and institutions that incorporate the principles of the international bill of human rights;

(f) Resolve that these arrangements should create institutions that provide individuals, groups and States with speedy and effective remedies for the enforcement of human rights;

(g) Pay greater attention to the promotion of social, economic and cultural rights and to the enforcement of these rights;

(h) Recommend that human rights are incorporated in the formulation of the social, economic and cultural programmes of States, regional bodies and international institutions;

(i) Resolve that particular attention should be paid in regional arrangements to human rights norms and that discriminatory practices in the areas of immigration, asylum and the treatment of refugees and displaced persons be ended;

(j) Affirm that states of emergency should not result in the arbitrary denial of the obligations assumed in regional or international human rights standards;

(k) Adopt mechanisms to ensure that States accede to all international human rights instruments and take steps to ensure their incorporation into enforceable national legislation;

(l) Urge States to adjust their political institutions or to establish new institutions in order to create democratic and legitimate systems of government;

(m) Give priority to policies which strengthen the independence of the judiciary and the efficiency of the administration of justice;

(n) Recommend that municipal and provincial law provides effective protection of human rights;

(o) Urge all States to provide a legal environment in which independent non-governmental human rights organizations are encouraged to fulfil their task to contribute effectively to the protection and promotion of human rights;

(p) Reaffirm that the respect of the freedom of thought, conscience and religion as a fundamental human right in all countries is a precondition for peace within and among nations;

(q) Urge that all Member States of the United Nations guarantee the freedom of opinion, free access to information and the media as well as full access to governmental information and archives;

(r) Recommend for States to provide guidelines, assistance, prevention, treatment and sanctions by legal and other social means to address issues concerning domestic violence, abuse and mistreatment;

(s) Resolve that all States support human rights education programmes and give full publicity to human rights and the international, regional and national instruments available for their enforcement.

315. The Sintra Conference appeals to the World Conference on Human Rights to be held in Vienna to adopt these recommendations in pursuance of its aim to establish a world order premised on respect for human rights and committed to the effective advancement of these rights at national, regional, and international levels. Progress towards the achievement of these goals would serve as a fitting tribute to those many women and men who have sacrificed their lives for the creation of a better world.

316. The importance of regional institutions and mechanisms for the promotion and protection of human rights is hereby recognized and endorsed. Concrete actions should be taken to strengthen these regional institutions and mechanisms, where they exist, and encourage their establishment where they are non-existent.

317. Regional instruments and institutions for the protection of human rights should adopt the standards set by the Universal Declaration of Human Rights and other international human rights instruments as the minimum standard for the formulation, establishment and implementation of their human rights norms.

318. Regional instruments and institutions should take into account the following considerations:

(a) The need to ensure prompt consideration of complaints brought before them and in particular provide for emergency procedures to deal with urgent complaints;

(b) The need to provide for wide and unhindered access by individuals, groups and States;

(c) The competent political bodies of regional institutions should promote means of enforcement of the decisions made by the organs of human rights protection;

(d) They should not have the power to reverse the decisions reached by the regional protection bodies, but should instead seek to enforce them;

(e) The binding character of these decisions and their publication are essential.

319. The competent political bodies of regional institutions should study the possibility of creating new organs, or of enhancing the competence of existing organs of protection in the field of economic, social and cultural rights.

320. The dissemination of proper information, creation of awareness about existent instruments and mechanisms of human rights protection are an essential condition for human rights protection.

321. Cooperation between regional institutions in the field of human rights should be encouraged to advance mutual understanding and exchange of ideas and experiences.

322. Regional institutions should take into account human rights considerations in the formulation of their economic, social, cultural, and other policies and programmes for implementation within the region.

323. The problems of racial discrimination and xenophobia with their particular manifestations ... (illegible).

324. Increasing numbers of displaced persons require regional and international systems that guarantee protection.

325. Widespread violations of human rights under states of emergency require more comprehensive norms and guidelines to be developed for the preservation of human rights at the regional levels.

326. Nations have sometimes deviated from universal human rights standards in the name of regional particularities or religious, cultural and traditional values. In such situations universal norms should prevail.

327. Particular recent developments have underlined the vital role that non-governmental organizations play in the promotion of human rights throughout the world. It is time to formally recognize the role and status of NGOs in international and regional human rights procedures and institutions.

328. Increasingly throughout the world, the prevailing forms of government are nominal democracies and a variety of authoritarian regimes. Authentic democracy is the form of government that allows and guarantees the full participation as well as the human development of people. Therefore, the existence of democracy is a necessary condition for the enjoyment of human rights.

329. Implementation of these rights requires the Governments to adjust their political institutions and to create the conditions for political pluralism, including the free development of political parties and grass-roots organizations. The subordination of the military to civilian authority, and the political participation of the people are also necessary. In other words, the authorities in a democratic government must have legitimacy with the people.*

330. In countries in which there is no rule of law nor independence of the judiciary, nor legal assistance for those deprived of economic means, justice is denied. Consequently, it is of paramount importance to give priority to policies which strengthen the judiciary and the efficiency of the administration of justice. The international system for the protection of human rights is subsidiary to the national level. A functioning independent judiciary at the national level is the basis for the implementation of human rights.

331. National legislation, such as a national constitution, should guarantee fundamental human rights. In the absence thereof, or as a complementary measure, Governments should ratify or accede to international instruments which they should then assure are implemented. What is essential is the political will to implement international treaties and create the legal mechanisms to incorporate them into domestic legislation. The legislative bodies should take the necessary measures to facilitate the incorporation of the rights included in these treaties into their legislation so that they become justiciable and enforceable at the national level. The United Nations supervisory bodies should devise a system of enforcement whereby sanctions are applied to those States that become parties to, but fail to enforce treaty provisions or that render them non-self-executing.

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* Democracy can be identified as the system in which the following elements, inter alia, are included: legislative and executive authorities are electorally determined; military and police corps are subject to civilian authority; the rule of law prevails; the rights of minorities are protected; due process of law is guaranteed.

332. In countries in which non-governmental organizations operate freely and their activities are not restricted by Governments, human rights are better promoted and protected. Similarly States that provide for national institutions such as the post of a human rights Ombudsman evidence an attempt to enhance the protection of such fundamental rights. It is essential that such entities operate independently in the investigation of human rights violations and are able to rely on the governmental authorities for the appropriate prosecution of those alleged to be responsible. The Government must provide a legal environment in which non-governmental human rights organizations can function and obtain the necessary financing to carry out their activities.

333. Freedom of thought, conscience and religion is a fundamental human right. Such beliefs have historically informed the content of international human rights norms. None the less, belief structures should not be allowed to replace freedoms guaranteed by existing human rights standards nor be used as a pretext for the failure to implement such rights.

334. Restrictions on the media or on the access to information, or secrecy laws, or censorship or propaganda constitute a serious impediment to the exercise of basic human rights. Therefore, Governments should adopt the requisite policies to guarantee free access to information and the media, and full access to governmental information and archives.

335. Human rights abuses also occur within the family. Therefore, Governments and the United Nations should address issues concerning domestic violence, abuse and mistreatment. It is necessary for States to provide guidelines, assistance, prevention, treatment and sanctions by legal and other social means. (Sintra Conference)

Asia-Pacific Workshop on Human Rights Issues
(Jakarta, 26-28 January 1993)

336. The Asia-Pacific Workshop on Human Rights Issues* was organized by the United Nations Centre for Human Rights in cooperation with the Government of the Republic of Indonesia under the Centre's programme of advisory services and technical assistance in the field of human rights.

337. The central objectives of the workshop were as follows:

(a) To increase awareness among countries of the region of international human rights standards and procedures and of the role of States in implementing human rights norms;

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* The report of the Workshop has been issued as document A/CONF.157/ASRM/3 and will be issued as a publication of the Centre for Human Rights.

(b) To inform participants of the mechanisms which are available to assist States in fulfilling their obligations under the various international human rights instruments;

(c) To promote bilateral cooperation in the field of human rights between countries of the region;

(d) To foster the development of national human rights institutions in the region;

(e) To provide a forum for discussion of questions relating to the establishment of regional arrangements for protection and promotion of human rights;

(f) To facilitate dialogue between Asia-Pacific nations on the upcoming World Conference on Human Rights. (Jakarta Workshop)

Human Rights at the Dawn of the Twenty-first Century
(Strasbourg, France, 28-30 January 1993)

338. The following are the conclusions by the General Rapporteur of this Council of Europe interregional meeting, Mary Robinson, President of Ireland.

339. I perceive six areas where there is consensus as to decisions that should be taken by the World Conference. First, it should reaffirm the basic principles of the universality and indivisibility of human rights, recognizing once more that violations are of legitimate concern to the international community. Second, it should reaffirm the principle that human rights are best protected by national institutions in the context of a legal and political culture supportive of human rights. Third, it should examine ways of improving effective implementation of international human rights standards. Fourth, it should recognize and endorse the role played by NGOs in the promotion and protection process. Fifth, it should recognize that democracy, pluralism and respect for human rights are essential for social and economic development. Sixth, it should examine appropriate means of upgrading the promotion and protection of economic, social and cultural rights.

340. Permit me to examine each point in turn with reference to the ideas and suggestions made during discussions.

341. Attention should be given to the nurturing of a human rights culture which is indispensable for the proper operation of national laws and institutions. The role of the actors of civil society, such as the media, trade unions, NGOs - so often the first targets of totalitarian regimes, was considered essential to the formation of this culture and ultimately to the extent of human rights awareness. Of special importance in this context is human rights education in schools and in professional training especially for officials responsible for key sectors such as prisons or the security forces. Assistance programmes for newly emerging democracies also play an important role.

342. The World Conference should give a new impetus to the national dimension and explore ways of generating financial support for education initiatives and for the widest possible distribution of basic human rights texts in the different languages.

343. Another development of great significance to the issues of this Conference is the women's movement worldwide. We can learn from the ways in which women from the Eurocentric world and the world of the South have been coming to know one another. It is instructive to see how links have been established between networks of women's organizations, and even more instructive to note the institutional approaches adopted which are open, enabling and participatory. Women have been finding new ways of relating and new voices, defining new roles or redefining old ones in a manner which has a powerful message for all concerned with the promotion of human rights. The major themes of the women's movement - equality, development, violence against women, and peace - have undergone significant changes as the women's movements themselves have come to a deeper understanding of the implications of their concerns. In the process, men have often felt threatened - but not just men. Women have also felt threatened because change is always disturbing. The energies, the perspectives and the voices of women must be given a more central place and integrated fully into the human rights debate, not least to ensure the appropriate gender balance. It is through NGOs at the national and international level that the voice of women is increasingly heard.

344. It is also an important reality that international mechanisms for protecting human rights are subsidiary to the national system. Human rights are better protected at home subject to the system of outer-protection afforded by international bodies. We should, however, be careful to ensure that the existence of international mechanisms is not used as a pretext for failure to take appropriate measures at the national level.

345. States should ensure that effective national remedies exist in respect of human rights violations. The incorporation of treaty standards into national law is one important way of ensuring adequate judicial protection but also of contributing to the formation of a legal culture more sensitive to human rights concerns. Judicial protection is, however, not enough. It needs to be supplemented by a variety of national agencies each with a mandate of promotion and protection.

346. On the other hand, attention should be given to the nurturing of a human rights culture which is indispensable for the proper operation of national laws and institutions. The role of the actors of civil society, such as the media, trade unions, NGOs - so often the first targets of totalitarian regimes, was considered essential to the formation of this culture and ultimately to the extent of human rights awareness. Of special importance in this context is human rights education in schools and in professional training especially for officials responsible for key sectors such as prisons or the security forces. Assistance programmes for newly emerging democracies also play an important role.

347. The World Conference should give a new impetus to the national dimension and explore ways of generating financial support for education initiatives and for the widest possible distribution of basic human rights texts in the different languages.

348. Participants have stressed the need for the World Conference to continue the progress that has been made in the international community in asserting the basic principle that human rights must be central to development. There was consensus that the success of the World Conference depended on placing emphasis on people as the subject of rights and on seeking ways to help the poorest sectors to exercise their freedom of expression and association so vital to political progress. Yet the implementation of this principle should be managed in a way which avoids counter-productive confrontation and further polarization between North and South.

349. Views were expressed that developed countries should be seen to take economic, social and cultural rights more seriously. In addition, measures taken by donor Governments because of deficiencies in the human rights record of developing countries should not be marked by selectivity and political expedience if their stand on the universality of basic principles is to be credible. Donor agencies should adopt operative guidelines which are based on transparent criteria. It should also be understood that credibility is related to the absence of disparity between domestic practices and international policies on human rights questions.

350. At the same time, the human rights record of developing countries, particularly in cases of widespread and systematic violations, is central to developmental assistance and may give rise to appropriate responses. The form that these responses take should not, however, be rigid. The donor community, in consultation with NGOs, must develop a framework of cooperation with the developing world which permits constructive dialogue and action on mutual concerns.

351. It was also strongly felt that international financial institutions such as the World Bank should integrate human rights concerns more consistently into their development projects. The effect of these projects on indigenous peoples, minorities and trade union rights should be taken into account. The concepts of "good governance" and the rule of law should be related more precisely to a proper human rights discourse.

352. The notion of solidarity is central to these issues. But solidarity between North and South also arises in a more dramatic context to which we should already turn our minds. I understand that by the year 2000 the World Health Organization envisages that there will be 40 million persons in the world who are HIV positive, an extremely high percentage of whom will be in developing countries. The demands on international solidarity with countries particularly affected will challenge all of us in a most compelling manner.

353. The World Conference must make a serious effort to upgrade the protection of economic, social and cultural rights. As Professor Alston has stressed, the Vienna Conference must sound the alarm bells "warning of the large-scale, deeply ingrained neglect of economic social and cultural rights over the past quarter of a century since Tehran". We have left far behind the cold war

ideological dispute as to the status of these rights. The interdependence and indivisibility of both sets of rights has been accepted and endorsed by the international community. How could it be otherwise? How can we proclaim our humanity and turn a blind eye on the squalor and misery of millions? But delivery on taking these rights seriously has been characterized by relative neglect and half-heartedness. These difficulties are also present within Europe where the European Social Charter of the Council of Europe has not been high on the list of State priorities, has not been ratified by all member States and has an over-cumbersome enforcement mechanism.

354. That we invest our energies in finding a realistic and imaginative way forward is imperative. The rights to food, health care, shelter and education are not negotiable. The death of 40,000 children every day from malnutrition is an affront to our conscience.

355. Numerous suggestions for improvement have been made involving the active promotion of ratification of the Covenant on Economic, Social and Cultural Rights, re-thinking and re-ordering the reporting system and upgrading the resources at the disposal of the Committee set up by the Covenant. These and other suggestions, particularly Professor Alston's 10-point plan of action, merit a more important place on our agenda.

356. But I will limit myself to highlighting two observations which should guide our thinking. First, there must be a concerted effort to ensure recognition of economic, social and cultural rights at the national and regional levels. If there is no solidarity at these levels, progress is not likely at the international level. They must be given the space to elbow their way more aggressively into our social and legal cultures. The startling observation has been made that there is practically no education about these rights. We have done little to inform people that they have them. Second, we should give careful thought to the reflection that the process of upgrading may require different skills and expertise to those normally involved in the judicial model of human rights implementation. It has been said that unless we widen the circle of actors normally involved in human rights work, who may feel ill at ease or ill-equipped in what has become a highly specialized and complex area, the prospects for undertaking the necessary reforms will be slim. The time has come to recognize that a new impetus needs not only political will and allocation of greater resources but the involvement of trained, more precisely targeted, multidisciplinary skills.

357. There is general agreement amongst participants that one of the most important aims of the World Conference will be to stress yet again the universality and indivisibility of human rights, and to resist claims that the minimum standards contained in human rights instruments are essentially Western in nature and not appropriate to countries with different religions and cultural traditions, particularly in the areas of women's rights, the rights of the child and the death penalty. There is a perceived need to re-assert and re-affirm the indispensable truth that the protection and promotion of human rights is a duty for all States, irrespective of their political, economic or cultural system, and to guard against the erosion of universally accepted standards in the name of regional "particularities". At the same time we should re-emphasize that violations of human rights are a legitimate concern of the international community.

358. The subversion of the principle of universality undermines the very foundations of the commitment of the international community to insist on minimum standards. Arbitrary detention, disappearances and violations of the rights of children do not contribute to feeding and clothing a nation or furthering a religious or cultural tradition. But as Dr. Tiruchelvam has highlighted in his paper, we must go further than rhetoric. We must go back to listening. More thought and effort must be given to enriching the human rights discourse by explicit reference to other non-Western religions and cultural traditions. By tracing the linkages between constitutional values on the one hand and the concepts, ideas and institutions which are central to Islam or the Hindu-Buddhist tradition or other traditions, the base of support for fundamental rights can be expanded and the claim to universality vindicated. The Western world has no monopoly or patent on basic human rights. We must embrace cultural diversity but not at the expense of universal minimum standards.

359. As regards international machinery, ways must be found to encourage universal ratification of the United Nations Covenants and Protocols. This could involve giving more publicity to non-ratifying States or entering into a constructive dialogue to explore the reasons for their reticence. It was also considered vital to actively encourage States to withdraw reservations to these instruments.

360. Undoubtedly the World Conference provides an opportunity for improving the implementation of existing standards and the effectiveness of mechanisms. Particular attention must be devoted to considering ways and means of preventing violations from occurring. Failure to do so could deepen public scepticism of the role of the United Nations in this area. The most compelling weaknesses concern (1) the absence of an early-warning system to signal danger and of a focal point within the United Nations to which those who are close to a deteriorating situation can communicate information; (2) the inability of the United Nations organs to react speedily and effectively to urgent situations or gross, systematic violations of human rights. The absence of powers to order binding interim measures at both European and universal levels must also be urgently reconsidered.

361. The idea was proposed that the time had arrived to create a High or Special Commissioner for Human Rights. He or she could be mandated to take investigating initiatives in situations of emergency as well as coordinating all of the United Nations human rights activities and ensuring the integration of human rights issues in respect of other United Nations activities such as peace-keeping and peace-building. Although there was some dispute as to whether the mandate should cover both protection and coordination and whether the Commissioner should be located in Geneva close to infrastructures or in New York close to political decision-making, the idea of such an office was broadly supported.

362. A Special Commissioner or other office with similar functions could more efficiently address the needs for urgent action and greater coordination of resources. As such it should be given serious consideration. Yet its success is ultimately bound up with the need for a fundamental re-evaluation of the United Nations human rights budget. Less than 1 per cent of the United Nations budget and 0.75 per cent of its staff is disproportionately

low for the ambitions of effective implementation in an era of increased responsibilities. It was alarming to learn, for example, that the United Nations Committee on Economic, Social and Cultural Rights has no expert staff and is serviced by one secretary. Clearly the financial and human resources made available must be significantly boosted. In particular, the United Nations Centre for Human Rights must be placed in a position where it can offer advisory services and technical assistance programmes without impinging on effective human rights monitoring.

363. Strong views have been expressed that violations of women's rights have been largely ignored by United Nations bodies, especially procedures for implementing standards prohibiting gender discrimination. A clear consensus has emerged from this meeting that the World Conference must adopt recommendations for reform of existing human rights mechanisms so that adequate attention can be given to violations of women's human rights in the areas that fall within their mandate. Special consideration should be given to violations that affect women disproportionately, such as rape or restrictions on women's legal capacity. It was felt that there was urgent need for a United Nations Special Rapporteur on these pressing and neglected problems.

364. Finally, the recent events in former Yugoslavia involving ethnic cleansing and systematic rape have highlighted the need for the international community to send a clear signal to those responsible for gross human rights abuses that they will not be able to act with impunity. Further consideration should be given to the creation of an international criminal tribunal at regional or global level with powers not only to punish but also to grant reparation to victims. The Vienna Conference provides an important occasion to explore the relationship between human rights law and humanitarian law, with particular attention being given to methods of implementing the basic humanitarian standards set out in the Geneva Conventions and Protocols.

365. As has been remarked, the credibility of the World Conference will depend critically upon the extent to which it is open and responsive to the concern of NGOs from all regions. Indeed, the role of NGOs is a thread which links all the topics of this Conference. Their creative energy is a vital resource. The effectiveness of the work of the United Nations and other international organizations in this area will depend on the extent to which they take NGOs into a real partnership. Where would the promotion and protection of human rights be today without the skills, experience, dedication and commitment of the thousands of men and women working in these organizations? In a real sense they are the voice of the voiceless. They are also the major standard bearers for women's rights. But how can this partnership be improved on?

366. Three concrete proposals have emerged. The first is that NGOs enjoy the broadest possible participating rights in the World Conference. It is frankly disturbing to hear that NGOs from Eastern European and other countries, who do not enjoy consultative status and who have not, because of a Catch-22 situation, participated in a regional preparatory meeting, may have no locus standi in Vienna. Surely some way should be found of accrediting these organizations before the Vienna Conference if we are not to exclude a sizeable section of the associative community.

367. The second is that the expertise of NGOs on the ground be properly utilized by States in preparing their reports for submission to international bodies. They could, for example, be consulted in the preparatory phase or given the possibility of submitting comments to the national authority or more actively associated in the drafting of the report. The third proposal is that the crucial role of NGOs in monitoring human rights violations in the field (where many have lost their lives) be recognized by the adoption of the United Nations Declaration on "the protection of human rights defenders".

368. I cannot speak of development and human rights without evoking the misery and hardship that I encountered on a visit to Somalia in October last year. I witnessed, at first hand, human suffering, degradation and humiliation on a scale that defies adequate description. I saw children dying from malnutrition in their mothers' arms. I visited a Somali refugee camp in Northern Kenya where there were 60,000 people without a single latrine.

369. My inner sense of justice and equality was outraged at what I had seen. The world is capable of providing the 2,600 daily calorie allowance for every man, woman and child. We have food mountains and large tracts of land taken out of production. Are we not diminishing our own sense of humanity by failing to address the starvation and destitution of so many of our fellow human beings? How can we assert the universality of human rights by ignoring the life chances of millions of people?

370. This painful act of witness, on behalf of the people of Ireland who were deeply concerned at events in Somalia, has a potent relevance to our proceedings. It taught me that the problems of Somalia and other countries of Africa were of such a scale that they could not be left exclusively to the United Nations, the European Community or Governments, and that a people-to-people response was also necessary for effective action. An individual assumption of responsibility and engagement on a large scale would surely impact on political priorities.

371. So too with human rights. There are natural limits to the effectiveness of national and international laws. We must strive to make them more effective to be sure. But at the end of the road it is our capacity as individuals to be concerned and moved by injustice that is the real driving force behind the human rights movement. We must ensure that the seeds of such individual responsiveness are firmly planted and nourished in our national cultures. This must be the goal of national education programmes. We must elevate the rights of others to a higher platform in our collective conscience.

372. In Somalia a distraught mother said to me "we need very basic things, we need the World to understand". Let us all listen very carefully to this simple human plea. And let us ensure that above the din of legal argument and contention others hear it too. (Council of Europe Interregional Meeting)

NGO Coalition Satellite Meeting*

(Washington, D.C., 23 February 1993)

373. The goal of the NGO Coalition is to bring to bear on the World Conference the concerns, expertise, and energy of non-governmental organizations in the area of human rights. The meeting served as a forum for Coalition members to explore the possibilities of recommending that the World Conference take a number of positive actions, such as:

1. Ensure that the universality of human rights be strengthened, not weakened.

2. Encourage the integration of human rights into all other United Nations activities (as reflected in the United Nations Charter).

3. Strengthen United Nations and other international institutions for the monitoring and enforcement of human rights.

4. Encourage increased coordination, integration, and effectiveness of existing United Nations human rights mechanisms.

5. Pursue the application of and the access to international law for individuals as well as nations.

6. Allow and encourage strong NGO participation in both the United Nations human rights system and in the World Conference

7. Allocate more resources (financial, human, etc.) to the United Nations human rights system.

8. Mandate the implementation and enforcement of existing human rights standards and instruments (and universally, without political bias).

9. Ensure that women's rights are fully integrated into human rights.

10. Recognize human rights education as a human right.

The Coalition also discussed:

1. Urging the United States Administration, other national Governments of the United Nations, and the Preparatory Committee to raise the World Conference to the Head-of-State level.

2. Urging President Clinton to attend the World Conference.

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* See document A/CONF.157/PC/81.

3. Requesting that the United States and other Western Governments convene a Western Regional Preparatory Meeting, or devise another method of providing Western non-governmental organizations official access and the right to participate in the World Conference. (Washington, D.C., NGO Coalition Meeting)

Objective 6: "To make recommendations for ensuring the necessary financial and other resources for United Nations activities in the promotion and protection of human rights and fundamental freedoms" (resolution 45/155, para. 1 (f))

374. No recommendations were submitted under this objective.
