

Creating the High Commissioner for Human Rights: The Outside Story

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This note concentrates on the events of 1993 that culminated in the creation of the new High Commissioner for Human Rights.¹ It is this recent history which really determines the way this office will develop. Although the human rights organizations were at the forefront of the campaign to have a High Commissioner they had to remain outside the drafting room. Their story – ‘the outside story’ – is that although they were shunned from the process of drafting the resolution, they are now vital to the High Commissioner if he is to implement the terms of that resolution.

I. Genesis of the Idea: from Attorney-General to ‘Big Coordinator’

As far back as 1947, during the drafting of the Universal Declaration of Human Rights, Professor René Cassin from France put forward the idea of an Attorney-General for Human Rights. The idea was that an aggrieved individual would be able to petition the UN Commission on Human Rights and then ‘on appeal’ to a Court of Human Rights the proposed Attorney-General would assist the individual against the respondent state.² In 1950 and 1951 Uruguay submitted a proposal for such an Attorney-General.³ The Attorney-General was to collect and examine information

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1 For a detailed history of the early discussions of this issue see R.S. Clarke, *A United Nations High Commissioner for Human Rights* (1972).

2 See Clarke, *supra* note 1, at 39-40 and UN Doc. E/CN.4/AC.4/1 (1947).

3 Submitted to the fifth session of the General Assembly and to the seventh session of the Commission on Human Rights respectively. For the details on the fate of these proposals see ‘Summary of Information regarding consideration by United Nations organs of the question of the establishment of a post of United Nations High Commissioner for Human Rights’, note by the Secretary-General, E/CN.4/Sub.2/1982/26, 30 July 1982.

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concerning observance of the Covenant on Civil and Political Rights. In 1963 the idea was taken up by Jacob Blaustein and already the title High Commissioner was seen as too scary; the alternative 'Special Rapporteur' was mooted.⁴ In 1964 various meetings were organized by non-governmental organizations (NGOs). These took place first, in Paris under the auspices of the World Veterans Association, second, in London under the auspices of Amnesty International and lastly, in Geneva under the auspices of the International Commission of Jurists. A joint statement and draft General Assembly resolution emerged from a coalition of these and other international NGOs with Sean McBride playing a central role. In 1965 Costa Rica introduced a draft at the Commission on Human Rights.

The idea bounced between the Commission and the General Assembly and by 1977 the Third Committee of the General Assembly actually had before it a draft resolution for adoption concerning the establishment of a High Commissioner for Human Rights. However, Cuba put forward a procedural motion suggesting that the whole issue be passed back to the Commission and this was narrowly adopted by 62 in favour, 49 against and 22 abstentions.

Over the next fifteen years the Human Rights Committee and the Committee on Economic, Social and Cultural Rights came to supervise the two Covenants and other expert treaty bodies were established to supervise other treaties on racial discrimination, discrimination against women, the rights of the child, and torture.⁵ In addition so-called thematic mechanisms which could receive and take up complaints were created: the working group on disappearances, the working group on arbitrary detention, the special rapporteur on extrajudicial summary or arbitrary executions, the special rapporteur on torture, the special rapporteur on religious intolerance, the special rapporteur on racism and xenophobia, and the special rapporteur on freedom of expression. Furthermore, country rapporteurs were appointed by the Commission on Human Rights to publicly report on the human rights situations in countries selected by the Commission. By 1993 the list of countries with rapporteurs or advisory services experts included Afghanistan, Cambodia, Cuba, El Salvador, Equatorial Guinea, Guatemala, Haiti, Iran, Iraq, Myanmar, Somalia, Sudan, and the former Yugoslavia. In addition there was an ad hoc working group on South Africa, a special committee on Israeli practices affecting human rights of Palestinian People and a special rapporteur for the Israeli Occupied Territories.

4 Clarke, *supra* note 1, at 46. In 1949 the Consultative Council of Jewish Organizations adopted the term 'High Commissioner' see Clarke, *supra* note 1, at 41.

5 International Covenant on Economic, Social and Cultural Rights, International Covenant on Civil and Political Rights, International Convention on the Elimination of All Forms of Racial Discrimination, Convention on the Elimination of All Forms of Discrimination against Women, Convention on the Rights of the Child, Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment.

This is not the place to rehearse the circumstances surrounding the development of these and other mechanisms as well as a range of human rights standards.⁶ These developments are mentioned here to demonstrate that the human rights landscape looked very different at the beginning of the 90s than it did at the end of the 70s. But despite this plethora of different mechanisms the UN continues to receive an increasing number of complaints relating to serious human rights violations. In its report to the World Conference on Human Rights, Amnesty International stated that the UN Working Group on Enforced or Involuntary Disappearances had received 17,000 reports of 'disappearances' in 1991; similarly the Special Rapporteur on Torture stated that he had received 'an alarming number of communications'. In the context of internal armed conflict the numbers of death threats and summary executions continues to rise.⁷ At the end of 1992 even the Secretary-General of the UN admitted that the UN had to face the fact that they had been unable to effectively end massive human rights violations.⁸

Despite the promise of a 'new world order'⁹ the disorder in which the world lay in 1992, together with the heightened expectations surrounding the UN, left many hungry for a new initiative which would harness the capacity of the UN to offer real protection while at the same time speaking out to combat the considerable suffering which was surfacing every day.

The advent of the World Conference on Human Rights forced many involved with human rights to consider the weaknesses in the current system and propose new ideas. In September 1992, at a large conference in Amsterdam hosted by the Dutch Section of Amnesty International, a number of human rights experts and activists agreed on the need for a new office headed by a high-level UN official to respond promptly and effectively to serious violations of human rights, including 'disappearances' and political killings and to become generally a focal point for UN action on human rights.¹⁰ The idea was promoted by Amnesty International at the

6 For a concise summary see Farer and Gaer, 'The UN and Human Rights: At the End of the Beginning', in A. Roberts and B. Kingsbury (eds), *United Nations, Divided World* (1993) 240-296. See also P. Alston (ed.), *The United Nations and Human Rights* (1992).

7 Amnesty International (AI), *World Conference on Human Rights – Facing up to the Failures: Proposals for Improving the Protection of Human Rights by the United Nations*, December 1992, at 4 (*Facing up to the Failures*). See also AI, *'Disappearances' and Political Killings: Human Rights Crisis of the 1990s* (1994).

8 '[I]f standards and procedures exist for normal situations, the United Nations has not been able to act effectively to bring to an end massive human rights situations. Faced with the barbaric conduct which fills the news media today, the United Nations cannot stand idle or indifferent. The long-term credibility of our organization as a whole will depend upon the success of our responses to this challenge.' 1992 report on the work of the organization, A/47/1 at para. 101.

9 Senator Gareth Evans has noted that General Secretary Gorbachev referred to 'a quest for universal consensus in the movement towards a new world order' in his 1988 UN General Assembly address, but that it was President Bush's 1990 speech to Congress on 11 September 1990 which gave the concept the big push. 'The New World Order and the United Nations', in R. Bustelo and P. Alston (eds), *Whose New World Order?* (1991) 1-10.

10 'Amnesty International souhaite une refonte des structures spécialisées de l'ONU', *Le Monde*, 8 September 1992; Declaration of the International Conference on 'Disappearances' and Political Killings, Amsterdam, 6 September 1992, AI Index ACT 33/02/92.

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Tunis regional preparatory meeting to the World Conference in December 1992 and became the centrepiece of its proposals to the World Conference.¹¹ The idea was included in the governmental declaration at the Costa Rica regional preparatory meeting,¹² having been seriously promoted by the host government. It was seriously discussed by governments and others at the Strasbourg inter-regional expert meeting hosted by the Council of Europe in January 1993, and endorsed in a number of important NGO declarations including the final report of the NGOs meeting before the World Conference:

3. An office of a High Commissioner for Human Rights should be established as a new high-level independent authority within the United Nations system, with the capacity to act rapidly in emergency situations of human rights violations and to ensure the coordination of human rights activities within the United Nations system and the integration of human rights into all United Nations programmes and activities.¹³

According to Susan Marks, the actual Conference 'had both its Nightmare and its Noble Dream'.¹⁴ 'The Nightmare of the Conference was that human rights had nothing to offer the Bosnian women, the Tibetan Buddhist monks, or the Kurds who had come to tell of their suffering... The Noble Dream was that human rights could constrain abuses, if only the right treaties and monitoring organs and implementation strategies and enforcement methods were put in place.'¹⁵ But even those diplomats who sought to fulfil the Noble Dream got little sleep during the Conference as the drafting went into the small hours. Issues such as: including the right to development as a human right; ensuring that the promotion of human rights should be conducted without conditions; including a link to peace-keeping, and the language recognizing the role of NGOs were all contentious enough to leave those involved with a hazy recollection of Vienna as a maniacal two weeks dominated by insomniacs and somnambulants. At the eleventh hour a paragraph went into the Vienna Declaration and Programme of Action and was adopted by consensus by the 171 States present:

18. The World Conference on Human Rights recommends to the General Assembly that, when examining the report of the Conference at its forty-eighth session, it begin, as a matter of priority, consideration of the question of the establishment of a High Commissioner for Human Rights for the promotion and protection of all human rights.

11 See *Facing up to the Failures*, *supra* note 7.

12 '25. We propose that the World Conference consider the possibility of asking the General Assembly to study the feasibility of establishing a United Nations Permanent Commissioner for Human Rights.' 18-22 January 1993, A/CONF.157/PC/58.

13 NGO-Forum final report to the Conference, A/CONF.157/7, at 4. See also Carter Center Colloquium, A/CONF.157/PC/79, at 5; NGO Bangkok Declaration A/CONF.157/ASRM/4.

14 'Nightmare and Noble Dream: The 1993 World Conference on Human Rights', *CLJ* (1994) 54-62.

15 At 54. For details of some of the atmosphere and issues that arose during the Conference see *Human Rights: The New Consensus* prepared by Regency Press in association with UNHCR (1994).

Hardly a ringing endorsement – but a clear message to the General Assembly to finally conclude this issue.

It is now nearly 20 years since the Centre for Human Rights moved from New York to Geneva. Holding the discussion about the High Commissioner at the General Assembly in New York highlighted the Centre's isolation from the agencies and other divisions in New York. The Vienna Declaration had called for better coordination, a system-wide approach to human rights and for the human rights of women to be integrated into the mainstream of United Nations system-wide activity.¹⁶ During the discussions, parallels were often drawn between this post and the recently created Emergency Relief Coordinator. The concept of coordinating what was already going on was something diplomats felt comfortable with. The Secretary-General's scepticism¹⁷ became more muted as he came to accept the will of the General Assembly. By the time of the appointment the Secretary-General had pledged to cooperate and welcomed the High Commissioner to the family of big coordinators.¹⁸

II. The Process of Creation: from Mandating the Working Group to Working out a Mandate in Groups

Despite endorsements from a number of Heads of State and Foreign Ministers during the General Debate at the start of the 48th Session of the General Assembly, the topic got off to a difficult start. Western States wanted to start an informal process guided by a facilitator which would come up with a draft resolution which could be then discussed and amended. Others wanted a working group of all Member States with full interpretation and documentation; they also wanted a full discussion of the existing human rights machinery; they felt it was overly selective to discuss the High Commissioner and not the rest of the system. The two sides

16 See paras. I.4, I.21, II.1, II.3, II.8, II.14, II.19, II.37 (integration of women's human rights), II.42, II.51, II.82, II.97.

17 On the eve of the World Conference the Secretary-General wrote: 'Both the principles and the practices of human rights are under stress. This is a time for serious discussion, for quiet diplomacy and step-by-step problem solving. Solutions cannot be imposed from the top down. Proposals for new bureaucracies, high-level positions, more procedures and permanent forums, as admirable and well-intentioned as they are, may only arouse discontent and resistance at a time when liberality and leeway are called for. This is a year for dialogue.' *Washington Post*, 9 June 1993.

18 The final resolution decides that the High Commissioner will be responsible for 'Coordination of the human rights promotion and protection activities throughout the United Nations system.' Given the fact that there are over 17 peace-keeping operations with varying human rights mandates, that electoral and development programmes are increasingly taking on human rights education, and that political officers are increasingly looking to the causes of conflict in an attempt to provide some kind of early warning, this fulfills a real need for greater human rights input into the UN's activities around the world. Two years earlier the General Assembly created the post of Emergency Relief Coordinator in another attempt to rationalize the sometimes disorganized activity in the field of disaster relief, see Resolution 46/182.

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remained deadlocked for weeks and during this time some States started work on a draft resolution.

Chaired by the Ambassador of Australia, this collection of mainly Western States managed to attract a few African and Latin American participants and eventually circulated a draft non-paper for comment. The prospect that this text might be tabled was catalytic to the agreement to set up the working group. The final compromise was that the working group would be set up and be open to maximum input from governments, it would discuss the creation of the High Commissioner, and only when it had concluded its discussion on that topic would it go on to discuss the other aspects.¹⁹

The working group was chaired by the Permanent Representative of Ecuador, Ambassador José Ayala Lasso, who would later become the first UN High Commissioner for Human Rights. Although some governments, notably that of China, would have preferred a formal working group meeting at ambassadorial level in plenary, part of the compromise was this informal working group of the Third Committee. Consequently, there were no daily press releases or summary records of the discussion and the meeting was listed as a closed meeting in the Daily Journal of the UN. Over the previous weeks it had been the non-western Member States which had held out for a 'transparent' process, yet before the working group got under way Indonesia (while congratulating the Chair on behalf of the Non-Aligned Movement), raised the issue of the presence of non-governmental representatives in the room.

About five NGO representatives were sitting quietly in the normal place monitoring the opening speeches. NGOs are often present during such working groups and delegates had assured during the previous weeks that NGOs would be present for the work of the working group. During the public part of the debate Cuba had even cited one advantage of a working group over informal discussions as the proper inclusion of NGOs with consultative status. The secretariat clarified that the designation 'closed' meant that there were no records and no press allowed. However, the Chair sensed the spectre of Vienna looming (where discussion over NGO presence had gone on for days²⁰) and asked the NGOs to leave, without prejudice to a final decision as to their admission.

19 The full terms of the creation of this working group are reproduced in A/C.3/48/L.85, 11 December 1993.

The paragraph of the Vienna Declaration and Programme of Action which was to be the framework for this second discussion was para. 17 of part II: 'The World Conference on Human Rights recognizes the necessity for a continuing adaptation of the United Nations human rights machinery to the current and future needs in the promotion and protection of human rights, as reflected in the present Declaration and within the framework of a balanced and sustainable development for all people. In particular, the United Nations human rights organs should improve their coordination, efficiency and effectiveness.'

20 See Guest, 'NGOs Face Exclusion from Crucial Drafting Committee', in *The New Consensus*, *supra* note 15, at 173-5.

The Chairman decided to admit NGOs (as a compromise we were to sit in the public gallery). However, the Chairman reserved the right to exclude NGOs when sensitive matters were discussed. Although we attended the next meeting we were excluded from the following one but later re-admitted for subsequent ones. This 'Solomonic' approach to the issue of NGO presence is obviously preferable to total exclusion but begs the question: what is so frightening and gory that threatens to offend NGO sensibilities? Why are governmental representatives so embarrassed about what they have to say? Human rights NGOs deal with horrendous reports of killings and torture every day. It is difficult to imagine what could be said that would shock NGOs. They know that many governments resent UN probes into their affairs and they need to understand the legitimate concerns of States who want more haste, less speed when it comes to creating the High Commissioner.

The Working Group adopted, at the suggestion of its Chairman, the following methodology. The Chairman asked for suggestions on a number of aspects relating to the creation of the Office of High Commissioner: election, qualifications, legal framework, mandate, relationship to the rest of the UN, and resources. This appeal solicited seven responses: from Australia (the earlier draft discussed above), Brazil, Mexico, the Non Aligned Movement (NAM), the European Union, Slovenia and the United States. The Chair also received suggestions from NGOs and invited them to meet with him in order to brief them on issues raised during the sessions from which they had been excluded and hear their views. Additionally, some NGOs sent their suggestions not only to the Chair but to Member States as well.²¹

Based on these suggestions, and the discussion during the meetings of the working group, the Chairman managed to put together non-papers which carefully incorporated most of the different ideas. But, fairly early on, the United States, fearing that the deadline for tabling resolutions was about to pass and that any eventual product of the working group might not reflect their vision of a High Commissioner, decided to table a resolution on the creation of a High Commissioner.²² The effect of this decision was electric. Coming as it did one minute before the deadline for tabling normal resolutions in the Third Committee, it came as a complete surprise and offended a number of delegations. Now there was a Sword of Damocles hanging over the proceedings. If the working group did not complete its work on the High Commissioner that year the Third Committee would

21 Many NGOs around the world were active at this time. The NGO Liaison Committee, formed in Vienna, was able to inform to some extent the regional and other networks of NGOs so that they could discuss the issue with their governments. Efforts were made so that NGO representatives from 'the South' could come to New York to show that the demand for a High Commissioner was not merely of interest to the West.

Among the papers specially written at this time were Amnesty International's, 'A High Commissioner for Human Rights: Time for Action', October 1993, AI Index IOR 41/35/93; and a joint paper, 'A High Commissioner for Human Rights', by Amnesty International, Fédération des Ligues de Droits de l'Homme, Human Rights Watch, International Human Rights Law Group, International League for Human Rights, Jacob Blaustein Institute for Human Rights, Lawyers Committee for Human Rights.

22 A/C.3/48/L.59, 29 November 1993.

have to take action on the United States' draft. No one knew whether it would pass or fail if it came to a vote.

The Chairman, undeterred, produced a Presidential paper in the form of a draft resolution; while Malaysia submitted a set of proposed amendments to the US draft which would have removed the bulk of the US text and replaced it with a text which more or less reflected the points elaborated in the original NAM paper.²³ At this point it was decided to convert the working group into a drafting group. With regard to NGOs, it was said that Vienna rules applied so that NGOs would be excluded at all times. Again, this is an unfortunate precedent as NGOs often sit in on drafting at the General Assembly in New York in exercises such as the creation of the treaty on the rights of Migrant Workers, or the current draft Convention on the security of UN personnel. Such treaties create concrete legal obligations whilst the High Commissioner resolution merely established a mandate for a UN official. In fact, the final resolution even talks of the need for States and the UN to cooperate with NGOs in the implementation of the World Conference recommendations; but the drafting for this central part of the follow-up to the World Conference was apparently too lurid an activity for the sensitivities of the handful of us who wanted to understand this last phase. The 'transparent open-ended working group' was now an opaque closed drafting group.

At the end of the drafting process no one really admitted that they had made concessions. Yet the final resolution was billed by nearly everyone as the result of compromise even if no one suggested that the final result was actually compromised itself. The central trade-off was as follows: the phrase which stated that the High Commissioner was to 'recognize the importance of promoting a balanced and sustainable development for all people without conditions' was inimical to the Western Group. It implied that the High Commissioner had a role in reviewing aid conditionality linked to human rights, good governance, or even trade for aid links. More seriously, a reference to the inappropriateness of conditionality in a UN resolution could have implications for the activities of UNDP, the World Bank and the IMF. However 'no conditionality' became the rallying cry of many of the key players in the Non-Aligned Movement and the G-77. Moreover, the Presidential text at this point still retained a role for the High Commissioner in dispatching fact-finding missions. The concept of fact-finders arriving at the scene of human rights atrocities was portrayed as interference and as being beyond the fringes of the Charter. Despite the fact that such dispatches were to be made in the context of continuous dialogue between the High Commissioner and governments, after consultation with the Secretary-General, and with the consent of the State concerned, it remained too much for several governments, notably Cuba, India and Iraq. In the end the references to conditionality and fact-finding were both removed.

With hindsight one can see that the fact-finding paragraph had become overloaded with preconditions and caveats. The final version may be vague but it

23 A/C.3/48/L.79, 3 December 1993.

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still allows a right of initiative to the High Commissioner. Among other things, it calls for the High Commissioner to play an active role in preventing the continuation of human rights violations around the world. Earlier proposals from members of the Non-Aligned Movement had suggested that the High Commissioner had to wait for a decision of the Human Rights Commission. The final resolution, adopted in plenary on 20 December 1993, does not link the Commissioner's active role to the Commission, and, for the first time, the UN now has a human rights official who can take up human rights concerns with governments without waiting for a mandate from a political body.²⁴

III. Qualities of the Final Resolution and the High Commissioner

The final resolution has a number of important elements. Although many points are more rhetorical than real they illustrate a new plateau at the ideological level which would have been impossible a few years ago. It reaffirms the right to development as a universal and inalienable right fundamental to the rights of the human person; it states that all human rights should be given the same emphasis; it states that the recommendations of Vienna should be implemented by governments and the UN 'in cooperation with non-governmental organizations'; and it recognizes that 'the promotion and protection of all human rights is a legitimate concern of the international community.'

The High Commissioner is to be 'a person of high moral standing and personal integrity and shall possess expertise, including in the field of human rights, and the general knowledge and understanding of diverse cultures necessary for impartial, objective, non-selective and effective performance of the duties of the High Commissioner.' The post is appointed by the Secretary-General and approved by the General Assembly, with due regard for geographical rotation, and has a fixed term of four years with the possibility of one renewal for four years. The High Commissioner is to report to the Commission and through ECOSOC to the General Assembly. The Office of the High Commissioner is to be located in Geneva with a liaison office in New York.

Apart from the crucial right to play 'an active role ... in preventing the continuation of human rights violations throughout the world', mentioned above, the High Commissioner is given a number of responsibilities. The General Assembly decided that the High Commissioner will be the UN official with principal responsibility for UN human rights activities, and that the responsibilities will be 'promoting and protecting the effective enjoyment by all of all civil, cultural,

24 As the Permanent Representative of Indonesia, Ambassador Wisnumurti, reportedly put it: the then head of the Centre for Human Rights had no authority to engage in dialogue with Member States. 'The new High Commissioner will dialogue with all countries and address all human rights issues.' 'NAM Backs Third World Human Rights High Commissioner', *IPS Daily Journal*, 22 December 1993. The final resolution was adopted as Resolution 48/141.

economic, political and social rights. (The alphabetical listing of the rights resolved the age-old problem of which rights to list first.) This catch-all responsibility must cover every imaginable aspect of human rights work. Promoting and protecting the realization of the right to development merits a separate sub-paragraph as does the provision of advisory services and technical assistance. Despite the emphasis on integrating the human rights of women into the mainstream of United Nations system-wide activity in the Vienna Declaration, delegates proved unable to agree on such an explicit function for the High Commissioner.

These wide operational tasks are to be complemented by diplomatic/political tasks such as: engaging in dialogue with all Governments to secure respect for human rights; enhancing international cooperation for the promotion and protection of all human rights; coordination of human rights activities throughout the UN system; rationalization, adaptation, strengthening and streamlining of the UN machinery in the field of human rights, and overall supervision of the Centre for Human Rights.

Of course there are a number of restrictions placed on the High Commissioner. The resolution states that the High Commissioner is to function within the framework of the Charter of the UN including the obligations to respect the sovereignty, territorial integrity and domestic jurisdiction of States. It also states that although the High Commissioner is to have principal responsibility for the UN's human rights activities, this is to be under the direction and authority of the Secretary-General. But the concrete and immediate restrictions come in the form of a totally inadequate budget and personnel commitment. In a bizarre procedure whereby the secretariat alone determines the cost of carrying out all the functions mentioned above, the estimate came down that implementation of the resolution would cost only \$1,888,000 over the next two years. This would provide a salary at the level of Under-Secretary-General for the High Commissioner, two professional staff, three secretarial staff and a travel allowance of \$50,000.²⁵

IV. The Future: from Dialogue to Protection

As predicted at the time, a few months after the adoption of the resolution no one recalls its terms. Instead, everyone has concentrated their attentions on the qualities and activities of the actual incumbent. Ambassador José Ayala Lasso was appointed by the Secretary-General on 1 February 1994 and approved by the General Assembly later that month. He took up his position on 5 April 1994.

The next day the Presidents of Rwanda and Burundi died in an air crash in suspicious circumstances, setting off a wave of violence in Rwanda primarily directed against civilians from the Tutsi minority and opponents of the Rwandan government. Following frantic efforts to evacuate foreign nationals from Rwanda,

25 A/C.3/48/L.87, 14 December 1993.

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the Belgian government pulled its contingent out from the United Nations peace-keeping operation there and on 21 April the Security Council reduced the strength of the force from over 2,000 to 260. The horrific killings and mutilations were characterized as genocide by the Secretary-General of the UN and estimates of the deaths had reached 100,000 by the beginning of May.

The High Commissioner asked various UN bodies and non-governmental organizations for suggestions and information. On 4 May he issued a public statement announcing that he would go to Burundi and Rwanda together with a number of UN officials and an independent expert, Louis Joinet.²⁶ He said he hoped that the Commission would meet in a special session and consider appointing a special rapporteur as well as a team of human rights monitors.²⁷ He travelled to Burundi and Rwanda and eventually arrived in Kigali and broadcast on Radio Rwanda an address appealing for an end to the human rights abuses.

The Commission did indeed hold a special session on 24 and 25 May, to hear the report of the High Commissioner, and passed a resolution on the 25th appointing a special rapporteur for Rwanda. It also called for the High Commissioner to make arrangements for there to be a team of human rights field officers to assist the special rapporteur, and work with the UN peace-keeping operation, which the Security Council had expanded up to 5,500 on 17 May 1994.²⁸ The special rapporteur is to travel to Rwanda.

The same day the High Commissioner launched an appeal for a UN programme to 'save the people of Burundi' from the kind of human rights abuses which were taking place in neighbouring Rwanda. He proposed a 'pilot case' of a technical assistance programme to cost \$1.2 m and to last at least two and a half years.²⁹ On 30 May the High Commissioner announced a 24-hour fax 'hot-line' and computer data base as part of new efforts to handle emergencies such as Rwanda.³⁰

Space does not permit an analysis of all these developments but they give a flavour of the concrete impact which the High Commissioner has already had. The emphasis on protection has become a defining feature of the High Commissioner's first concrete proposals whilst the procedural hurdles which might have prevented action do not seem to have materialized.

26 A member of the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities.

27 See also the appeals at this time from various NGOs: 'Amnesty International Launches Public Appeal for Exceptional United Nations Action on Rwanda and Burundi', 3 May 1994, AFR/WU 05/94; Oxfam, 'Genocide in Rwanda: Update 1', 7 May 1994; 'A Call for UN Human Rights Action on Rwanda and Burundi', May 1994, AI Index: IOR 41/02/94.

28 The text of the Commission's resolution is contained in E/CN.4/S-3/L.2, 25 May 1993; the report of the High Commissioner is contained in E/CN.4/S-3/3; the Security Council Resolution is Resolution 918.

29 DPI Press Release HR/4004, 27 May 1994.

30 UN Press Release, HR/94/20, 30 May 1994. The number is 41 22 917 0092.

V. Concluding Remarks

A number of conclusions can be drawn about the relationship between the process of creation and the first steps taken by the High Commissioner.

First, the fact that Ambassador Ayala Lasso himself presided over the tortuous process of creation means that he personally understands the expectations of him and some of the gaps the post is supposed to fill.

Second, the High Commissioner has used the confidence which the Member States had in appointing him to go forward without having to wait for inter-governmental instructions. Of course, Rwanda had become a pariah State in the midst of a humanitarian disaster. Less clear-cut cases will test the independence of the High Commissioner.

Third, despite the heated and secretive discussion over the wording of the mandate, the original wording of the resolution has been of little relevance to the evolution of the Office of the High Commissioner in its first few months. The clear precedent of producing a report in response to an emergency is now established.

Fourth, ironically, the controversy surrounding the creation of the Office has fuelled a sense that this post is more than just another UN bureaucratic job and actually symbolizes humanity's aspirations to achieve greater dignity for all human beings. Despite inadequate resources this high-level official can galvanize things and is more than merely a servant of a UN body.

Fifth, the role of the NGOs in promoting and conceptualizing the idea of a High Commissioner over the years is now reflected in the Office's reliance on them for information, suggestions and support. At the beginning of the Rwanda crisis, the High Commissioner wrote to NGOs asking for assistance. Despite the governmental monopoly on the right to conceive and deliver the High Commissioner, governments have shown little interest in nurturing or providing for the Office in its formative first few months. There have been no expressions of concern about the inadequate resources allocated by the Secretary-General, no recognition by the Security Council of the complementary role of the High Commissioner, and few spontaneous invitations to come to countries to engage in dialogue about the human rights problems. By way of contrast, the NGOs deemed irrelevant to the creation process are now central to the future of the Office. NGOs have always been central in informing the UN about human rights violations. With the advent of the High Commissioner this role will be highlighted, as the Office is to respond on an emergency basis and before governments have taken a political decision that a human rights situation should be the subject of UN scrutiny. It will be in precisely those areas where governments are reluctant to supply information or suggestions that NGOs now have a crucial role to play.

Lastly, the diplomatic skill and air of authority which Ambassador Ayala Lasso brought to the process of creating the High Commissioner has left him with a great deal of credit *vis-à-vis* the governments that eventually approved his appointment. It

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is to be hoped that these same governments will allow the Office to work properly to prevent human rights violations. If the respect which is currently shown filters down to the officials and individuals who currently abuse people's rights, then it says a lot about the need for such symbolism and the power of the human rights message. The first signs are there – it was reported in New York that during the High Commissioner's brave visit to Kigali some of the killing was temporarily suspended.