



**The Evolution of  
National  
Human Rights  
Institutions**

**The Role of  
the United Nations**

By Anna-Elina Pohjolainen

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**January 2006**

**CONTENTS**

<b>1 INTRODUCTION .....</b>	<b>1</b>
1.1 THE PHENOMENON OF NATIONAL HUMAN RIGHTS INSTITUTIONS.....	1
1.2 PLAN FOR THE STUDY.....	2
<b>2 THE CONCEPT OF NATIONAL HUMAN RIGHTS INSTITUTIONS.....</b>	<b>6</b>
2.1 INTERNATIONAL STANDARDS FOR NATIONAL INSTITUTIONS: THE PARIS PRINCIPLES .....	6
3.2 THE NORMATIVE STATUS OF THE PARIS PRINCIPLES .....	9
3.3 THE PARIS PRINCIPLES IN THE NATIONAL CONTEXT .....	14
3.4 BASIC TYPES OF NATIONAL INSTITUTIONS .....	16
<b>3 NATIONAL INSTITUTIONS ON THE INTERNATIONAL AGENDA .....</b>	<b>30</b>
3.1 INTRODUCING THE IDEA.....	30
3.1.1 <i>National Institutions as “International Support Bodies”</i> .....	30
3.1.2 <i>Advisory Committees for Governments</i> .....	34
3.2 DEVELOPING THE IDEA .....	39
3.2.1 <i>National Human Rights Committees and Treaty Monitoring</i> .....	39
3.2.2 <i>National Institutions and Complaints Handling</i> .....	41
3.2.3 <i>The First International Guidelines for National Institutions</i> .....	43
3.3 THE POPULARISATION OF THE CONCEPT.....	47
3.3.1 <i>Exchange of Information on National Institutions</i> .....	47
3.3.2 <i>National Institutions and Technical Assistance</i> .....	51
3.3.3 <i>Developments beyond the United Nations</i> .....	55
3.4 THE DIFFUSION OF NATIONAL INSTITUTIONS.....	58
3.4.1 <i>International Standards for National Institutions: The “Paris Principles”</i> .....	58
3.4.2 <i>International Commitment to “Paris Principles Institutions”</i> .....	60
3.4.3 <i>The First United Nations Programme of Action for National Institutions</i> .....	65
3.4.4 <i>The Proactive Phase of the United Nations Programme</i> .....	67
3.4.5 <i>The United Nations National Institutions Approach</i> .....	72
3.4.6 <i>Developments in the Field of National Institutions</i> .....	74
3.4.7 <i>National Institutions in Other International Fora</i> .....	77
<b>4 SUMMARY AND CONCLUSIONS .....</b>	<b>118</b>
4.1 SPECIFICATION OF THE CONCEPT OF NATIONAL INSTITUTIONS .....	119
4.2 THE CHANGING ATTITUDES OF GOVERNMENTS .....	121
4.3 THE EXPANDING ROLE OF THE UNITED NATIONS .....	123
<b>BIBLIOGRAPHY.....</b>	<b>i</b>
<b>APPENDIX: Paris Principles relating to the status of national institutions .....</b>	<b>xxxiv</b>

## PREFACE

This study was inspired by international relations theories stating that international organisations can be significant actors in their own right. Apart from the fact that they can pick up and develop new ideas, they can also actively contribute to the popularisation and diffusion of such ideas.<sup>1</sup> According to these theories, even international organisations without considerable material power may play an important role in the spreading of new ideas through out the world, for instance through the provision of technical assistance and expert advice. Focusing on the evolution and spreading of national human rights institutions and the decade-long work by the United Nations in this field, this study introduces one more case demonstrating that international organisations can indeed make a difference.

The study is based on my PhD dissertation “Establishing National Human Rights Institutions: The Role of the United Nations”<sup>2</sup>, defended at the Department of Law of the European University Institute on the 8<sup>th</sup> of November 2004. The research for the dissertation was mainly carried out between the years 2000 and 2003 and, therefore, this study covers developments only until 2003.

It would not have been possible to complete this study without a chance to gain some first hand experience on the United Nations’ work in the field of national human rights institutions. For this opportunity I am deeply indebted to the National Institutions Team and the then Special Advisor on National Institutions at the Office of the High Commissioner for Human Rights in Geneva. I also owe a thank you to those several other people working at the Office of the High Commissioner who generously took the time to answer my numerous questions. My six-month stay in Geneva was greatly facilitated by a grant from the Finnish Cultural Foundation, which allowed me to take a leave of absence from the European University Institute and to fully concentrate on learning about the United Nations and national human rights institutions. I would also like to thank my thesis supervisor at the European University Institute Professor Philip Alston who patiently advised and encouraged me in my work. Last but not least, I would like express my gratitude to my fellow students and the human rights experts who have provided useful comments along the way as well as to the Danish Institute for Human Rights, which has kindly agreed to publish this study. It goes without saying that the author alone remains responsible for the contents of this study and any errors that may remain.

Anna-Elina Pohjolainen

Helsinki, 10 January 2006

## **End Notes to Preface**

<sup>1</sup> See in particular the work by Martha Finnemore (1993), (1996) and (1999).

<sup>2</sup> This study leaves out the theoretical chapter and two case study chapters which are part of the original PhD dissertation. The empirical chapter as well as the conclusions of this study have been modified accordingly.

## 1 INTRODUCTION

### 1 The Phenomenon of National Human Rights Institutions

The last ten years have witnessed the emergence of a new human rights actor. This actor, generally referred to as the National Institution for the Promotion and Protection of Human Rights (“national institution”), can be described in broad terms as an independent body established by a national government for the specific purpose of advancing and defending human rights at the domestic level. In practice, these institutions have adopted a variety of forms and functions depending on the national context in which they operate. The names of these bodies also vary considerably, ranging from human rights commissions and consultative councils to human rights ombudsmen, public defenders and people’s protectors. Despite these differences, all national institutions share certain common features: they are expected to work independently from the government, co-operate with relevant actors at home and abroad and contribute to the implementation of international human rights standards by acting as “guardians”, “experts” and “teachers” of human rights.

International support for the establishment and strengthening of these national institutions is currently considered as one of the most important ways to improve domestic human rights records especially in emerging democracies and countries recovering from internal conflicts or times of extreme oppression. The potentially important role of national institutions has been acknowledged by several intergovernmental and non-governmental organisations in the field of human rights, and many international actors have also considerably stepped up their activities relating to these domestic bodies. Among them, in particular, the United Nations (UN) has actively advocated the expansion of national institutions, taking its starting point from the so-called Paris Principles, which were endorsed in 1993 by the World Conference on Human Rights and the UN General Assembly. The central position that national institutions have gained in the overall human rights work of the organisation is reflected in the Secretary-General’s report of 2002. It states that “[b]uilding strong human rights institutions at the country level is what in the long run will ensure that human rights are protected and advanced in a sustained manner. The emplacement [sic.] or enhancement of a national protection system in each country [...] should therefore be a principal objective of the Organisation”.<sup>1</sup>

The role envisaged for these institutions has not been limited to the promotion of human rights at the domestic level. The past decade also witnessed a considerable development in national institutions' status as an international human rights actor, which can co-operate with and contribute to the work of international human rights organisations side by side with governments and non-governmental organisations. In recent years, national institutions have participated to an increasing degree in international human rights meetings, as well as in the work of international policy-making organs and expert bodies, and the discussion on further strengthening of this co-operation is ongoing.

As a result of the high international profile that national institutions have gained since the early 1990s, the creation of new national institutions is now considered something of a "norm". Governments' interest in the strengthening of their domestic human rights protection mechanisms is interpreted as a sign of their willingness to become a member of the international community of states that live up to international human rights commitments. Encouraged by the desire to improve their human rights records, the governments of the newly-democratised states, in particular, have started to set up and strengthen their national institutions. According to one expert, the number of national institutions that conform to international standards rose from eight in 1990 to fifty-five in 2002.<sup>2</sup> In Africa alone, the number of various human rights commissions grew from one to twenty-four in ten years.<sup>3</sup> In Asia, the rapid mushrooming of national institutions led one local NGO to conclude that they had become a status symbol of the 1990s.<sup>4</sup> A similar phenomenon has taken place in the Latin America and in the Central and Eastern Europe, and at the beginning of the new millennium, the popularity of the concept of national institutions does not show any signs of fading away.

## **1.2 Plan for the Study**

The developments that have taken place since the early 1990s raise the question why the concept of national human rights institutions has become so popular. The purpose of this study is to elucidate this question by examining the evolution and spread of national human rights institutions in the light of the activities of one international organisation: the United Nations.



In this study, the term “United Nations” (UN) refers to the entity of Charter-based bodies which are responsible for the development, formulation and implementation of the UN’s human rights activities. The UN Secretariat, in particular the sector devoted to human rights issues, working under the leadership of the UN Secretary-General is at the very heart of these activities.<sup>5</sup> The main task of the Human Rights Secretariat is to administer and implement the organisation’s Human Rights Programme, including activities related to the provision of advisory services and technical assistance. It derives its authority for this task from the UN policy-making bodies – the Commission on Human Rights, the Economic and Social Council (ECOSOC) and the General Assembly – which decide upon both the general direction and the funding of the organisation’s human rights work. Similar to all intergovernmental organisations, the ultimate decision-making power thereby lies in the hands of the UN Member States which are represented in these bodies.

Apart from the fact that the work and decision-making related to human rights is dispersed among several actors *within* the UN organisation, it should be noted that this work is also shared between different international organisations. In fact, many of the UN human rights activities, including those related to national institutions, have been taken in close co-operation with other UN agencies, programmes and funds. In the 1990s, such collaboration was developed, in particular, with the United Nations Development Programme (UNDP).<sup>6</sup> It is equally important to note that, in addition to the UN, several other international organisations have supported the establishment and strengthening of national human rights structures in the last ten years. Due to the limited scope of this study, these activities can anyhow be examined only in a cursory manner. Along with multilateral assistance, national institutions have also been supported bilaterally by governments, private foundations, research institutes as well as by existing national institutions and their co-operation bodies.<sup>7</sup> Although this study will not focus on this bilateral assistance, it is clear from the outset that the UN and other international organisations have not worked in a vacuum: the activities undertaken by other actors have clearly had an important impact on the spread of national institutions.

Within these limits, the structure of this study is as follows: Chapter two (2) introduces the concept of national human rights institutions. Chapter three (3) will focus, first, on the historical evolution of this concept in the UN framework and, then, on the strategies and forms of support that the UN has used to advocate national institutions in the 1990s. Finally, chapter three (3)

summarises the research results and draws conclusions on the role of the UN in the development and spread of national institutions.

## End Notes to Introduction, Chapter One

<sup>1</sup> A/57/387 (2002), *Strengthening of the United Nations: an agenda for further change*, para. 50.

<sup>2</sup> Kjaerum (2003), 1.

<sup>3</sup> See for example *Human Rights Watch* (2001). These figures should however be considered with caution as there are no official statistics for the number of national institutions and the definition of a national institution tends to vary to some extent from one source to another. Furthermore, as it will be shown later, the criteria for national institutions have evolved over time. The overall tendency is nevertheless clear: it indicates a sudden mushrooming of national institutions since the early 1990s.

<sup>4</sup> *National Human Rights Institutions in the Asia-Pacific Region: Report of the Alternate NGO Consultation on the Second Asia-Pacific Regional Workshop on National Human Rights Institutions, March 1998*, 2. In a similar vein, the NGO assessed that “[...] setting up a National Human Rights Commissions is clearly in fashion for the Governments in the region”. *Ibid.*, 37.

<sup>5</sup> In the UN framework this sector was first established under the title of the *Human Rights Division*. In 1982, following long discussions and considerable expansion of the UN’s human rights work, the Division was upgraded to the *Centre for Human Rights*. When these efforts finally resulted in the establishment of the post of the High Commissioner for Human Rights in 1993, the Centre began to co-operate with the front office of the High Commissioner. However, as part of the UN reform, the Centre was combined with the front office in 1997 and the new entity, led by the High Commissioner, was renamed as the *Office of the High Commissioner for Human Rights* (OHCHR). In describing the activities by the UN Human Rights Secretariat these three names will therefore be used according to the historical phase of evolution. For a more detailed historical evolution of the structure and functions of the UN Human Rights Secretariat see *Humphrey (1984)* and *van Boven (1992)*, both former executive heads of the UN human rights sector.

<sup>6</sup> While this co-operation gained considerably momentum after the conclusion of the 1998 Memorandum of Understanding and the introduction of the 1999 HURIST programme, UNDP has also played a role in the establishment of various types of national institutions in the early 1990s.

<sup>7</sup> For more on the roles that various international and national actors play in supporting national institutions, see the study by the *Danish Institute for Human Rights (2003)*. Similarly, *Cardenas (2003b)* discusses the role of the Canadian Human Rights Commission.

## 2 THE CONCEPT OF NATIONAL HUMAN RIGHTS INSTITUTIONS

### 2.1 International Standards for National Institutions: The Paris Principles

National human rights institutions can be generally described as permanent and independent bodies, which governments have established for the specific purpose of promoting and protecting human rights. Apart from this very broad concept, one cannot plausibly claim that there would be any single, universally accepted definition of national human rights institutions. Instead, there is a bulk of recommendations and guidelines that have been developed and endorsed by different international institutions and non-governmental organisations, professional associations and expert bodies with a view to encouraging governments to create the most suitable and efficient national institutions possible.<sup>1</sup> By far the most authoritative set of recommendations, which have often served as a basis and inspiration for further conceptual development in the field, were adopted as a result of an international workshop on national human rights institutions organised by the UN in Paris in 1991.<sup>2</sup> Due to the location of this historical meeting, the *Principles relating to the Status of National Human Rights Institutions* have been referred to simply as the *Paris Principles* ever since.<sup>3</sup>

The Paris Principles are generally considered as the international minimum standards for national institutions. They lay down a broad normative framework for national institutions' status, mandate, composition and methods of operation.<sup>4</sup> The primary requirement set by the Paris Principles is that national institutions be official state-funded bodies which derive their mandate and powers from a constitutional or a legislative text and have a specific competence to promote and protect human rights. Although national institutions are governmental agencies, they should enjoy independence. This is to be ensured by according these institutions an autonomous status and an adequate funding, which enables them to have their own personnel and premises and to carry out their work efficiently and impartially without the fear of outside interference. Apart from this institutional independence, the independence of the individuals working for national institutions should be guaranteed, for instance, by ensuring impartial appointment procedures and regulating this procedure and the duration of the mandate in an official act.

According to the Paris Principles, the composition of national institutions should be pluralistic and bring together representatives of social forces involved in the promotion and protection of human rights, such as NGOs, social and professional organisations, leading proponents of religious and philosophical thought, universities and qualified experts. It is also suggested that the representatives of parliament and government departments could become members of the institution; however, the latter should only participate in an advisory capacity. Apart from the fact that a multi-member structure ensures the widest possible expertise of local issues and contributes to co-operation with relevant sectors of society, it has often been seen also as an additional safeguard for independence. At best, pluralism may guarantee that the body carries out its work impartially without any particular approach or group gaining a dominant position.<sup>5</sup>

The mandate of national institutions should be “as broad as possible”. In practice, this requirement has been interpreted to refer both to the widest possible selection of responsibilities or tasks and to the largest possible legal basis for the work of the institution, ranging from the rights protected in the constitution to human rights protected in various international human rights instruments.<sup>6</sup> Rather than promoting the creation of several specialised bodies or bodies carrying out a limited set of tasks, the Paris Principles thereby recommend that governments set up general human rights institutions undertaking various activities related to human rights monitoring, advice as well as to human rights education and awareness-raising.<sup>7</sup> In addition to these “minimum tasks”, the Paris Principles propose that national institutions should engage in receiving and investigating human rights complaints and in settling such complaints, for instance, through conciliation. However, compared to other tasks, this quasi-judicial function is given only a secondary status; even in the framework of the Paris Principles, which are recommendations by their nature, the task of dealing with complaints is presented as “optional”.

In an ideal case, the broad mandate of national institutions is complemented with powers and resources that are commensurate to their responsibilities and allow them to carry out their work effectively. At a minimum, these bodies should be accorded the right to freely consider any issues falling within their competence, receive representations from any person and obtain any information and documents necessary for considering issues within their jurisdiction and to publish their opinions and recommendations. The Paris Principles recommend that national institutions should also develop and maintain close co-operation with other actors working in the

field of human rights both at home and abroad. Apart from the relevant sectors of the government and domestic human rights NGOs, links should be created with national institutions across borders as well as with the UN and regional institutions.

Notwithstanding the fact that the Paris Principles provide only a general outline for national institutions, they propose the creation of a national structure, which was – and still is – in many ways almost revolutionary. For one thing, the whole concept of national institutions is dating only from the early 1990s, and at the time only few experts in a handful of countries were familiar with the utility and nature of this type of institution. Furthermore, the idea that governments should establish and fund agencies, which would develop transnational connections and possess a certain scope of freedom of action at the international level must have appeared strange in the state-centered world which had only recently learned to accept the participation of non-governmental organisations. Finally, the fact that the institutions outlined in the Paris Principles did not fit easily in the traditional three-division of state powers but appeared to have a role in both the legislative, judicial and executive field, must have confused many governments. Despite these peculiar characteristics, national institutions have spread to many new places all over the world since the introduction of the Paris Principles in the early 1990s.

Along with the increasing number of new national institutions and the growing experience in the field, some proposals have been made to improve the international benchmark set for these institutions. Stronger emphasis has, for instance, been placed on the importance of the investigative and complaints-handling function, which is now recognised as one of the core functions of national institutions.<sup>8</sup> Similarly, the requirement of pluralistic composition has been questioned in the light of the existing institutions that carry out functions similar to those in the Paris Principles but are *de facto* single-person bodies.<sup>9</sup> Several observers have also highlighted the importance of creating national institutions in the environment with sufficiently developed democratic structures. In line with this, it has been suggested that the Paris Principles should be supplemented with a specific requirement of fundamental democratic processes, including free elections, the rule of law and an independent judiciary.<sup>10</sup>

Regardless of this criticism, which focuses on certain aspects of the Paris Principles, their fundamental idea – the creation of a body which is at the same time independent from the

government and dependent on its financial and political support – has not been seriously called into question. Neither has it been analysed in depth what problems might arise from the fact that the national institution is expected to play a dual role of advising and criticising the government.<sup>11</sup> Instead of impugning these basic tenets laid down in the Paris Principles, advocates of national institutions have concentrated on developing additional recommendations and guidelines which do not only highlight the independence of these bodies but also elaborate the ways and means to ensure the impartiality of their work. These recommendations issued equally by NGOs, international expert bodies as well as by national institutions themselves, have resulted in something of a “doctrine of national institutions”.<sup>12</sup>

Over ten years after their international endorsement, the Paris Principles still lie in the core of this doctrine and there has not been any serious attempts to amend these broadly supported minimum guidelines. The reason for this is obvious; as some experts suggest, the revision of the widely accepted and relatively vague standards might open the Pandora’s box. As far as it is not clear what difficulties would be encountered if changes are made and as far as the Principles continue to give guidance to governments and national institutions, it could be risky to open the door for negotiations.<sup>13</sup> Therefore, for the time being, the original Paris Principles from the year 1991 still provide the most authoritative normative basis that exists at the international level for defining the characteristics of national institutions for the promotion and protection of human rights.

### **3.2 The Normative Status of the Paris Principles**

As a set of recommendations, the Paris Principles do not possess the quality of legally binding international rules. Although the workshop that drafted and adopted the Principles was convened in response to the request of the UN Commission on Human Rights,<sup>14</sup> these standards originally only represented the view of a handful of national institutions, some NGOs and a limited number of governments. Nonetheless, since then, the Principles have gained considerable political and moral weight due to the fact that various international and national organisations have welcomed these principles and encouraged governments to follow them.<sup>15</sup>

The lead in this respect has been taken by the UN policy-making bodies, which have, since the early 1990s, annually adopted resolutions to encourage the Member States to establish and strengthen national institutions having regard to the Paris Principles.<sup>16</sup> The concept of national institutions was also endorsed in the Final Document and Programme of Action of the World Conference on Human Rights, organised in Vienna in 1993.<sup>17</sup> Drawing on these resolutions, the Office of the High Commissioner for Human Rights (OHCHR) has explicitly announced that its assistance in the field is targeted at “established national institutions and governments that are in the process, or have committed to, establishing such institutions in accordance with the relevant international standards (i.e. the “Paris Principles” [...])”.<sup>18</sup>

The endorsement of the Paris Principles beyond the UN fora has given them additional legitimacy. The World Conference on Human Rights clearly marked a turning point in this respect by creating a political opening for the prompt acceptance and diffusion of the idea of national institutions. At the end of the 1990s, the recommendations of the Conference had already been reflected in the resolutions and recommendations of several intergovernmental actors. The International Parliamentary Union (IPU) has repeatedly called states to honour the Paris Principles since its 1994 resolution concerning the strengthening of national human rights structures.<sup>19</sup> Similarly, in 1997, the Council of Europe Committee of Ministers recommended that governments “draw, as appropriate, on the experience acquired by existing national human rights commissions and other national human rights institutions, having regard [...] the Paris Principles [...]”.<sup>20</sup> The role of independent national institutions in the promotion and protection of human rights was acknowledged in the 1990s also by the African and Latin American regional organisations, although neither of them included an explicit reference to the Paris Principles in their political resolutions.<sup>21</sup>

In addition to intergovernmental organisation, several international human rights NGOs have recommended that governments should follow the standards laid down in the Paris Principles. Amnesty International was one of the first NGOs to refer to the Paris Principles, by stating in 1993 that the Paris Principles “should serve as the basic minimum guidelines for the establishment of national institutions”.<sup>22</sup> Thereafter, it has endorsed the Principles and has also used them as a reference-point in several individual cases.<sup>23</sup> Human Rights Watch has also found that the Paris Principles provide a good starting-point for institution building as this increases the



likelihood of an active and serious institution.<sup>24</sup> Similar views have been expressed by regional NGOs. The Alternative NGO Consultation of National Human Rights Institutions in the Asia Pacific Region announced in its statement of 1997 that the Paris Principles are the “minimum standards against which the independence and credibility of the National Human Rights Institutions already existent and being set up will be measured”.<sup>25</sup> Likewise, the Commonwealth Human Rights Initiative (CHRI) uses the Paris Principles as a starting-point and has urged local NGOs to scrutinise national institutions, in particular their compliance with these standards.<sup>26</sup>

The Paris Principles have also offered a useful reference point for national institutions themselves. The International Co-ordinating Committee of National Human Rights Institutions (ICC), the representative body of a global national institutions’ network established in 1993 during the Second International Workshop of National Institutions,<sup>27</sup> has adopted the Paris Principles as a criteria for membership. According to the Rules of Procedure of the ICC, “only national institutions which comply with the Paris Principles shall be eligible to be members of the group of National Institutions”.<sup>28</sup> Regional groups of national institutions have set similar requirements for membership. An example of this is the Asia-Pacific Forum of National Human Rights Institutions (APF), which only accepts as members those national institutions which conform to the Paris Principles.<sup>29</sup> In addition to national institutions’ co-operation bodies, organisations that have traditionally advocated the ombudsman institutions began to discuss the significance of the Paris Principles and their potential role in the future work of ombudsmen in the late 1990s.<sup>30</sup>

Finally, in recent years, national institutions and the Paris Principles have been given increasing significance in the implementation of international treaty obligations. In this regard, it is worth noting, in particular, the general comments of the UN treaty bodies, which monitor the States Parties’ compliance with international, legally-binding human rights instruments and provide recommendations for their improved enforcement. By 2003, three out of six treaty bodies had recommended the establishment of national institutions in accordance with the Paris Principles to ensure the effective implementation of treaty obligations. The first of these recommendations was already given a couple of months before the 1993 World Conference by the Committee on the Convention on Elimination of Racial Discrimination (CERD). It invited States Parties to set up “national commissions or other appropriate bodies, taking into account, mutatis mutandis, the

principles relating to the status of national institutions”.<sup>31</sup> This affirmative line was followed by the Committee on Economic, Social and Cultural Rights (CEREC). It noted in 1998 that “national institutions have a potentially crucial role to play in promoting and ensuring indivisibility and interdependence of all human rights”, and thereby called upon Member States to “ensure that the mandates accorded to all national human rights institutions include appropriate attention to economic, social and cultural rights”.<sup>32</sup>

The most recent general comment on national institutions was adopted in 2002 by the Committee on the Rights of the Child (CRC). Apart from the fact that this recommendation is by far the most elaborate in terms of the application of the Paris Principles in the context of the relevant convention, it is also the most vigorous of all of the general comments that concern national institutions. For instance, it considers the establishment of national institutions as part of the treaty obligations undertaken by the States Parties upon ratification and stipulates that national institutions “should be established in compliance with the Principles relating to the status of national institutions [...]”.<sup>33</sup>

Following the adoption of the Optional Protocol to the International Covenant Against Torture in December 2002, the creation of a certain type of national institution was, for the first time, incorporated into an international legal instrument. Once the Protocol enters into force, the States Parties that have ratified or acceded to it have a legal obligation to create national mechanisms for the prevention of torture. Although the wording of the Protocol is flexible, it urges Parties to “give due consideration to the Principles relating to the Status and Functioning of National Institutions for Protection and Promotion of Human Rights”.<sup>34</sup> Furthermore, the Protocol obliges Parties to “guarantee the functional independence of the national preventive mechanisms as well as the independence of their personnel” and to equip such bodies with certain minimum responsibilities and powers, many of which are outlined in the Paris Principles.<sup>35</sup>

In addition to the general recommendations, the UN treaty bodies have underlined the role of national institutions when dealing with the reports of individual governments. This tendency has clearly gained momentum since the late 1990s and can, of course, be partly explained by the growth of the number of national institutions worldwide. However, there is no doubt that a role has also been played by the independent experts who have become more familiar with the

concept of national institutions and have understood the great potential of such institutions in the national implementation of UN human rights treaties.<sup>36</sup> For instance, the CRC and the CESCRC have systematically started to refer to the Paris Principles in their concluding observations and encouraged States Parties to create national institutions that comply with these standards.<sup>37</sup> On the other hand, the CERD has drawn on its own General Recommendation, which includes a direct reference to the Paris Principles.<sup>38</sup>

Since the end of the 1990s, UN special rapporteurs and representatives have also attached growing importance to national institutions and to the Paris Principles. Although it seems that the endorsement of national institutions has not yet become as central part to the work of extra-conventional mechanisms as it has become within treaty monitoring bodies, it is evident that the idea is gaining ground. In recent years, the experts reporting to the UN Commission on Human Rights or the UN General Assembly have increasingly encouraged governments to consider the establishment and strengthening of national institutions and referred to the Paris Principles as the criteria that these bodies should fulfil.<sup>39</sup>

The fact that the Paris Principles have become widely known in the past ten years and are now accepted as a benchmark for governmental human rights bodies implies that the concept of national human rights institutions has become something of a “norm”. To use theoretical terms, the critical threshold of acceptance, which was reached already in Vienna in 1993, has gradually led to such a broad acceptance of the concept of national institutions that, by the late 1990s, such institutions are almost taken for granted.<sup>40</sup> As one observer concludes, “[t]he creation of National Human Rights Institutions is viewed as an important governmental step in becoming a legitimate member of the international community”.<sup>41</sup> It could be argued that the influence of the concept of national institution has been particularly strong on post-authoritarian and emerging democracies, which have modified their national structures in accordance with international values and principles in the 1990s and have therefore often resorted to external sources for appropriate institutional models.

### 3.3 The Paris Principles in the National Context

Despite the wide endorsement of the Paris Principles, the way in which these recommendations have been translated into practice has been very flexible. There are both pragmatic and political reasons for this. As mentioned earlier, the Paris Principles only provide a very general framework for the structure, mandate and powers of national institutions. Indeed, it could even be said that the standards are so broad that it is next to impossible to objectively assess whether or not a national institution is in full compliance with them.<sup>42</sup> Moreover, while the Paris Principles were originally meant to serve as minimum standards guiding governments in providing their new institutions with the “essential basis”, it has been claimed that, in reality, they constitute a “maximum programme that is met by hardly any national institution in the world”.<sup>43</sup>

The present situation can in part be explained by the fact that the authors of the Paris Principles did not wish to straightjacket governments. Their primary goal was to give governments some guidance at a time when the experience of national institutions was still limited, when the interest in this type of institution was growing fast and when various “scam” institutions claiming to work for human rights had already started to mushroom.<sup>44</sup> While there clearly was a need for international instructions, it was evident that it would be impossible to draw guidelines that would fit all national contexts and would be suitable for all governments. Therefore, the authors of the Principles had to be content with devising a *compromise* that would be supported by most governments.

In a way, this compromise was taken one step further when governments endorsed the Paris Principles in various international fora and retained a certain margin of discretion in their implementation. For instance, the resolutions of the UN policy-making bodies and the final documents of the Vienna World Conference, which encourage governments to set up national institutions keeping in mind the recommendations of the Paris Principles, explicitly recognise the “right of each state to choose the framework that is best suited to its particular needs”.<sup>45</sup> As a consequence, the Office of the High Commissioner for Human Rights, which has systematically highlighted the importance of developing national institutions in conformity with the Paris Principles, has also chosen not to limit its support to one particular model.<sup>46</sup>

The concept endorsed by other international organisations imply an even more flexible understanding of “national human rights institutions” as they often entail several possible types of institutions that can participate in the human rights work at the national level. The Council of Europe, for instance, recommends the establishment of national human rights institutions, in particular human rights commissions, ombudsmen or comparable institutions, “taking into account the specific requirements of each member State”<sup>47</sup>. The resolutions of the OAS General Assembly refer broadly to various types of institutions which have the purpose of promoting and/or protecting human rights, thereby leaving a considerable amount of freedom for governments to decide upon the type of institutions that they wish to put in place.<sup>48</sup> For pragmatic reasons, the International Co-ordinating Committee of National Human Rights Institutions (ICC) also overlooked some regional variations and opened its membership to national institutions, which could not, in strict terms, be considered as fully-fledged Paris Principles institutions. Without this concession, for instance a number of ombudsmen in Europe and in Latin America would not have been able to participate in the work of the ICC despite their important work at the national level.<sup>49</sup>

The fact that governments have the freedom to tailor their national institutions according to their domestic context has undoubtedly been one of the reasons for the success of national institutions. The flexibility of the concept has evidently opened doors also to such countries where international human rights advocates have not always been welcome and helped to accommodate the new institutional structure in different legal and political environments. One could therefore claim that the fact that the concept of national institution is broad is not only a weakness. This argument is further supported by the observation of some experts that national institution’s compliance with a certain legal framework is not always connected to its effectiveness. On the one hand, it has been claimed that several institutions have been effective in their own context without having a broad mandate, a strong founding statute, independent appointment process and adequate funding.<sup>50</sup> On the other hand, it seems that the fulfilment of some specific standards or characteristics does not always ensure that the national institution is able to live up to expectations – or even to its formal mandate.<sup>51</sup>

This uneven and somewhat unpredictable record of “successes” and “failures” suggests that the successful consolidation of a national institution goes far beyond the establishment of a good

normative basis. Indeed, it is said that the litmus test only takes place when the national institution begins its work. In this respect, the institutions' ability to carve its niche in the society and to gain the trust of the public – rather than its close compliance with international standards – can be seen as the most crucial elements of success.<sup>52</sup> Nevertheless, the adoption of a legal mandate respecting the Paris Principles serves as a solid bedrock for the work of a national institution and often indicates that majority of the political forces are supportive of the institution.<sup>53</sup>

### 3.4 Basic Types of National Institutions

The broad concept of national human rights institution mirrors the situation in the field: it seems that there are as many types of national institutions as there are states. Governments have applied the Paris Principles and other international recommendations in line with their national interests. In this way, the selection of a suitable institutional model is affected by the prevailing legal system and past traditions, political situation and historical experiences, economic circumstances and social needs as well as by the example of neighbouring countries or otherwise politically important states. As a consequence, a quick overview of domestic human rights bodies reveals considerable differences in the legal basis and jurisdiction, the functions and powers as well as the structure and composition of national institutions. Notwithstanding this, for analytical purposes, it is useful to create a general classification that elucidates the *main* differences in the *formal* characteristics of these institutions.<sup>54</sup> In order to capture the heterogeneous nature of this field, national institutions can be divided into four broad categories, encompassing: the human rights commission model, the advisory committee model, the ombudsman model, and the human rights institute model.<sup>55</sup>

The *human rights commission* represents the classic type of national institutions and conforms most clearly to the model outlined in the Paris Principles. This type of national institution is sometimes also referred to as the “Commonwealth model” due to its origin and its relatively strong popularity in the Commonwealth region. The model is based on the example of the “first national institutions”, i.e. the human rights commissions of Australia (1981), Canada (1977), New Zealand (1977) and the United Kingdom (1976).<sup>56</sup> While the mandate of these early

commissions focussed on the implementation of anti-discrimination or equality legislation,<sup>57</sup> the Paris Principles introduced a new type of human rights commission, which has a general human rights mandate going beyond discrimination cases.<sup>58</sup> In many cases, the jurisdiction of this commission covers both the public and private sectors. Human rights commissions are by definition collegiate bodies based either on a technocratic “expert” composition, which is typical of anti-discrimination and equality commissions, or on a pluralistic composition, which is closer to the ideal of the Paris Principles and brings together various sectors of society.<sup>59</sup>

The mandates accorded to human rights commissions vary in scope, however, in general commissions are responsible for a wide range of functions with a special emphasis on proactive and preventive tasks. The commissions’ tasks may include advising the government on human rights matters and monitoring its compliance with its human rights obligations, as well as carrying out awareness-raising and training activities in the field of human rights. In many cases, the investigation of complaints and conciliation of cases with a view to an amicable settlement are also part of their responsibilities. Some commissions are also bestowed with the task of conducting public inquiries on relevant human rights questions.<sup>60</sup>

Unlike human rights commissions, national institutions following the *advisory committee model* do not usually aim to act so much as human rights guardians and educators but rather to build bridges between civil society and the government. This model is based on the example of the National Consultative Commission of Human Rights of France (1984) and is therefore sometimes referred to also as “the French model”. In the 1980s and 1990s, the advisory committee model has gained popularity, in particular, in Francophone Africa.<sup>61</sup>

Due to their consultative role, advisory committees do not usually receive complaints or possess strong investigative powers. Instead, they concentrate on assisting the government in human rights issues through the provision of expert advice and conducting studies on human rights issues.<sup>62</sup> This advisory and research capacity is often limited to cases where the government has specifically requested the institution’s assistance. Apart from this, advisory committees may engage in educational and awareness-raising activities similar to those of human rights commissions. Due to these overlapping mandates, the line between a proactive advisory committee which also acts on its own initiative and a human rights commission with a weak

monitoring mandate is often subtle. There are also similarities in the composition of these two types of national institutions. Like human rights commissions, advisory committees are multi-member bodies and bring together people from different backgrounds, ranging from academics and NGOs to human rights experts and government officials. However, in comparison with human rights commissions, the advisory committees' membership is often larger and, therefore, the chances of having a truly pluralistic representation, as recommended in the Paris Principles, are also higher.<sup>63</sup>

The category of *human rights ombudsmen* includes national bodies that combine features of the classic ombudsman and the human rights commission model. As a consequence, these institutions have also been called "hybrid offices" in the literature.<sup>64</sup> The first national institutions following this kind of mixed model were already established in the 1970s.<sup>65</sup> The real mushrooming of the hybrids did not begin however until in the 1990s when several Latin American and Central and Eastern European states started to strengthen their human rights structures.<sup>66</sup> In contrast with the classic Scandinavian ombudsman, which has traditionally concentrated on monitoring the legality and fairness of public administration, the mixed model institutions do not act as mere "administrative watchdogs" but they have also been given an explicit mandate to promote and protect human rights. As a rule, this mandate is nonetheless only limited to the public sector.

The emphasis of human rights ombudsmen's work is usually placed on the investigation of complaints and surveillance of the observance of human rights at different levels of state. These institutions are usually authorised to also make recommendations and proposals and to issue opinions and statements on the government policies and legislation related to or having effect on human rights.<sup>67</sup> Unlike the classic ombudsman, the new human rights oriented version may also engage in educational and training activities similar to those undertaken by human rights commissions.<sup>68</sup>

The composition of human rights ombudsmen is the most visible difference compared to other types of national institutions: ombudsman institutions are by definition single-person bodies, which means that the Paris Principles requirement of pluralistic composition cannot be fulfilled.<sup>69</sup> Apart from this distinctive feature, the line between human rights ombudsmen and



human rights commissions has become increasingly blurred. One can plausibly ask, for instance, what is the difference between a human rights commission and a human rights ombudsman which do not possess the traditional administrative control function but, instead, concentrates on various promotional activities. Perhaps the clearest sign of the convergence between these models, often considered as the two basic forms of national institutions,<sup>70</sup> is that many human rights ombudsmen are members both of the International Ombudsman Institute (IOI) and the International Co-ordinating Committee of National Institutions (ICC).<sup>71</sup>

Finally, a separate category of *human rights institutes* can be identified. By 2003, only one human rights institute, the Danish Centre for Human Rights,<sup>72</sup> had been officially accredited as a national human rights institution. Similar institutes have, however, been created also in several other countries.<sup>73</sup> The model is potentially interesting for democratic states, in particular those which have already relatively well-functioning human rights structures, such as ombudsmen institutions or parliamentary complaints bodies, and do not therefore have any immediate functional need to put additional and possibly overlapping structures in place. Following from their complementary role, human rights institutes do not usually investigate individual complaints or possess extensive investigative powers.<sup>74</sup> Instead, the emphasis of their work is placed on activities relating to human rights education, information, research and documentation. In many cases, human rights institutes also prepare statements and commentaries on draft legislation and provide other types of expert advice to the government on various human rights issues. The structure of human rights institutes reflects their principal function: the practical work is usually carried out by professionals with the expertise of different fields of activity, supervised by a governing board representing a wider cross-section of society.<sup>75</sup>

As this brief overview shows, the mandate and composition of national institutions vary significantly from one type of institution to another. The diversity becomes even more apparent by looking at the various institutions falling under the main categories. Nevertheless, in principle, all of the domestic human rights bodies described here share certain common features: most notably, they have been established by governments with the specific goal of promoting and protecting human rights. Furthermore, they are supposed to work as independent human rights agencies, which – even when serving the government – carry out their work impartially and without external interference, in close co-operation with other domestic human rights actors.

The subsequent chapter concentrates on studying how and why this concept of national human rights institution came into being and what role the UN played in this process.

Table 1. The main characteristics of the basic types of national institutions.

	<b>Human rights commissions</b>	<b>Advisory committees</b>	<b>Human rights ombudsmen</b>	<b>Human rights institutes</b>
<b>Composition</b>	Several commissioners, civil society can sometimes participate in the selection	Pluralist committee representing various sectors of civil society and the government	Single-person body (often assisted by one or several deputies)	Human rights experts and pluralistic advisory board supervising the work
<b>Mandate/principal objective</b>	Promotion and protection of human rights	Advising the government on human rights issues	Protection of civil rights and/or human rights	Promotion of human rights
<b>Monitoring function</b>	Observance of human rights monitored; investigation of complaints; often conciliatory role	Observance of human rights monitored	Observance of human rights monitored; investigation of complaints	Observance of human rights monitored
<b>Advisory function</b>	Advice to the government and other actors in the field of human rights; opinions and statements	Advice to the government, often only on government's request	Advice to the government on the basis of complaints; opinions and statements	Advice to the government and other actors in the field of human rights; opinions and statements
<b>Education and information function</b>	General awareness-raising; training in the field of human rights	Sometimes general awareness-raising	Sometimes general awareness-raising and educational activities	General awareness-raising; education in the field of human rights
<b>Research function</b>	Research for the purpose of advisory function and promotion of human rights; sometimes public inquiries	Limited research function, mainly for the purpose of advisory tasks	Usually no specific research function	Research with the goal of promoting human rights

## End Notes to Chapter Two

<sup>1</sup> Such recommendations have been recently given, for instance, with a view to setting up national anti-discrimination bodies. See articles 13 and 8a of the *European Council Directives 2000/43/EC and 2002/73/EC* asking Member States to establish or designate a body/bodies to promote equal treatment of all persons without discrimination on the grounds of racial or ethnic origin and to promote, analyse, monitor and support equal treatment of all persons without discrimination on the grounds of sex. For the recommendations of the Council of Europe expert body dealing with racial discrimination see *ECRI General Policy Recommendation No. 2: "Basic principles concerning specialised bodies to combat racism, xenophobia, anti-Semitism and intolerance at the national level" and Appendix, 13 June 1997*. For a further elaboration of the existing standards, see the guidelines for the best practice of national institutions, developed in 2001 by the Commonwealth Secretariat in co-operation with several experts in the field. Amnesty International adopted similar recommendations in 2001. *Amnesty International: National Human Rights Institutions, Amnesty International's recommendations for effective protection and promotion of human rights, 1 October 2001*. For a set of recommendations in a context of the implementation of children's rights, see *General Recommendation No. 2 (2002) on the role of independent national institutions in the promotion and protection of the rights of the child by the Committee on the Rights of the Child, CRC/GC/2002/2, 15 November 2002*. An important set of more general recommendations was introduced already in the late 1970s by the International Ombudsman Institute (IOI) to outline the membership criteria of the organisation and thereby the minimum characteristics of an ombudsman institution. Article 5 of the By-Laws of the IOI, available at the homepage of the organisation at [[www.ualberta.ca](http://www.ualberta.ca)].

<sup>2</sup> The workshop was hosted by one of the oldest national institutions in the world: the French National Consultative Commission of Human Rights. *E/CN.4/1992/43*.

<sup>3</sup> The Principles relating to the status of national human rights institutions, reproduced in the appendix of *GA Res. 48/134 of 20 December 1993*.

<sup>4</sup> The contents and practical implementation of the Paris Principles have been a subject to a considerable amount of research and it is therefore possible to find several publications analysing individual recommendations both from the theoretical and practical point of view. For the purpose of this study, it suffices to briefly introduce the essential components of the "Paris Principles institution". For a more detailed analysis of the Paris Principles, see *UN Handbook (1995)* and "*National Human Rights Institutions: Article and Working Papers*" by Lindsnaes, Lindholt & Yigen (2000) (eds.). For the full text of the Principles, see the appendix of this study.

<sup>5</sup> This is not suggested as explicitly in the Paris Principles as in the various interpretations of these principles, first by the UN and afterwards in several other sources. See for example *UN Handbook (1995)*, 12. Similarly, *Bacquet (2002)* who notes that the pluralist composition not only secures the independence from the government but also from any other social groups.

<sup>6</sup> See for example *UN Handbook (1995)*, 12.

<sup>7</sup> The non-inclusive list of tasks proposed in the Paris Principles urges national institutions, for instance, to follow the human rights situation and developments in the country, in particular, those related to the implementation and preparation of legislative or administrative provisions. When necessary, the institutions should draw the attention of the government to situations in which human rights may be at risk and propose appropriate actions for ending such situations and/or preventing them in the future. National institutions are also expected to promote the harmonisation of national legislation and practice with international human rights instruments and encourage ratification and ensure the implementation of these instruments. Furthermore, in order to increase human rights awareness, national institutions should diffuse information and undertake education concerning human rights as well as to participate in the design and implementation of programmes for teaching of human rights and research on this field.

<sup>8</sup> See *CHR Res. 2002/83* and *CHR Res. 2003/76* in which the Commission takes note "with satisfaction of the efforts of those States that have provided their national institutions with more autonomy and independence, including through giving them an investigative role or enhancing such a role, and encourages other Governments to consider taking similar steps". Similarly, the *Declaration and Programme of Action, UN World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance (Durban, 2001, para. 90)*, explicitly refers to the investigative role of national institutions urging states to establish national institutions with the competence and capacity for "investigation, research, education [...]". See also the Commonwealth Secretariat's criteria for national institutions in "*National Human Rights Institutions: The Best Practice*" (2001), 20-21. The importance of the national institution's quasi-judicial function in the implementation of "positive" human rights is pointed out by *Scheinin (1999)*, 427.

<sup>9</sup> See for example the *Recommendation "For the Future" by the Second European Meeting on National Institutions, Copenhagen 22 January 1997*, which proposes that the Paris Principles be revised to take into consideration also other independent, statutory human rights institutions, in addition to those following the human rights commission model. For similar opinion, see *Reif (2000, 24)*, who notes that the Paris Principles do not sufficiently take the structure and role of the ombudsman-type institutions in the protection of human rights into account.

<sup>10</sup> The importance of democratic structures to the performance of national institutions has been pointed out for instance by *Reif (2000), 24; International Council on Human Rights Policy (2000b), 106; and Burdekin and Gallagher (1998). O'Sullivan (2000, 239)* has also suggested that the Paris Principles should be amended in this regard. Generally speaking, ombudsman experts have discussed much more actively issues such as the transplantation of institutional models in new environments and the role of contextual factors in the performance of new institutions. See, for instance, *Reif & Marshall & Ferris (1993) (eds.), The Ombudsman: Diversity and Development* and *Reif (1999) (ed.), International Ombudsman Anthology: Selected Writings from the International Ombudsman Institute*.

<sup>11</sup> The risk of being co-opted by state authorities with the result that the national institution becomes unable to confront them even if needed has been pointed out, for instance, by *Kjaerum (2000), 91*.

<sup>12</sup> For relevant decisions of international institutions and the statements of NGOs, see note 1 above. For recent recommendations of the international network of national institutions, see the conclusions of the round table "The Paris Principles: a reflection", which was held in December 2003 to commemorate the tenth anniversary of the adoption of the Paris Principles. *E/CN.4/2004/101, Annex II*. The practice that has emerged in the framework of the UN is discussed in more detail in chapter 4.4.5 below.

<sup>13</sup> *Decaux (2001), 236; Kjaerum (2003)*. This cautious attitude can be partly explained by the wide diversity of national institutions. Countries with different kinds of national institutions would evidently have divergent opinions about the appropriate content of the revised Paris Principles. The great variety of governmental human rights bodies is discussed briefly in chapters 3.3 and 3.4 below.

<sup>14</sup> *CHR Res. 1990/73 of 7 March 1990*, para. 3.

<sup>15</sup> It is worth noting that the Paris Principles were not the first set of guidelines for national bodies created to protect citizens' human rights and/or civil rights. In the United Nations framework, the 1991 standards were preceded by the international guidelines adopted already in 1978 as a result of an International Seminar on Local and National Institutions for Promotion and Protection of Human Rights. Apart from the UN Commission on Human Rights and the UN General Assembly, these standards were not however endorsed more widely. (For a more detailed discussion of the 1978 seminar and standards, see chapter 4.2.3 below.) As mentioned earlier, the international ombudsman community had promoted a set of core characteristics of a credible ombudsman institution since the late 1970s, laid down first in article 5 of the *By-Laws of the International Ombudsman Institute (IOI)* in 1978. The fulfilment of these guidelines, emphasising, for instance, the independence and the reporting and investigative functions of the ombudsman institution, is a precondition for full membership (with voting rights) of the IOI. These criteria were preceded by the 1969 resolution of the American Bar Association (ABA) recommending the setting up of ombudsman offices that fulfil twelve essential features, many of which can be considered as essential elements for any national institution. See *Draft Recommendation on Ombudsmen of an ABA Ombudsman Committee, adopted by the Section of Administrative Law and Regulatory Practice Council in 30 April 2000*. Although there is no reference in the ABA 1969 resolution or in the IOI By-Laws to a human rights protection function of the Ombudsmen, many of the principles relating for instance to the independence and powers of the ombudsman are in fact the same as or close to those listed in the Paris Principles. However, none of these recommendations were ever endorsed at international level.

<sup>16</sup> The United Nations' principal human rights body, the Commission on Human Rights, "welcomed" the Paris Principles by consensus in its resolution of 1992 and decided to continue the consideration of the issue, in particular, the "ways to study and promote the Principles [...]" *CHR Res. 1992/54 of 3 March*, paras. 10 and 17. At the end of the next year, the United Nations General Assembly "welcomed" the principles and encouraged the establishment and strengthening of national institutions having regard to those principles. *GA Res. 48/134 of 20 December 1993*, paras. 11-12. Reference to the Paris Principles has thereafter become an inherent part of the resolutions on national institutions adopted by various United Nations bodies.

<sup>17</sup> In its final documents, "[t]he World Conference on Human Rights encourages the establishment and strengthening of national institutions, having regard to the 'Principles relating to the status of national institutions' [...]" *The Vienna Declaration and Programme of Action, 25 June 1993*, part I, para. 36. For more detailed discussion on the Vienna Conference, see chapter 4.4.2 below.

<sup>18</sup> See the *Annual Appeals 2000, 2001, 2002 and 2003* of the Office of the High Commissioner for Human Rights at [www.unhchr.ch]. For further discussion on the UN national institutions approach, see chapter 4.4.4. below.

<sup>19</sup> *Strengthening national structures, institutions and organizations of society which play a role in promoting and safeguarding human rights, resolution adopted without vote by the 92<sup>nd</sup> Inter-Parliamentary Conference (Copenhagen, 17 September 1994)*. This resolution “[c]alls on States to honour the ‘Principles relating to the status of national institutions’ to ensure in particular, that these institutions are: (a) independent of government; (b) provided with adequate funding; (c) pluralistic and represent those in society involved in the promotion and protection of human rights; (d) empowered to comment on the human rights performance of their government; and (e) active in human rights education”. *Ibid.*, art. 10. A similar position was adopted in the following resolutions: *Promoting greater respect and protection of human rights in general and in particular for women and children, resolution adopted without vote by the 96<sup>th</sup> Inter-Parliamentary Conference (Beijing, 20 September 1996)*, art. 2; *Fiftieth Anniversary of the Universal Declaration of Human Rights, resolution adopted without a vote by the Inter-Parliamentary Council at its 161st session (Cairo, 16 September 1997)*.

<sup>20</sup> *Recommendation No. R(97)14 of the Committee of Ministers to Member States on the establishment of independent national institutions for the promotion and protection of human rights*. It is also worth noting that the European Commission Against Racism and Intolerance (ECRI) has adopted its own recommendations for anti-discrimination bodies, referring to the Paris Principles. *ECRI General Policy Recommendation No. 2: “Specialised bodies to combat racism, xenophobia, anti-Semitism and intolerance at national level, 13 June 1997*.

<sup>21</sup> However, the African Commission for Human Rights has defined compliance with the Paris Principles as one of the criteria for granting an observer status to African national institutions. *Resolution on Granting Observer Status to National Human Rights Institutions in Africa with the African Commission on Human and People’s Rights, African Commission Document DOC/OS(XXVI)/115, 24<sup>th</sup> ordinary session in Banjul, Gambia, October 1998*. At the end of the 1990s, the General Assembly of the OAS had adopted several resolutions asking governments to establish new national institutions or to strengthen existing ones. However, rather than referring to the Paris Principles, the organisation has underlined the importance of establishing politically, administratively and financially independent institutions. *OAS GA resolution 1505 (XXVII-O/97) on the Support for International Exchanges of Experience Among Ombudsmen, 5 June 1997; the OAS GA resolution 1601 (XXVIII-O/98) and 1670 (XXIX-O/99) on the Support for the Work of Defenders of the People, Defenders of the Population, Human Rights Attorneys, and Human Rights Commissioners (Ombudsmen) in the Context of Strengthening Democracy in the Hemisphere*.

<sup>22</sup> *Amnesty International: Proposed Standards for National Human Rights Commission, January 1993, 1*.

<sup>23</sup> See for instance the following reports and statements by the Amnesty International: *Proposed Standards for a National Human Rights Commission (June 1997)*, stating, in the light of the plans to create a NHRI in Bangladesh, that “[t]he Paris Principles constitute, in Amnesty International’s view, the basic minimum guidelines for the establishment of a national human rights commission”; *Human Rights Commission a Welcome First in South Pacific (April 8, 1998)*, concerning the establishment of the Fiji Human Rights Commission and welcoming the “the fact that the commission’s strong basis in national law reflects international minimum standards for national human rights institutions”; *Open Letter from the Secretary-General of Amnesty International to the Participants at the Conference in Addis Ababa on the Establishment of a Human Rights Commission and Office of Ombudsman (May 1998)*, referring to the Paris Principles as “basic minimum guidelines” for the establishment of a national institution and giving recommendations vis-à-vis the establishment and functioning of a National Human Rights Commission in Ethiopia; *Legislation to Establish Human Rights Commission is Seriously Flawed (October 23, 1998)*, stating that the legislation setting-up a national institution in the Republic of South Korea does not conform to international standards. More recently, Amnesty International has given its own recommendations for national institutions that “should be considered alongside other guidelines such as the [Paris Principles]”. *Amnesty International: National Human Rights Institutions, Amnesty International’s recommendations for effective protection and promotion of human rights (October 2001)*.

<sup>24</sup> *Human Rights Watch (2001)*. It seems however that the Human Rights Watch has referred to the Paris Principles in its reports less often than, for instance, Amnesty International.

<sup>25</sup> *Statement of the Alternate NGO Conference of National Human Rights Institutions in the Asia Pacific Region, organised in conjunction of the Second Meeting of the Asia Pacific Forum of National Human Rights Institutions, September 1997, New Delhi, India*. The Conference was attended by NGOs from Bangladesh, Burma, Canada, India, Iran, Nepal, the Philippines, Tibet, the United Kingdom and the United States. See also the *Report of the Alternate NGO Consultation on the Second Asia-Pacific Regional Workshop on National Human Rights, March 1998*, which concludes that “[t]he effectiveness of National Human Rights Institutions depends on whether they are able to follow the Paris Principles designed to guide them”. *Ibid.*, 1.

<sup>26</sup> Accordingly, the Commonwealth Human Rights Initiative recommended at the 1999 Harare Conference, for instance, that NGOs should “act as watchdogs to scrutinize human rights commissions to ensure their independence, as well as their conformance to international standards and in particular the Paris Principles”. *Commonwealth Human Rights Initiative: Harare Conference*.

<sup>27</sup> The purpose of this network is, among other things, to co-ordinate the activities of national institutions at the international level, to liaise with international human rights organisations, in particular with the UN Office of the High Commissioner for Human Rights, and to support the creation and strengthening of national institutions in conformity to the Paris Principles. *ICC Rules of Procedure, adopted 15 April 2000 and as amended 13 April 2002*, paras. 2 and 3(a).

<sup>28</sup> *ICC Rules of Procedure, section 3, rule 3(a)*. The assessment of compliance is made by a four-member Credentials Committee composed of the representatives of four geographical areas and is based on information provided by the national institutions. The information requested concerns the legislation establishing or empowering the NHRI; the organisational structure and annual budget of the NHRI; the recent activities of the institutions. *Ibid.*, rule 3(c). In practice, the approach adopted by the Credentials Committee has been flexible.

<sup>29</sup> See the website of the Asia-Pacific Forum at [[www.asiapacificforum.net/about/membership.html](http://www.asiapacificforum.net/about/membership.html)], “About the Forum”. However, for instance the European Regional Group of National Institutions has a somewhat less stringent approach: according to its Rules of Procedure adopted in 2002, the European Group accepts as its members not only institutions accredited as “national institutions” but also institutions that have been admitted as observers to the ICC. The observer status may be admitted to national institutions, persons and institutions not members to the ICC (i.e. not in full compliance with the Paris Principles) on the decision of the Chairperson, following the consultation with the ICC members. *Rules of Procedure of the European Regional Group, adopted in Dublin on 16 November 2002*, para. 1; *ICC Rules of Procedure*, para. 9(g).

<sup>30</sup> The evolution of the ombudsman concept from the classic model, committed to the deflection of administrative dysfunction, into the model in which the protection and promotion of human rights plays a central role was acknowledged already in 1999 for instance by Jorge Luis Maiorano, the former President of the IOI and Defensor del Pueblo of Argentina. *IOI Newsletter 21(2), June 1999*. See also the Introductory Remarks to the European Ombudsman Institute’s publication from 1996 which reproduced the Vienna Declaration and Programme of Action and the Paris Principles. According to the Managing Member of the Board of EOI, “[i]t will be necessary [to the EOI] to discuss whether the circle of membership should also be enlarged by types of human rights institutions such as human rights commissions and/of offices in order to have the ability to make use of all synergies to afford comprehensive protection for the citizens of our countries”. *European Ombudsman Institute: Varia 7(E), Vienna Declaration and programme of Action and Paris Principles (1996)*.

<sup>31</sup> *CERD General Recommendation XVII: The Establishment of National Institutions to Facilitate the Implementation of the Convention, 19 March 1993*, para. 1. The tasks that the committee proposed, including the monitoring, advising and educating, closely followed to those suggested in the Paris Principles. It should be mentioned in this context that the International Convention on the Elimination of All Forms of Racial Discrimination, which was adopted in 1965, suggests in article 14 the creation of national bodies competent to receive and consider petitions from individuals and groups of individuals. The creation of such bodies is, however, optional and there are no further specification regarding the nature of the body.

It is worth noting that the treaty body monitoring States Parties’ compliance with the International Covenant on the Elimination of Discrimination Against Women gave a General Recommendation already in 1989 prompting States Parties to “establish or strengthen effective national machinery, institutions and procedures, at a high level of Government, and with adequate resources, commitment and authority”. The specific tasks bestowed upon these institutions were very much in line with those proposed some years later in the Paris Principles: to advise on the impact on women of all government policies; to monitor the situation of women; and to help to formulate new policies and carry out strategies and measures to eliminate discrimination. *CEDAW General Recommendation No. 6: Effective National Machinery and Publicity, 4 March 1988*, para. 1.

<sup>32</sup> *CESCR General Comment 10: The Role of National Human Rights Institutions in the Protection of Economic, Social and Cultural Rights, 3 December 1998*. It is nonetheless worth noting that no specific reference was made to the Paris Principles at the time; instead, the Committee noted that there is a wide range of various national institutions including human rights commissions, Ombudsmen, and human rights defenders. The exemplary list of tasks, which the Committee proposes in order to integrate economic, social and cultural rights into the mandates of national institutions, converge nonetheless with those outlined in the Paris Principles. Later the Committee has also referred directly to the Paris Principles in its concluding observations concerning individual states.

<sup>33</sup> *CRC General Comment No. 2: The role of independent national human rights institutions in the promotion and protection of the rights of the child, 15 November 2002*, paras. 1 and 4.

<sup>34</sup> *Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, GA Res. A/RES/57/199 of 18 December 2002, Part IV.

<sup>35</sup> *Ibid.*

<sup>36</sup> According to the UN treaty bodies database, available at [www.unhchr.ch], it seems that by the mid-1990s, treaty bodies had only made references to national institutions in their concluding recommendations in relation to some ten countries. The emphasis placed on the endorsement of these institutions has clearly grown stronger in the latter part of the 1990s, which coincides with the emergence of the more proactive approach towards national institutions in the UN. Interestingly, the Human Rights Committee (HRC) has been by far the most active treaty monitoring body in commending and criticising governments' national institutions or plans to create such bodies in the 1990s, including the first part of the decade. Nonetheless, the HRC rarely sought support for its recommendations from the Paris Principles. For references to national institutions in the HRC concluding observations, see *CCPR/C/79* (Mexico, 18 April 1994); *A/50/40*, paras. 436-476 (Sri Lanka, 3 October 1995); *CCPR/C/79/Add.65* (Nigeria, 24 July 1996); *CCPR/C/79/Add.71* (Gabon, 18 November 1996); *CCPR/C/79/Add.75* (Georgia, 1 April 1997); *CCPR/C/79/Add.78* (Lebanon, 1 April 1997); *CCPR/C/79/Add.81* (India, 4 August 1997); *CCPR/C/79/Add.89* (Zimbabwe, 4 August 1998); *CCPR/C/79/Add.108* (Cambodia, 27 July 1999).

<sup>37</sup> See the Concluding Observations of the Committee of the Rights of the Child for Tajikistan, Latvia, Saudi Arabia and Egypt. *CRC/C/15/Add.136 of 16 October 2000 as well as CRC/C/15/Add.142, 145 and 148 of 26 January 2001*. In a similar vein, the Committee on the Economic, Social and Cultural Rights recommended to Bulgaria to "seek technical co-operation and assistance of the Office of the United Nations High Commissioner for Human Rights with a view to establishing a national human rights institutions in conformity with the 1991 Principles [...]". *E/C.12/1/Add.37 of 8 December 1999*, para. 22. Similar recommendations were made in the case of Sudan. *E/CN.12/1/Add.48 of 1 September 2000*, para. 31. In the case of Morocco, the Committee encouraged the State Party to "ensure that the Office of the National Ombudsman, which is to be established shortly, functions in conformity with the Paris Principles of 1991". *E/C.12/1/Add.55 of 1 December 2000*, para. 37.

<sup>38</sup> See Concluding Observations of the Committee on the Elimination of Racial Discrimination concerning the Republic of Korea (*A/48/18 of 15 September 1993*, para. 231) and Belarus (*CERD/C/302/Add. 22 of 23 April 1997*, para. 18). Similarly, after having examined the periodic report of Trinidad and Tobago, the Committee asked the State Party whether it intended to establish a national institution to facilitate the implementation of the Convention "in accordance with Committee's general recommendation XVII (42) and with various recommendations of the Commission on Human Rights and the United Nations General Assembly". *A/50/18 of 22 September 1995*, para. 40. In the Concluding Observations concerning Romania (*A/50/18 of 22 September 1995*, para. 267) and Cyprus (*CERD/C/304/Add. 56 of 10 February 1999*, para. 8) the Committee also makes an assessment of compliance with its General Recommendation by noting, in the case of Romania, that the actions taken by the government "conform with the General Recommendation XVII" and, in the case of Cyprus, that the "the State party has taken into account the Committee's general recommendation (XVII) [...]".

<sup>39</sup> It should be noted that the fact that rapporteurs have not endorsed national institutions and the Paris Principles as frequently as the treaty bodies does not mean that they would not have consulted national institutions for instance in connection with their country visits. In the following reports, special rapporteurs/ representatives have directly referred to national institutions as an appropriate way of promoting and protecting human rights and/or to international standards as a measure towards which institutions should be assessed: extra-judicial, summary or arbitrary executions, mission to Indonesia and East Timor (*E/CN.4/1995/61/Add.1*); freedom of opinion and expression, mission to Turkey (*E/CN.4/1997/31/Add.1*); torture and other cruel, inhuman or degrading treatment or punishment, visit to Mexico (*E/CN.4/1998/38/Add.2*); situation of human rights in Rwanda (*A/53/402 in 1998*); situation of human rights in Nigeria (*E/CN.4/1999/36*); situation of human rights in the Islamic Republic of Iran (*A/54/365 in 1999*); civil and political rights, including freedom of expression, visit to Sudan (*E/CN.4/2000/63*); situation of human rights in Burundi (*A/56/479 in 2001*); situation of human rights in Cambodia (*E/CN.4/2001/103*); situation of human rights in the Former Yugoslavia (*E/CN.4/2002/41*); situation of human rights in Myanmar (*E/CN.4/2002/45*); promotion and protection of human rights defenders, mission to Kyrgyzstan (*E/CN.4/2002/106/Add.1*); civil and political rights, including the question of freedom of expression, mission to Equatorial Guinea (*E/CN.4/2003/67/Add.2*).

<sup>40</sup> *Finnemore & Sikkink (1999)*, 902-905.

<sup>41</sup> *Pinheiro & Baluarte (2000)*.

<sup>42</sup> For example, how does one measure whether a national institutions is adequately funded? In principle, the very nature of these institutions as promoters and protectors of human rights requires them to constantly broaden and deepen their activities. As a consequence, it is hardly possible to find an institution, which could not make use of some additional funds to intensify its work. Furthermore, sometimes the requirements of the Principles may seem simply impossible to fulfil. How does one ensure, for instance, that the pluralistic composition is truly

representative of all social groups? If a country is composed of twenty different ethnic groups, can a national institution be truly representative unless representatives of all of these groups are present?

<sup>43</sup> *International Council on Human Rights Policy (2000b)*, 2.

<sup>44</sup> See the statement by representative of the International Commission of Jurists during the 1991 Paris workshop in which he noted the emergence of “conscience-salving institutions” and saw international standards as a way of clarifying the role of such institutions and assuring the partners of such institutions. *Report of the International Workshop on National Institutions for the Promotion and Protection of Human Rights, E/CN.4/1992/43*, paras. 130-131. For academic criticism see for instance *Picken (1988)*, who states that the principal task of many institutions set up in the 1980s seemed to be the protection of the government against criticism rather than citizens against human rights violations.

<sup>45</sup> See for example *GA Res. 48/134 of 20 December 1993; The Vienna Declaration and Programme of Action, 25 June 1993*, para. 36. Similarly cautious – and even an open-ended – approach was adopted in the first Commission resolution in which it “welcomes the guidance provided by the Principles [...]” and decides to continue its consideration, in particular ways to “study” the Principles. *CHR Res. 1992/54 of 3 March 1992*, paras. 10 and 17.

<sup>46</sup> According to the UN, “[i]n the course of its involvement in the work of national institutions, the United Nations has come to realize that no single model of national institution can, or should, be recommended as the appropriate mechanism for all countries to fulfil their international human rights obligations. Although each nation can benefit from the experience of others, national institutions must be developed taking into account local cultural and legal traditions as well as existing political organization.” *United Nations Fact Sheet No. 19: National Institutions for the Promotion and Protection of Human Rights (1993)*. The wide interpretation of the concept of national institutions is also reflected in the recent reports on national institutions to the Commission on Human Rights and to the General Assembly. They show that the activities of the OHCHR cover both human rights commissions and their co-operation arrangements and the ombudsman institutions and their respective co-operation bodies. See for instance *E/CN.4/2003/110 and A/58/261 (2003)*.

<sup>47</sup> *Recommendation No. R(97)14 of the Committee of Ministers to Member States on the establishment of independent national institutions for the promotion and protection of human rights, 30 September 1997*. For an even broader concept of national institutions see the project document from 2000 on “Independent National Human Rights Protection Institutions, including Ombudsman” under the Stability Pact for South East Europe. Within this report, the term national human rights institutions is used not only to refer to “human rights Ombudsman institutions, parliamentary human rights commissioners, public defenders, people’s advocates, mediators, legal chancellors, ombudsman institutions with a specialised mandate [...] and national human rights institutions (collegiate bodies)” but also to “Ombudsman institutions in the traditional sense”.

<sup>48</sup> *OAS GA resolution 1601 (XXVIII-O/98) and 1670 (XXIX-O/99) on the Support for the Work of Defenders of the People, Defenders of the Population, Human Rights Attorneys, and Human Rights Commissioners (Ombudsmen) in the Context of Strengthening Democracy in the Hemisphere*. As the titles used in the resolution imply, the majority of the national institutions in the Latin America, which have often been modelled after the Spanish Ombudsman institution, are one-person rather than pluralistic national institutions. For further discussion on Latin American institutions, see *Elizondo & Aguilar (2000)*.

<sup>49</sup> Ombudsman-type members of the ICC are traditionally single-person bodies and therefore necessarily contradict the principle which states that the composition of national institutions should be based on the “pluralist representation of the social forces (of civilian society) involved in the promotion and protection of human rights [...]”. *Paris Principles, Composition and guarantees of independence and pluralism*, para. 1. In a strict sense, for instance, the Swedish Ombudsman Against Ethnic Discrimination is not in compliance with the Paris Principles. The ICC has nevertheless accepted this ombudsman institution as its member as a representative of all Swedish Ombudsmen. On the basis of membership, one could also ask if the established national human rights commissions for instance in Australia and Canada are “real” national institutions, as they are composed of “technocratic” experts rather than of the representatives of civil society.

Finally, according to membership requirements, national institutions should be independent and their composition should not therefore include representatives of the government apart from an advisory capacity. *Ibid.*, para. 1 (e). Despite this principle, in 2003, the ICC had a national institution as its President whose independence was questioned by international NGOs and whose members include several representatives of the government and political parties with full voting rights. *Dahir n°1-00-350 du 15 moharem 1422 (10 avril 2001) portant réorganisation du Conseil Consultatif des Droits de l’Homme*, art. 3. For the criticism of the Moroccan national institution, see *Human Rights Watch (2001)*, 36-37.

<sup>50</sup> *International Council on Human Rights Policy (2000b)*, 3. *Carver & Hunt (1991, v)* already came to a similar conclusion at the beginning of the 1990s: they claim, referring to the African context, that the origin of a national institution does not always determine its ultimate fate as “[...] experience suggests [...] that the effectiveness of a



human rights institutions can be quite autonomous from the intentions of the government that set it up". Indeed, there are examples of institutions that were originally established with a very limited mandate and even more limited financial and moral support from the government or which have been created under military regimes for the sole purpose of smoke-screening international observers. Despite this, some of them have persisted and accomplished a great deal given the poor conditions under which they have had to work. As examples of such institutions have been mentioned for example the National Human Rights Commission of Nigeria and the Indonesian Human Rights Commission. *Human Rights Watch (2001)*, 68; *International Council on Human Rights Policy (2000b)*, 21-35 and 97. *Lindsnaes & Lindholt (2000)*, 33. The National Human Rights Commission of India has also been mentioned as an example of an institution that grew stronger than originally thought. *Sripati (2000)*. Similarly positive case is the Mexican National Commission for Human Rights. *Lindsnaes & Lindholt (2000)*, 27-28; *International Council on Human Rights Policy (2000b)*, 54-55.

<sup>51</sup> See for example *Kimweri (1993, 43)* who states, referring to the experience of human rights ombudsman, "the formal structure of an institution is not in itself the determinant of effectiveness [...] [t]he implementation of these structures must also be taken into account". Along the same lines, Human Rights Watch concludes in its recent report on African national institutions that compliance with the Paris Principles is not a guarantee of a robust commission unless the individuals working for the commission are committed to their work and willing to stand firm in the face of bureaucratic resistance. *Human Rights Watch (2001)*, 11-12.

<sup>52</sup> *Mohamedou (2000)*.

<sup>53</sup> Some observers have concluded that the creation of a national institution conforming as closely as possible to the Paris Principles is a key element in the future success of the institution. For example, if the setting up of a formally sound institution does not receive political backing, it is unlikely that sufficient backing would be found when the institution begins its practical work. The degree of political consensus required for establishing a Paris Principles institution is thereby decisive for the future achievements of the institution. *Lindsnaes & Lindholt (2000)*, 3.

<sup>54</sup> Regardless of the method chosen, all efforts to categorise national human rights institutions should be assessed with great caution: Existing institutions do not necessarily fall in a straightforward manner into any strict categorisation and, in some cases, they can fall into several categories at the same time. Therefore, any categorisation is only indicative at best. It should also be noted that there are often considerable differences between national institutions' formal appearance and their operation in practice.

<sup>55</sup> Similar typologies have been used at least by *Lempinen, Pohjolainen & Scheinin (2002)* and *Aichele (2003)*. For other ways of categorising national institutions see for example *Kjaerum (2003)* who presents five models: consultative commissions, commissions with judicial competence, commissions with judicial competence and ombudsman competence, national human rights centres and human rights ombudsmen. The International Council on Human Rights Policy has also used a division based on five categories: national commissions, national advisory commissions, national anti-discrimination commissions, ombudsmen, and the category called as the defensor del pueblo. *International Council on Human Rights Policy (2000b)*, 3-4. For the categorisation used by international organisations see *UN Handbook (1995)*, 7-9. In its 2000 Human Development Report, the UNDP applies a classification based on three groups: human rights commissions, ombudsmen for human rights, and parliamentary human rights bodies. *UNDP Human Development Report 2000*, 117-118.

<sup>56</sup> For an analysis of the work of anti-discrimination and equality commissions of Australia, Canada and United Kingdom, see *MacEwen ed. (1997)*.

<sup>57</sup> *Hucker (2002)* notes that the current Canadian Human Rights Commission and its provincial counterparts are anti-discrimination or equality commissions rather than human rights commission in the normal sense of the word. *Dickson (2002)* states that the work of the anti-discrimination bodies in the United Kingdom clearly related to protection of human rights, however, these bodies do not see themselves as human rights institutions. Various anti-discrimination bodies also exist in many other countries. In Europe, a tide of such bodies can be expected following the adoption of two Directives of the European Council, which require Member States to set up national institutions in the field of discrimination based on race and ethnic origin and sex. *European Council Directives 2000/43/EC and 2002/73/EC*, art 13 and 8a respectively. It is however questionable whether this kind of specialised institutions can be considered as fully-fledged Paris Principles institutions.

<sup>58</sup> Of the sixteen members of the International Co-ordinating Committee of National Institutions in 2003, the following seven national institutions can be mentioned as clearest representatives of the human rights commission model: Malawi Human Rights Commission, Uganda Human Rights Commission, Canadian Human Rights Commission, Australian Human Rights and Equal Opportunity Commission, Fiji Human Rights Commission, Indian National Human Rights Commission, and Philippines Human Rights Commission. Majority of the ICC national institutions following the "commissions model" are thus located in the Commonwealth region.

<sup>59</sup> Compare for instance the composition of the Greek Human Rights Commission, consisting *inter alia* of representatives of government, NGOs, trade unions, political parties, judiciary, human rights experts and the

ombudsman, and that of the New Zealand Human Rights Commission composed of three full-time and five part-time Commissioners selected on the basis of their personal attributes and their knowledge and/or experience of matters likely to come before the Commission. *Information Note on the Greek National Commission for Human Rights*; website of the New Zealand Human Rights Commission at [www.hrc.co.nz].

<sup>60</sup> A case in point is the power of the Australian commission to conduct public inquiries. Examples of such inquiries include the Separation of Aboriginal and Torres Strait Islander Children from their Families, Homeless Children Inquiry, Pregnancy Discrimination Inquiry and Inquiry into the Accessibility of electronic commerce and new service and information technologies for older Australians and people with a disability.

<sup>61</sup> Of the sixteen members of the ICC in 2003, the Conseil Consultatif des Droits de l'Homme of Morocco seems to be closest to the "French model". The institutions in Algeria and Tunisia have been mentioned as other examples of the influence of this model. *Human Rights Watch (2001)*, 36.

<sup>62</sup> For instance, the French human rights commission is mandated to "assist the Prime Minister and the ministers concerned with all general issues pertaining to human rights and humanitarian action". It is also responsible for preparing annual reports to the government on the fight against discrimination and xenophobia. *Constitutive Decree on the National Consultative Commission*, art. 1. However, for instance the Moroccan human rights commission is also mandated to examine human rights violations cases and make recommendations on this basis to competent authorities. *Dahir n°1-00-350 du 15 moharem 1422 (10 avril 2001) portant réorganisation du Conseil Consultatif des Droits de l'Homme*, art. 2.

<sup>63</sup> For instance, the French human rights commission consists of over hundred human rights experts and representatives of the government and civil society. On the other hand, the Moroccan institution has over forty members chosen by the King and on the proposal associations working in the field of human rights, trade unions and political parties and by various professional groups, and the Greek Human Rights Commission consists of some thirty members representing *inter alia* NGOs, human rights experts, professional associations, political parties and various sectors of the government. *Ibid.*; *Information Note on Greek National Commission for Human Rights* at [www.nhri.net].

<sup>64</sup> See for instance *Reif (1993)*, 176; *Reif (2000)*; *Ayeni (2000)*. Alternatively, these mixed model institutions are described as "human rights commissions, which act as ombudsman offices". *International Ombudsman Institute Information Booklet*.

<sup>65</sup> The Ombudsmen of Spain (1978) and Portugal (1975) have often been referred to as the first representatives of this new type of human rights-oriented ombudsman. *Reif (2000)*, 36. In addition to these generalists, specialised ombudsmen focussing on the protection of the rights of certain groups or on combating against discrimination, have been set up in the course of the last twenty years. Examples are Norway (Children's Ombudsman, 1981), Sweden (Ombudsman Against Ethnic Discrimination, 1986) and Hungary (Commissioner for National and Ethnic Minorities, 1993).

<sup>66</sup> Not so surprisingly, of the sixteen members of the International Co-ordinating Committee of National Institutions in 2003, the following five institutions that most clearly represent the human rights ombudsman model are all located either in Latin America or in Europe: Colombian Defensor del Pueblo, Costa Rican Defensoria de los Habitantes, Mexican Comision Nacional de los Derechos Humanos, the Polish Commissioner for Civil Rights Protection and the Swedish Ombudsman against Ethnic Discrimination.

<sup>67</sup> For instance, the Human Rights Ombudsman of Slovenia investigates complaints concerning alleged human rights violations and issues recommendations, opinions and proposals to the public authorities. The Ombudsman acts in accordance with the provisions of the Constitution and international legal acts on human rights and fundamental freedoms. *Human Rights Ombudsman Act of December 1993*, art. 1, 7 and 9.

<sup>68</sup> A case in point is the Mexican Human Rights Commission, which despite its name, is usually perceived as an ombudsman institution. The Mexican institution carries out awareness-raising and training activities but examines also human rights complaints concerning the action or inaction of public authorities. *Ley de la Comision Nacional de los Derechos Humanos 23 de junio de 1992*. On the basis of the database, maintained by the Inter-American Institute of Human Rights, at least twelve of the twenty-three Latin American Ombudsmen undertake activities related to human rights education and/or awareness-raising. Ombudsnet at [www.iidh.ed.cr/comunidades/Ombudsnet].

<sup>69</sup> In this respect, some demands have been made for the revision of the Paris Principles in order for them to also take into consideration other independent, statutory human rights institutions, in addition to those following the human rights commission model. See the *Recommendation "For the Future" by the Second European Meeting on National Institutions, Copenhagen 22 January 1997*.

<sup>70</sup> See *UN Handbook (1995)*; *Reif (2000)*.

<sup>71</sup> Hybrid institutions which are active in the International Co-ordinating Committee in 2003 as regional representatives and are at the same time members of the International Ombudsman Institute include: Defensor del

Pueblo of Colombia, Defensoria de los Habitantes of Costa Rica, Comision Nacional de los Derechos Humanos of Mexico and the Commissioner for Civil Rights Protection of Poland. For the list of the members of the ICC and the IOI, see the website of the National Human Rights Institutions Forum at [[www.nhri.net](http://www.nhri.net)] and *International Ombudsman Institute: Directory 2000*.

<sup>72</sup> The title and status of this institution were modified in June 2002 following the change of the government. As of 2003, the Danish national institution is called the Danish Institute for Human Rights (DIHR) and it forms the Danish Centre for International Studies and Human Rights, together with the former foreign policy, peace research and development policy research institutes. See for instance the website of the DIHR at [[www.humanrights.dk](http://www.humanrights.dk)].

<sup>73</sup> Recently national institutions following the human rights institute model have been established for example in Germany (German Institute for Human Rights, 2001) and in Norway (Norwegian Centre for Human Rights, 2001).

<sup>74</sup> However, the Danish parliament enacted a law in May 2003 giving the Danish Institute for Human Rights the power to receive and investigate complaints on ethnic and racial discrimination. This task was previously undertaken by the Ethnic Board, which was closed down at the end of 2002. *Act No. 374 of 28 May 2003 on Ethnic Equal Treatment*.

<sup>75</sup> For instance, the Governing Board of the Danish Institute is composed of thirteen members who are mainly nominated by representatives of Danish universities and the Human Rights Council. The latter is composed in such a way that it reflects the views and opinions of interested voluntary organisations, relevant public authorities, scholars working in the area and other affected persons and groups, including ethnic minorities. *Lov nr 411 af 06/06/2002 om etablering af Dansk Center for Internationale Studier og Menneskerettigheder*. Similarly, the founding legislation of the German Institute for Human Rights stipulates that the institution is supervised by a 16-member council (Kuratorium), which consists of representatives of various levels of the state administration, the parliament and NGOs, complemented by experts in different areas of work of the Institute. Further information on the structures of these two institutions are available on their websites at [[www.humanrights.dk](http://www.humanrights.dk)] and [[www.institut-fuer-menschenrechte.de](http://www.institut-fuer-menschenrechte.de)].

### 3 NATIONAL INSTITUTIONS ON THE INTERNATIONAL AGENDA

#### 3.1 Introducing the Idea

##### *3.1.1 National Institutions as “International Support Bodies”*

Although it was only in the 1990s that national human rights institutions became a firmly established and widely accepted concept, the idea of national bodies that would contribute to promotion and protection of human rights has intermittently surfaced in international discussions since the creation of the UN. The first recorded proposal on the issue originates from 1946 when the Nuclear Commission on Human Rights, a nine-member preparatory body, convened a meeting to plan the future work programme of the Commission on Human Rights. In this connection, the preparatory group also discussed the possibility of creating local information groups or human rights committees that would provide periodic information on national human rights practices.<sup>1</sup> Following the recommendation of the Commission, the Economic and Social Council (ECOSOC) adopted a broader resolution, inviting the Member States to “[...] consider the desirability of establishing information groups or local human rights committees within their respective countries to collaborate with them in furthering the work of the Commission on Human Rights”.<sup>2</sup> Clearly, the role reserved to these early “national human rights institutions” was less concerned with promoting human rights at the national level than it was with supporting the work of the emerging international human rights organisation. Furthermore, the idea that such bodies would be separate, let alone independent from the government was not a feature that was given any consideration.<sup>3</sup> Nevertheless, the notion that there would be domestic institutions that somehow contribute to the international protection of human rights had now become accepted, and it provided a basis for future developments in the field.

It is not clear how the Nuclear Commission first came up with the idea of national human rights committees. Nevertheless, at the time when the Commission was building the foundation for the future human rights regime, some experience had already been gained in the implementation of international conventions and the national mechanisms that could serve this end. It is worth mentioning, in particular, the system of labour inspections which had been promoted by the International Labour Organisation (ILO) since the 1920s. In the ILO Recommendation of 1923,

it was recommended that governments should create permanent labour inspectorates composed of independent inspectors, who would be vested with the task of investigating, advising on, and informing about the protection of the workers. It was also recommended that the inspectors should report regularly on their findings to the central authority of the state, which would, in turn, publish the findings in the form of annual reports.<sup>4</sup>

By 1946, the establishment of “national institutions” which would co-operate with their parent-organisation and promote its objectives had also been introduced in the framework of the United Nations Educational and Scientific Organisation (UNESCO). According to article VII of UNESCO’s Constitution, which was adopted in November 1945, each Member State shall take steps to encourage links between its principal bodies in the field of educational, scientific and cultural matters and the work of UNESCO. In this regard, it was specifically recommended that Member States should establish national commissions that are broadly representative of the government and various bodies in the educational, scientific and cultural field. Such commissions should advise the government and the national UNESCO delegation in matters relating to the parent-organisation. In addition, they were expected to liaise with UNESCO and other actors in the field in all matters within their common interest.<sup>5</sup>

Although the concept of “national institutions” which had emerged in the framework of ILO and UNESCO was more elaborate than the one proposed by the Nuclear Commission on Human Rights, the fundamental purpose of these bodies was similar. The objective was to create national institutions that could promote the goals of the parent-organisation without appearing to interfere in issues which belong to the internal jurisdiction of states.<sup>6</sup> In particular, UNESCO model seemed to provide an encouraging example for similar institutional development in the field of human rights.<sup>7</sup> The National Commissions began to spread rapidly all over the world, apparently, in part due to their relatively “non-threatening” nature, but also due to the active efforts by UNESCO to diffuse this new state structure.<sup>8</sup> However, the idea of a national body devoted to the promotion and protection of human rights was not first welcomed with similar enthusiasm.<sup>9</sup> In fact, only a few governments responded positively to the 1946 ECOSOC resolution which recommended the creation of “local human rights committees”. The UN Human Rights Secretariat sent three letters to the Member States between September 1946 and May 1948 in order to draw their attention to this recommendation. By the end of 1948, the

Secretary-General had only received replies from twenty-seven governments, which represented less than half of the UN Member States. Among those who replied, eleven reported that local information centres or local human rights committees had been established or that existing organisations were used for the recommended purpose.<sup>10</sup> However, there was little information given on how these institutions carried out their work. A further twelve Member States expressed an interest in the creation of human rights committees, although some pointed out that the establishment of such bodies would require more clarification on their role and functions.<sup>11</sup>

The initial response of the eighteen members of the Commission on Human Rights, which convened in their first meeting in 1947, was equally unenthusiastic. Although the issue of national committees was placed on the agenda during subsequent meetings, a comprehensive discussion of the issue was postponed year after year.<sup>12</sup> Finally, on the eve of the Commission's seventh session in 1951, the Secretariat tried to bring the issue to the attention of the Member States. Drawing in particular on the success of the UNESCO model, the Commission on Human Rights was asked to consider whether a new inquiry should be undertaken concerning the governments' existing national human rights institutions. The Secretariat also proposed that the Commission could request ECOSOC to indicate "certain guiding principles regarding the functions of local human rights committees"<sup>13</sup> and consider the ways in which these bodies could contribute to the implementation of international human rights standards. Efforts were also made to influence the direction in which the proposed institutions could develop. Following the model of UNESCO commissions, the Secretariat suggested that human rights committees could assist the UN in its educational programmes in order to spread awareness of the Universal Declaration of Human Rights, as well as to inform the public of the actions of their governments in various UN organs. It was also proposed that such committees could study the observance of human rights in the light of the Universal Declaration on a regular basis and even submit recommendations to the governments in order to assist them in preparing appropriate national legislation and in improving existing practices.<sup>14</sup> Despite these efforts, the Secretariat did not manage to convince the Commission to reconsider the issue of local human rights committees.

Other attempts to advance the idea of national human rights institutions did not enjoy any greater success. A case in point is the initiative taken in the early 1950s by the Sub-Commission on the Prevention of Discrimination and Protection of Minorities. This body asked ECOSOC to request

Member States to encourage the establishment of national and local human rights committees, which would study and survey discriminative elements in law or in practice and recommend appropriate measures for the governments to eliminate and prevent such discrimination in the future.<sup>15</sup> However, ECOSOC, which was trying to abolish rather than to strengthen the Sub-Commission in the early 1950s,<sup>16</sup> did not respond favourably to this recommendation. A subsequent proposal of the Commission on Human Rights was equally futile. In connection with its resolution on Member States' annual reports on human rights, the Commission asked ECOSOC to "[...] call attention of each Member State to the advisability of setting up an advisory body, composed of experienced and competent persons, to assist their government in the preparation of its report."<sup>17</sup> This proposal, nevertheless, was largely ignored, and ECOSOC proceeded to create the system of human rights reports without any reference to national human rights institutions.<sup>18</sup>

The apparent standstill in the evolution of the idea of national institutions in the 1950s can be partly explained by the fact that the UN human rights bodies were occupied with the development of the international human rights regime, in particular, with the standard-setting.<sup>19</sup> As only the first building blocks of this regime were in place, national implementation measures were not yet given a high priority.<sup>20</sup> However, it is evident that other obstacles also existed in this regard. For example, some UN Member States might have felt that the nature and functions of national human rights bodies belonged to the internal jurisdiction of states and, therefore, the issue would fall outside the competence of the Commission. In particular, the creation of national institutions with a "wathdog" function may have represented an unwelcome development as certain Western states still continued to carry out discriminative practices at home or in their overseas colonies.<sup>21</sup> In the absence of support of influential states, the Human Rights Secretariat had little possibility of taking the idea further.

Nevertheless, the discussion that had been spurred on by the 1946 resolution was not entirely without results, as the awareness of national institutions and interest in their development had increased and spread not only within the UN but also outside it. A case in point is the Inter-American Commission on Human Rights, which discussed the possibility of creating national human rights institutions in several meetings during its first session in 1960.<sup>22</sup> It called upon Member States to create National Committees on Human Rights to co-operate with the

Commission “[...] in the task of stimulating an awareness on human rights among the American peoples, [by] taking advantage of the cultural and educational means available to them [...] and [by] suggest[ing] to the Commission ways of promoting human rights and guaranteeing their protection through the legislation of American States”.<sup>23</sup> This recommendation followed in many respects the model created in the late 1940s at the UN. Most importantly, the primary purpose of the suggested committees was to support the Inter-American Commission in its promotional work rather than assisting governments in the development of their national human rights policies.<sup>24</sup> However, this proposal was not welcomed by many governments. Although the Commission later introduced specific guidelines for the creation of National Committees in order follow up on its recommendation, the idea of “international support bodies” did not lead to any noteworthy developments at the national level.<sup>25</sup> The issue was also discussed sporadically after the early 1960s, but without much success.<sup>26</sup>

### *3.1.2 Advisory Committees for Governments*

The development of the idea of national committees had been sidelined in the 1950s as the UN human rights body preoccupied with standard setting and institution building and it was felt that the issue of national mechanisms was still premature. However, by the 1960s, the situation had changed to a significant degree. The Commission had completed the drafting of the international Bill of Rights and, thereafter, the responsibility for developing treaty implementation mechanisms had been passed to the General Assembly. While many Member States had become increasingly conscious of the urgent need to create some kind of international mechanism for monitoring national compliance, it seemed that compromises would have to be made on this issue. In particular, the Eastern European group and many Third World states, which had strengthened their foothold in the General Assembly since the mid-1950s, tended to emphasise national sovereignty and responsibility, rather than a strong international system.<sup>27</sup>

Under these circumstances, the moment could not have been more opportune for raising the issue of national institutions on the Commission’s agenda. This occurred in 1959 upon the initiative of R.S.S. Gunewardene, the Ceylonese Chairman of the Commission. In the explanatory memorandum, which was submitted to the Commission at its 1960 session, he asserted that



“properly instituted” national advisory committees that consist of “prominent personalities” could provide governments with “great assistance” by advising them on the implementation of international standards and resolving national human rights problems.<sup>28</sup> Therefore, he suggested that the Commission should adopt a resolution inviting the governments to consider the establishment of such committees with the following minimum tasks: 1) the analysis of domestic human rights problems and making recommendations to the government; 2) advising the government on any human rights matters; 3) assisting the government in the preparation of periodic reports on human rights to the UN; 4) holding conferences or seminars on human rights; and 5) carrying out surveys on the observance of human rights.<sup>29</sup> In anticipating the reactions of governments, it was acknowledged that it would not be possible to propose a model that would be suitable for all countries; therefore, the organisation, structure and status of national advisory committees could differ from one country to another. In the draft resolution appended to the memorandum, no reference was made, for instance, to the nature of the new institution as an autonomous body or even as entities connected to the government. It was nonetheless clearly envisaged that these new bodies would be serious, professional agencies which were committed to the cause of human rights as it was stated that they should be composed of persons of “outstanding ability and reputation”.<sup>30</sup>

The role envisaged for national institutions in the 1960 memorandum was considerably more ambitious than that suggested in the earlier proposals. In fact, it was the first time that the Commission had a coherent plan on the table with a clearly formulated set of functions, including human rights monitoring, education and advice. Although this idea was generally accepted, many governments seemed to find certain proposals much too far-reaching. For instance, several delegates opposed the formulation of the draft text, which seemed to “oblige” governments to set up national advisory committees. Some claimed that the creation of new bodies as outlined in the memorandum was unnecessary, as there already existed various actors to protect human rights, such as non-governmental organisations, the press and the parliament. It was also questioned whether it might be more useful to establish private or semi-official bodies, for example, upon the initiative of non-governmental organisations, rather than governmental bodies. Others asserted that the entire issue belonged to the domestic jurisdiction of states and should not be addressed by the Commission in the first place. It was also argued that a uniform system of advisory committees could be difficult to develop in the light of national differences

and that the functions of such committees should be left to the governments' discretion.<sup>31</sup> Due to the lack of political will to bestow any real powers on national institutions, the draft resolution proposed by Mr. Gunewardene was modified twice before consensus could be reached. Particular concern was raised by the provisions which implied that the body should provide an "independent opinion on questions relating to human rights" and possess a consultative role vis-à-vis the government.<sup>32</sup>

After the long and detailed negotiations, it could, firstly be noted that the list of possible functions, which had been originally proposed, had been entirely deleted from the operational part of the draft resolution. Instead, the advocates of national committees had to settle for a reference in the preamble of the Commission's resolution that the committees could play an important role in raising public awareness of human rights. Moreover, the operational part of the text was reformulated so that national advisory committees and local human rights committees were only mentioned as examples of a possible model for national bodies. In this way, states were accorded a wide discretion in the types of human rights institutions that could be established. On the positive side, the resolution encouraged governments to "stimulate in such manner as may be appropriate" the formation of national committees and "consider the means by which the views of such bodies can best be taken into account".<sup>33</sup> Furthermore, it authorised the Secretary-General to prepare a report on the subject and placed the issue on the agenda of the 18<sup>th</sup> session of the Commission.<sup>34</sup> ECOSOC endorsed this resolution with some minor modifications.<sup>35</sup>

At first sight it did not appear that much progress had been made by early 1962, when the Secretary-General drew up his report on the basis of the replies of twenty-four governments that had provided information concerning their national advisory committees.<sup>36</sup> The report reflected diverse views of governments on the nature and functions of this type of body. The majority of them stated that advisory committees or similar bodies already existed in their countries or that there were some other arrangements which were either adequate to secure the protection of human rights or even more efficient than advisory committees.<sup>37</sup> The discussion continued during the Commission's session where several delegations questioned whether the establishment of these bodies would add anything to the already existing structures. There seemed to be wide consensus on the fact that each country should be allowed to employ its own

methods and mechanisms of dealing with human rights problems to reflect the local circumstances. Similarly, views on the role of national human rights institutions were disparate. In particular, the issue of whether the Commission's resolution should include a list of examples indicating the type of functions of the advisory committees was discussed at length. While several delegations underlined that it should be left to the governments' discretion whether or not to set up such bodies and to decide upon their tasks,<sup>38</sup> others believed that it could be useful to create some guidelines on the functions of these committees.<sup>39</sup> In a similar vein, the Commission discussed the contribution that could be required from the governments for the establishment of advisory committees. While the sponsors of the draft resolution proposed that governments should be invited to "*promote*" the creation of advisory committees, the majority of the delegations felt that this wording would represent a radical departure from the resolution endorsed by ECOSOC two years earlier.<sup>40</sup>

Despite the wide-ranging views, the Commission managed to deliver a compromise resolution, which was adopted by unanimity. In this resolution, the Commission invited governments to "favour in the light of conditions in their countries" the formation of bodies which could take, *inter alia*, the form of national advisory committees or local human rights committees. It was, thereby, affirmed that governments must have the freedom to choose which kind of institutions, if any, would be established and that no *active* steps are required towards the setting up of such institutions. As it will be shown in the subsequent sections of this study, the former principle has been an indispensable part of all UN resolutions concerning national institutions ever since, while the latter has undergone considerable changes.<sup>41</sup> The significance of the 1962 resolution lay in the agreement of a broad list of functions for advisory committees. The Commission proposed that such committees "[...] could for example, study questions relating to human rights, examine the situation on the national level, offer advice to the Government, and help to create public opinion favouring respect for human rights [...]".<sup>42</sup> Although the resolution followed the prudent line set by the Council two years earlier, this short list of tasks represented a clear step forwards. The blueprint for the national human rights institution for the purposes of human rights monitoring, advice and education had now truly started to take shape.

The Commission's resolution resulted in an increased interest in the potential of national human rights institutions within the organisation. For instance, ECOSOC adopted, on the

recommendation of the Commission on the Status of Women, a resolution in 1963 referring to “[...] the value of appointing national commissions on the status of women [...] to develop plans and make recommendations for improving the position of women in their respective countries”. In the same resolution, the body also took a stand on the composition of national institutions for the first time by suggesting that commissions were comprised of “[...] leading men and women with experience in government service, education, employment, community development and other aspects of public life”.<sup>43</sup>

Another noteworthy step was taken at the end of 1963 when the issue of national institutions surfaced for the first time at the General Assembly. In connection with the proposal on the International Year for Human Rights in 1968, a representative of Jamaica referred to the multitude of ineffective remedies in present legal systems. He also drew the attention of other delegates to the fact that some countries had established new institutions to ensure that wrongful administrative action could be challenged and reversed, and it was proposed that other governments could consider taking similar steps.<sup>44</sup> It is quite evident that the delegate was referring to ombudsman institutions, which had started to emerge by this time in many parts of the world. Although the UN Human Rights Secretariat had also begun to promote the creation of Ombudsmen in the context of several human rights seminars,<sup>45</sup> the potential of these institutions in the protection of human rights was still unknown for most of the UN Member States. Despite this, the importance of national human rights infrastructures was generally recognised, and the Jamaican proposal resulted in a resolution which invited governments to “intensify their domestic efforts in the field of human rights, with the assistance of their appropriate organizations [...]”.<sup>46</sup> More importantly, the fact that the question of national human rights bodies had finally found its way to the General Assembly’s agenda opened a possibility for introducing the idea to a much wider audience, including an increasing number of newly independent Third World countries.<sup>47</sup>

## 3.2 Developing the Idea

### *3.2.1 National Human Rights Committees and Treaty Monitoring*

The international human rights regime grew increasingly stronger towards the end of the 1960s. The most important steps in this respect were taken in 1965 and 1966, when the General Assembly adopted three international human rights instruments introducing an unprecedented system of human rights scrutiny based on periodic reporting and individual complaints.<sup>48</sup> The evolution of the concept of national institutions was closely intertwined with these developments. In particular, efforts to strengthen the domestic implementation of human rights were made by a group of African and Asian countries, which came together in the early 1960s under the auspices of the Non-aligned Movement.<sup>49</sup>

In 1965, Ghana, Mauritania, the Philippines and Saudi Arabia proposed some last-minute amendments to the draft International Convention on the Elimination of All Forms of Racial Discrimination, which had been recently adopted by the Commission on Human Rights. Most importantly, they proposed that the draft Convention should be complemented by an article requesting Member States to establish national human rights committees. These committees would be independent of the government and receive and consider petitions from individuals or groups of individuals on the basis of a violation of any of the rights under the new treaty.<sup>50</sup> However, when the General Assembly adopted and opened the new convention for signing in December 1965 only traces of these proposals remained. The setting up of national institutions, which would contribute to the implementation of the Convention, was made optional and there was no requirement relating to the independence of such bodies.<sup>51</sup>

In 1966, similar amendments were put forward in connection with the adoption of the International Covenant on Civil and Political Rights. Firstly, Saudi Arabia suggested that the article concerning the implementation of the Covenant should be modified. According to the proposal, the Covenant should require each state to create a National Committee of nine independent persons, which would receive petitions from individuals who claim that his or her rights under the treaty have been violated. The idea was to provide a reliable alternative to the

system of the complaints mechanism of the Human Rights Committee envisaged in the draft Covenant and, therefore, it was proposed that complaints could only be brought to the international treaty committee in deadlock cases.<sup>52</sup> Then, the Jamaican delegation put forward a similar amendment but in the form of a separate article. According to the proposed provision, States Parties should establish a National Commission on Human Rights, which would advise the governments in human rights issues upon their request and monitor the legislation and practice relating to the rights under the Covenant. The members of the commission would carry out these activities independently and report to the government on an annual basis. Reports would also be forwarded to the international treaty committee that would be established under the new Covenant.<sup>53</sup>

As with the case of the Convention against discrimination, it seems that the amendments proposed were put forward to dilute rather than to strengthen the effect of international human rights scrutiny. Although this goal might have served the interest of many governments, the adoption of the proposals would have made the establishment of independent national institutions a legally binding treaty obligation. It was therefore not surprising that the idea was rejected as “unnecessary” and “unconstitutional”.<sup>54</sup> Although the suggested amendments were not reflected in the final version of the Covenant,<sup>55</sup> they led to a proposal for a separate resolution stating that the Assembly would continue to consider the issue in its next session.<sup>56</sup> For many governments this proposal was too far-reaching as it directly linked national institutions to the implementation of international human rights instruments.<sup>57</sup> Some delegations also called for a more detailed and thorough exploration of the issue as the precise role of these bodies with regard to new human rights instruments was still unclear.<sup>58</sup>

After lengthy and detailed discussions, the Third Committee reached an agreement on a draft resolution, which stated that the Assembly had considered “the advisability of the proposals for the establishment of national commissions or other appropriate bodies to perform certain functions pertaining to the observance” of the covenants. The responsibility for the future development of the idea was delegated to the Commission on Human Rights, which would examine the question and report on it to the General Assembly. In addition, the Secretary-General was requested to invite Member States to submit their comments on the issue in order for them to be taken into account in the report by the Commission.<sup>59</sup> It is noteworthy that no

specific deadline was given for the examination of the issue by the Commission and the further consideration of the issue by the General Assembly was also left open. Apparently, it was considered premature to endorse the idea of domestic implementation mechanisms, which had not yet been explored extensively at the UN human rights fora. Moreover, it was felt that any further discussion on the issue would require careful further preparation in the future.<sup>60</sup> In this way, the discussion had shown that the majority of the governments were still uneager to create *independent* national institutions, let alone national institutions that would carry out any more intrusive activities than education, awareness-raising and counselling.

### 3.2.2 *National Institutions and Complaints Handling*

The adoption of three international human rights instruments in the mid-1960s led to intensified efforts to map out the steps taken by Member States for the promotion and protection of human rights. Following the 1966 General Assembly resolution, the Secretary-General sent a *note verbale* to the Member States in January 1967 requesting comments on the establishment of national commissions to perform certain functions relating to the observance of the international human rights covenants.<sup>61</sup> Later in the same year, the Commission on the Status of Women asked the Secretary-General to launch a similar inquiry to verify the number of existing national institutions working on women's rights and to examine their functions, as well as the extent to which these bodies co-operated with NGOs.<sup>62</sup> The issue of national institutions was not followed-up, however, until three years later, when the Commission discussed the issue in connection with an item concerning the establishment of regional human rights mechanisms.<sup>63</sup>

Initially, the debate during the 1970 session of the Commission seemed to continue from where it had been left eight years earlier. The delegations held the widespread view that the establishment of national institutions should be left at governments' discretion along with the right to choose the most suitable framework for such institutions in the light of their traditions and existing institutions.<sup>64</sup> Some delegates questioned the utility of new institutions on the basis that existing mechanisms already provided sufficient protection for human rights.<sup>65</sup> Others insisted that the Commission should not be dealing with this issue in the first place as it belonged exclusively to the domestic jurisdiction of states and that there was no need to include the item in the

Commission's agenda in the future.<sup>66</sup> However, generally, it was increasingly recognised that the UN could play a more visible role in the advancement of national institutions for instance by providing recommendations on their possible tasks.<sup>67</sup> In this respect, it was proposed that such institutions could contribute to human rights education and to the preparation of periodic reports by the Member States. It was also suggested that national institutions could be entrusted with the task of considering "petitions submitted by individuals who had exhausted other remedies".<sup>68</sup>

Yet, these interesting ideas were not endorsed in any resolution. Instead, the Commission asked the Secretary-General to forward its conclusion and summary records of the discussion to the General Assembly at its next session.<sup>69</sup> Despite this, the fact that the Commission had discussed the possibility of giving national institutions a "protective" role was a significant step forward. The motivation for doing so was probably due to the significant development in the Commission's own role in the supervision of human rights. Spurred on by the situation in the Southern Africa, the UN human rights body had decided only some years earlier to reconsider its passive role, which had prevented it from taking any stand on human rights violations in the first twenty years of its existence.<sup>70</sup>

As the first step, it began, in 1966, to undertake annual analysis of the question of the violation of human rights, including policies of racial discrimination, segregation and apartheid throughout the world, in particular, in colonial and other dependent countries. In 1967, this mandate was expanded, and the Commission was authorised "to examine information relevant to gross violations of human rights and fundamental freedoms"<sup>71</sup> during its sessions. Another mechanism increasing the "protective" role of the Commission was introduced in 1970. At this point ECOSOC mandated the Sub-Commission to examine in a confidential manner all communications, which "appeared to reveal a consistent pattern of gross and reliably attested violations of human rights" and, in appropriate cases, to refer them to Commission.<sup>72</sup>

The increasing surveillance on the part of the UN human rights body was, however, only part of the overall picture. Additional pressures were undoubtedly created by the fact that the International Convention on the Elimination of All Forms of Racial Discrimination had entered into force in January 1969. As the first international instrument that had launched a treaty monitoring process,<sup>73</sup> it gave many governments a new impetus to give consideration to the



domestic dimension of the protection of human rights. In this context, it is noteworthy that some states introduced legislation on race relations and established special bodies for its implementation. In some cases, these initial arrangements evolved over time into broader anti-discrimination commissions and, thereby, served as a basis for the development of the first national human rights institutions.<sup>74</sup>

The international discussion on the role of national institutions might have also served as an inspiration for the recommendations of the Parliamentary Conference on Human Rights.<sup>75</sup> The meeting, which was convened in Strasbourg in 1971, examined the ways and means of strengthening the protection of human rights in the framework of the Council of Europe and also discussed the role of the ombudsman institution. Although there were diverse views on this issue,<sup>76</sup> the final resolution of the Conference invited national parliaments to “consider favourably the establishment of an organ authorised to receive and examine individual complaints, with a right of access to the files of government department, functioning on the lines of the ombudsman as known in the Scandinavian countries”.<sup>77</sup> This idea was later promoted by a growing number of international non-governmental organisations and by scholars, who gradually became interested in the potential of ombudsmen in the protection of human rights.<sup>78</sup> Following from these developments, the human rights commissions or advisory committees promoted by the UN were no longer the only internationally endorsed model for national human rights institutions.

### *3.2.3 The First International Guidelines for National Institutions*

There may have been only few incentives for introducing national institutions for the promotion and protection of human rights in the first three decades of the UN because the international human rights regime was only in its early stages of development. However, the situation had changed considerably by the end of the 1970s. After twenty years of standard setting and institution building, the central parts of the international protection mechanism were now in place and they had begun to gain operational strength. Firstly, the Commission on Human Rights intensified its public scrutiny of human rights violations during its annual meetings,<sup>79</sup> and the two international covenants entered into force in 1976 thus widening the scope of monitoring mechanisms based on periodic reports.<sup>80</sup> These international developments were undoubtedly

reinforced by the progress gained at the regional level, including the considerable strengthening of the European human rights regime from the early 1970s onwards and the entry into force of the Inter-American Convention on Human Rights in 1978. An equally important factor was the growth of international human rights NGOs, which made the national human rights practices more transparent and the international human rights monitoring increasingly more pervasive.<sup>81</sup>

These developments gave a new incentive for the development of the concept of national human rights institutions, which was still by and large in its nascent stages. The first signs of this were to be seen during the 1977 session of the UN General Assembly. As part of the preparations of the thirtieth anniversary of the Universal Declaration of Human Rights, the Assembly asked the Secretary-General to organise a special seminar on national and local institutions in 1978. Furthermore, as part of the festivities, the Member States were encouraged to establish national or local institutions for the promotion and protection of human rights.<sup>82</sup>

The issue of national institutions also surfaced in connection with an agenda item “alternative approaches and ways and means for improving the effective enjoyment of human rights and fundamental freedoms”. During the discussion on the strengthening of international supervision, including the establishment of the Office of the High Commissioner for Human Rights, several delegates underlined the importance of national human rights work and announced their governments’ plans to set up national human rights commissions or equivalent bodies.<sup>83</sup> Some of the delegates clearly promoted national mechanisms as an alternative to the enhanced international scrutiny, which was considered to be incapable of accommodating cultural differences.<sup>84</sup>

Drawing on these discussions in its session of 1978, the Commission on Human Rights invited the Member States to set up national institutions “within the framework of their national legislation and policy and according to their available means”.<sup>85</sup> It also decided that an international seminar on these institutions would be held later in that year. Given the lack of knowledge about national institutions, it was determined that the specific objective of the meeting would be to “suggest certain possible guidelines for the structure and functioning of national institutions”.<sup>86</sup> The groundwork for such guidelines was provided by the Commission itself in a resolution annexing a carefully formulated six-point list on the possible functions of

national institutions.<sup>87</sup> The core of the proposed functions was based on promotional activities, such as the dissemination of information and education. However, the Commission foresaw that national institutions could also have a minor monitoring role in relation to the review of judicial and administrative practice and the state of national legislation.<sup>88</sup> In addition, it was specifically stated that national institutions could make recommendations and give advice on any human rights issue on the request of the government as well as perform any function related to the government's treaty obligations. In brief, the role that would have been accorded to national institutions by the Commission was primarily that of a human rights expert, whose services the government could choose to either use or ignore. This cautious approach was also reflected in the explicit recommendation that the structure, composition and powers of the institution should be left to the discretion of the government.<sup>89</sup>

The official documents do not reveal what inspired the Commission to propose the specific functions that were included in its resolution. Nevertheless, there appear to be many similarities with the proposals put forward by the Secretariat and the Chairman of the Commission in the 1950s.<sup>90</sup> It has also been claimed that the ombudsman institution, which had already spread to some twenty countries by the late 1970s, would have provided a model for the functions and structure of national human rights institutions.<sup>91</sup> In practice, it is however difficult to ascertain whether this institution would have served as the principal source of inspiration for the international recommendations concerning national institutions. The reason for this is the fact that the functions and objectives of the ombudsman and the national human rights institutions were still radically distinct at this time and the emergence of the first "human rights ombudsmen" was a recent phenomenon.<sup>92</sup> In the light of existing institutions, it is more likely that the discussion was influenced by the experience gained in the area of race relations commissions, which had been established since the 1950s in many Commonwealth countries.<sup>93</sup> By 1978, two of these countries, namely Canada and New Zealand, had developed these structures even further and established anti-discrimination commissions with a broad mandate.<sup>94</sup> In fact, many of the functions of national institutions, which appeared in the international debate in the past two decades and were now included in the Commission's proposal, had much in common with the tasks of these anti-discrimination bodies.<sup>95</sup>

As a result of the resolutions of the Assembly and Commission, the Secretariat was now authorised for the first time to actively promote the idea of national institutions under its advisory services programme. Despite the fact that the Secretariat had severe financial problems,<sup>96</sup> the first meeting on national institutions was held as requested. It took place in Geneva in September 1978 and, in retrospect, it has been considered to be one of the most productive seminars organised under the UN Human Rights Programme.<sup>97</sup> With participants from twenty-five countries, it was not only the widest gathering outside the formal international platforms on the issue of national institutions in general,<sup>98</sup> but it was also the first international meeting focusing on the topic of national institutions in particular.<sup>99</sup> In practice, however, the concept of national institutions was interpreted in a broad manner. The seminar covered a wide selection of protective and promotional arrangements ranging from judicial and quasi-judicial institutions to educational institutions and NGOs.<sup>100</sup> Furthermore, although there was a clear quest for the creation of *key* national bodies that would concentrate solely on human rights,<sup>101</sup> the recommendations of the seminar were addressed in view of “existing national institutions, comprising all governmental and public bodies concerned with the promotion and protection of human rights”.<sup>102</sup>

Notwithstanding its broad approach, the seminar made a considerable contribution to the concept of national institutions by drafting and adopting the first set of international guidelines for these bodies. According to the guidelines, national institutions should accorded a wide variety of functions, including: 1) the provision of information to the government and the public; 2) the education of public opinion; 3) the analysis and review of the status of legislation, judicial decisions and administrative arrangements; and 4) advising the government on any human rights questions upon its request. In addition, it was recommended that national institutions should perform any other tasks that the government might wish to assign to them in connection with its duties under international human rights conventions. To carry out these tasks, the guidelines propose that national institutions should be authorised to publish and submit periodic reports on their activities and findings as well as on the domestic human rights developments. Furthermore, it is suggested that such bodies would be given the right to receive and investigate complaints and to apply concrete remedies to individual cases of human rights violations.<sup>103</sup>

The official report of the seminar implies that more sensitive issues, such as the powers and structure of national institutions, were given less attention during the discussions.<sup>104</sup> Nonetheless, the seminar did outline some recommendations for the status and composition of national institutions. These include a general requirement for the establishment of an autonomous, impartial and statutory body, which would have a fixed term and would function on a regular basis. Furthermore, the governments were urged to ensure that the institutions would be adequately staffed and have local branch offices and advisory organs to assist them in the implementation of their tasks. Finally, the guidelines recommended that national institutions should represent a wide spectrum of the public and ensure that “all parts of the population [are brought] into to the decision-making process in regard human rights”.<sup>105</sup> Although many details were left for the governments’ consideration, the guidelines thereby laid the foundations for the concept of an independent, permanent and pluralistic national institution.

In addition to this, some noteworthy proposals were made regarding suitable areas of action for the UN. For instance, the attention was drawn to the fact that new national institutions, in particular those under governmental pressure, often needed material support from the UN.<sup>106</sup> Moreover, some participants highlighted the potential advisory role of the United Nations: apart from co-ordinating the efforts of national institutions and providing them with information, it could also support them by “acting towards them in a consultative capacity”.<sup>107</sup> Although these suggestions were never included in the guidelines, they opened the debate on the organisation’s role in the development of national institutions, which had been widely ignored until then.

### **3.3 The Popularisation of the Concept**

#### *3.3.1 Exchange of Information on National Institutions*

The period following the seminar of 1978 was characterised by three significant developments. Firstly, the adoption of the international guidelines on national institutions provided a normative reference point for such institutions for the first time and thereby paved the way for their gradual institutionalisation. Secondly, due to the fact that the UN policy-making bodies discussed the issue of national institutions almost every year in the 1980s, this particular type of body received a considerable amount of international attention. Thirdly, spurred on by this publicity, a growing

number of governments became interested in national human rights institutions and some even took steps to create similar structures at the national level. While the period prior to 1978 was marked by a gradual development of the concept of national institutions, the period after this is thus best described as the time of its popularisation. This meant that the idea of national bodies concerned with the promotion and protection of human rights became increasingly known and widely accepted.

The popularisation of the concept was significantly enhanced by the extensive exchange of information throughout the 1980s on various types of national institutions. The impetus for this activity came in the late 1970s when both the General Assembly and the Commission on Human Rights endorsed the results of the 1978 seminar and invited Member States to “take appropriate steps for the establishment of [...] national institutions for the promotion and protection of human rights, bearing in mind the guidelines [...]”.<sup>108</sup> In particular, the governments of the Non-aligned group favoured this new “contextual approach”.<sup>109</sup> Characteristically, the delegation of India, which formally initiated the General Assembly resolutions relating to national institution in the 1980s, maintained that the UN had inherent limitations due to its universal nature. Therefore, it would be advisable to concentrate on the development of local and national human rights mechanisms.<sup>110</sup> This support to the *idea* of national institutions did not, however, mean that governments would have been willing to endorse a certain institutional model or to accept international guidance in this respect. An example of this can be seen in the comments that the Secretary-General received from fourteen Member States in response to requests which were sent in 1978 and early 1979.<sup>111</sup> In general, governments felt that the guidelines provided a good starting point for future work in the field. However, it was also emphasised that the new standards required further examination and that several countries already had other institutions dealing with the proposed functions.<sup>112</sup> In particular, many Western European countries seemed to be concerned about the implications of the new guidelines on the existing arrangements and were eager to state that the endorsement of the guidelines did not necessitate the creation of additional state structures.<sup>113</sup>

As a result of these reservations, the activities undertaken by the UN in the 1980s were aimed at the exchange of information on the arrangements already existing in the field rather than at the promotion of the 1978 guidelines. Soon after their endorsement, the guidelines disappeared from

the operational part of the Assembly's and Commission's resolutions and reference was no longer made to the establishment of national institutions "bearing in mind the guidelines".<sup>114</sup> Instead, the policy-making bodies launched a reporting process in 1979, which continued throughout the 1980s. Originally, the reporting mandate was limited to a mere follow-up, as the Commission requested Member States to keep it informed, through the Secretary-General, about national institutions that already existed or were to be established in the future. In addition, they were required to submit relevant information on the activities of their national institutions to the Commission every three years from 1981 onwards.<sup>115</sup> Nonetheless, the General Assembly broadened this mandate later in the same year and asked the Secretary-General to also describe various existing *types* of national institutions in his report. In addition, he was requested to widen the sources of the report to also cover other relevant information, such as the documents relating to the 1978 seminar.<sup>116</sup>

The Secretary-General prepared five reports on national human rights institutions during the 1980s.<sup>117</sup> However, the contribution of these reports to the concept of a national institution remained weak and they revealed that governments considered national institutions to cover a wide selection of human rights bodies, ranging from legislative and administrative organs to judicial and non-judicial bodies and even NGOs.<sup>118</sup> This shortcoming was acknowledged also by the Secretary-General. Already at a very early stage of the process, he pointed out the difficulty of categorising various human rights bodies because the information received from governments did not always follow the framework of the 1978 guidelines and was, therefore, often difficult to interpret. Furthermore, he criticised that the mandate given by the UN policy-making bodies was too broad as almost all national arrangements contributed somehow to the protection and promotion of human rights and, thereby, fulfilled the criteria of a "national institution".<sup>119</sup> A few years later, some token efforts were made to sharpen the focus of the reports. Firstly, in 1984, the General Assembly accepted the proposal of the Secretariat on the eventual publication of a "manual or guidebook or models of national institutions existing in various countries as a reference work for Governments".<sup>120</sup> Moreover, in 1987, the Assembly chose to emphasise the "functional" element of the reports and asked the Secretary-General to pay particular attention to the ways in which various models of national institutions implement international standards on human rights.<sup>121</sup> However, as the discussion never went beyond the functions of national

institutions, the difficult and important questions relating, for instance, to the independence and status of national institutions vis-à-vis other state structures remained unanswered.

Despite the fact that the reports prepared in the 1980s did not help to narrow down the concept of national institutions, they did ensure that national institutions remained on the UN agenda. In particular, the General Assembly was active on the issue and it dealt with national institutions at seven sessions throughout the decade. In contrast, the Commission on Human Rights only joined the discussion at the end of the 1980s.<sup>122</sup> Despite their obvious unwillingness to endorse a specific model, the policy-making bodies promoted the general idea of national institutions and recognised the significant role that such institutions could play in the promotion and protection of human rights at the national level.<sup>123</sup> Member States' attention was directed towards three primary areas. Firstly, they were advised to set up new national human rights institutions or strengthen those already in place. Secondly, they were asked to encourage the exchange of experience in the establishment of such institutions. Thirdly, the governments were reminded of the importance of maintaining the integrity and independence of national institutions, and the constructive role that NGOs could play in national institutions' work was pointed out.<sup>124</sup>

The essence of these recommendations did not change significantly over the years. However, towards the end of the 1980s, the language of the UN resolutions grew somewhat stronger.<sup>125</sup> Furthermore, these resolutions were supported by a wider group of governments. Most importantly, by the late 1980s, the customary advocates of national human rights institutions, including India, Australia, Sri Lanka, New Zealand, Nigeria, Iraq and Morocco, were joined by several countries from the Eastern European group.<sup>126</sup> In addition to this, an important proof of the popularisation of national institutions was their proliferation at the national level. The self-enforcing logic of annual discussions resulted in the emergence of a bulk of new national bodies in the 1980s. Some of these bodies, often called human rights commissions or advisory committees, complied with the 1978 guidelines and the subsequent UN resolutions and appeared to enjoy the outright support of their governments.<sup>127</sup> However, many others were set up in the aftermath of international criticism and were equipped with limited powers and even more limited resources.<sup>128</sup> The popularity of national institutions did not thus come without costs.



### *3.3.2 National Institutions and Technical Assistance*

Along with the increasing interest in the role and potential of national human rights institutions in the 1980s, the UN Human Rights Secretariat started to advance the idea that more concrete activities should be developed for the promotion of such bodies. The idea was not a revolutionary one, as the need for technical and material assistance had already been voiced during the UN seminar on national and local institutions in 1978.<sup>129</sup> Nevertheless, the capacity of the UN to provide substantial and long-term assistance to individual national institutions was very limited at the time. In practice, such activities should have been channelled through the UN Advisory Services Programme. However, due to a lack of resources and political interest, this programme had remained at the margin of the UN activities.<sup>130</sup> In the late 1970s, the assistance provided through the programme was mainly concerned with providing fellowships and organising international and regional seminars and training courses, whereas the use of the expert advice was limited to a few cases. The majority of the governments appreciated these efforts, but they showed little interest in further developing the components that went beyond the benign “educational activities”.<sup>131</sup>

Nevertheless, in the 1980s, the attitude towards the UN advisory services began to change and this also paved the way for the development of specific programmes in the field of national institutions. It could be argued that the strongest impetus for this transformation came from the realisation that after fifteen years of institution building, the international human rights regime was now in place and, more importantly, it was reaching a fully operational status. By the early 1980s, there were already four international human rights conventions in force with their own monitoring mechanisms.<sup>132</sup> Additional legal instruments were under preparation,<sup>133</sup> and governments continued to discuss the possibility of fortifying the international human rights regime with the High Commissioner for Human Rights. In addition to this, the Commission on Human Rights had clearly adopted a more visible role in the scrutiny of human rights. For instance, in 1982, the body had already used over two-thirds of its session to debate human rights violations, and nearly half of the resolutions that were adopted during that session concerned violations in specific countries. The nature of the Commission’s discussions had also become increasingly outspoken. As one observer noted with reference to the 1982 session, “[m]embers and NGOs now disregard the former taboo against attacking states by name in public debate and make sweeping public indictments”.<sup>134</sup> At the same time as the international human rights

mechanism was becoming stronger, it also began to attract increasing criticism. For example, the new activity of Commission led some governments to conclude that the human rights body had become politicised and unable to respond to cases of human rights violations in a prompt and impartial manner. It was also felt that the standards developed in the field were too vague and lacking in effective supervision.<sup>135</sup> The vulnerability of the new treaty monitoring mechanism also became apparent as governments continued to submit inadequate information to the treaty committees and the number of overdue reports continued to grow.<sup>136</sup>

The changing concept of the role of governments in the promotion and protection of human rights gave an additional impetus to the revision of the methods employed by the UN. The idea of human rights resulting primarily in negative obligations for governments became increasingly more contested towards the end of the 1970s.<sup>137</sup> Instead, the idea started to gain ground that governments also possessed a positive obligation to undertake measures to promote human rights and, more importantly, to ensure that the domestic environment was suitable for the realisation of human rights.<sup>138</sup> Furthermore, it was gradually realised the UN supervisory mechanisms only addressed the symptoms, not the root causes of human rights violations.<sup>139</sup> The international activities related to the “protection” of human rights were clearly insufficient, and instead of simply pointing out the problems, the UN should also engage in assisting states to correct them. The “third wave”<sup>140</sup> of democratisation, which swept over Asia, Africa, Latin America and parts of Central Europe and left many countries in the state of disarray, gave rise to an even more compelling case for this idea of capacity building.

These developments encouraged governments to re-evaluate the role of the UN Advisory Services Programme. For some countries who found international monitoring mechanisms to be biased, the advisory services offered a considerably less intrusive and meaningful way to promote and protect human rights.<sup>141</sup> Similarly, for those who concerned about the insufficiency of protective mechanisms, the programme gave a practical means to translate words into deeds. The first steps towards the more active use of these positive measures were taken in the early 1980s when the Commission began to support newly established governments in some countries “emerging from a period of extreme oppression”.<sup>142</sup> In 1984, this focus was broadened when the Commission asked the Secretary-General to outline suggestions for a general long-term programme of action for the provision of expert advice.<sup>143</sup>

The Human Rights Secretariat (which was then called the “Centre for Human Rights”) was supportive of the strengthening of the promotional dimension of the Human Rights Programme, although it was somewhat unclear how the Centre would obtain the necessary resources to carry this out.<sup>144</sup> The importance of building strong domestic human rights structures had also started to become a widely accepted objective, and the Centre openly lobbied for the development of technical assistance for the support of national institutions. In 1983, the Director of the Centre assured the Third Committee that the Secretary-General’s reports on national institutions “should now lead to practical action to encourage and carry out tangible and constructive measures at national and local levels”. He also recommended that “the ways in which international co-operation could assist national and local institutions to increase their contributions in the future should be considered”.<sup>145</sup> In 1984, he noted that the role of national institutions in the promotion and protection of human rights had been given a special importance and asked the Third Committee to consider “how the [advisory services programme] could be organized to meet the needs of Governments”.<sup>146</sup>

The UN policy-making bodies responded to these recommendations in 1985. Firstly, the Commission asked the Secretary-General to examine ways of facilitating the provision of technical assistance to individual governments, including the possibility of using voluntary contributions for the implementation of technical assistance projects.<sup>147</sup> Later in the same year, the General Assembly recognised the role that the UN could play in supporting national institutions for the first time and asked the Secretary-General to provide all necessary assistance for the establishment and exchange of information on the establishment and strengthening of such institutions.<sup>148</sup> These decisions marked a turning point in the evolution of national institutions. Subsequently, the Centre for Human Rights began to develop the idea of the voluntary fund, which would be used to finance the technical assistance activities in the field of human rights.<sup>149</sup> Following the UN budget crisis in 1986, which required cutting the staff of the Human Rights Programme and reducing the human rights activities by 20%,<sup>150</sup> the fund was finally set up in 1987. In the enabling resolution of the Commission on Human Rights, the objective of the fund was defined as to “provide additional financial support for practical activities focused on the implementation of international conventions and other international instruments on human rights”.<sup>151</sup>

At the same session, the Commission adopted a resolution recognising that the effective implementation of human rights necessitated giving priority to the development of appropriate arrangements at the national level. Moreover, following the wording of the 1985 resolution of the General Assembly, the Commission requested the Secretary-General to provide all necessary assistance to the Member States in the establishment of national institutions and in the exchange of information on the establishment and operation of such institutions.<sup>152</sup>

The development of the scope of the UN technical assistance activities represented an equally important step. Following the guidance of the policy-making bodies, the Centre began to revise parts of its medium-term plan concerning the Advisory Service Programme. In 1987, the Director of the Centre informed both the Commission and the Third Committee of the General Assembly that national institutions would be of “crucial importance” in the UN Human Rights Programme and that assistance to such institutions would form a “key component” of the future advisory service activities.<sup>153</sup> From a wider perspective, support to national institutions appeared to represent a new phase in the evolution of the UN human rights activities where the emphasis would be placed on positive forms of action and on work aimed at developing national systems for the protection of human rights.<sup>154</sup>

In line with these objectives, the Secretary-General’s outline for the medium-term plan, which was submitted to Commission in its 1988 session, focused on practical assistance in the creation and development of national human rights infrastructures. National institutions were introduced as a specific target group of one of the six sub-programmes and as possible beneficiaries of technical assistance provided under some other sub-programmes.<sup>155</sup> While the proposed plan defined the various forms of assistance in considerable length, it remained silent on many other important issues, including the object of support activities.<sup>156</sup> In the context of national institutions, there was no clear guidance given, for instance, on the type of national institutions that the Centre should aim to promote in its seminars and training courses and on the conditions for the eligibility for assistance.<sup>157</sup> It is also remarkable that the plan did not include any reference to the 1978 guidelines, which were the only internationally endorsed benchmark for national institutions that were available at the time. Several experts who had followed the development of the UN human rights activities identified similar problems in the overall

approach of the programme.<sup>158</sup> In their view, one of the most serious flaws in the outline of the medium-term plan was the lack of a clear strategy, which would assist in defining objective criteria for assessing which projects to support.<sup>159</sup>

Despite these weaknesses, the members of the Commission seemed to be generally satisfied with the chosen programme approach and particularly welcomed the sub-programme “practical assistance for national infrastructures”.<sup>160</sup> In practice, the implementation of the new approach had a slow start as only a handful of projects for the support of national human rights institutions were undertaken during the late 1980s.<sup>161</sup> This can be partially explained by a lack of resources. In spite of the reforms, the new Voluntary Fund had not yet received contributions specifically aimed at national human rights institutions activities and the Centre did not have the personnel that could have been assigned to develop the politically sensitive and complex activities in this field. An additional obstacle was undoubtedly created by the fact that the UN policy-making bodies did not give any clear guidance on the future direction of the UN national institutions activities.<sup>162</sup> Notwithstanding, the UN policy-making bodies welcomed limited number of activities that had been taken, and the Secretary-General was asked to respond favourably to further requests from Member States for assistance in the establishment of new national institutions and strengthening those which already existed.<sup>163</sup> In this way, the UN laid the foundation for the future development in the field.

### *3.3.3 Developments beyond the United Nations*

The intensive discussion on national institutions, which had begun in the UN fora in the late 1970s, had a clear spill-over effect. A decade later, the UN was no longer the only international organisation concerned with the role of such institutions in the domestic implementation of human rights. As a result of the popularisation of the concept, various activities, primarily relating to fact-finding and to the exchange of information, were also introduced in the context of the Commonwealth States, the Council of Europe and the Organisation of African Unity (OAS).

For instance, in 1986, the Commonwealth Law Ministers requested the Secretariat’s Human Rights Unit to facilitate exchanges of information on law reform, national institutions and domestic procedures established for the promotion of human rights.<sup>164</sup> As part of this task, the

Unit initiated a survey to examine the scope and nature of national institutions in 1987.<sup>165</sup> The responses revealed a great range of institutions dealing with human rights, however, the initial results were published in 1988 to serve as a “source of reference to facilitate exchanges of information between relevant institutions”.<sup>166</sup> Two years later, the findings were compiled in a Directory on National Human Rights Institutions in the Commonwealth, which identified two types of institutions; namely, ombudsmen and national human rights commissions. While the former was considered as the principal form of the existing human rights arrangements in the Commonwealth area, it was anticipated that the broadly mandated Human Rights Commissions, which took international standards as a starting-point for their work, could provide a model for the future development of the ombudsman’s role.<sup>167</sup>

National human rights institutions also attracted attention in the framework of the Organisation of African Unity (OAU). The regional UN seminar on regional human rights commissions, which was held in Liberia in 1979, resulted in the adoption in 1981 of the African Charter on Human and Peoples’ Rights.<sup>168</sup> With regard to national institutions, the importance of the Charter lay in the provision which requested governments to “allow the establishment and improvement of appropriate national institutions entrusted with the promotion and protection of the rights and freedoms”. Furthermore, it urged the African human rights body, the African Commission on Human and Peoples’ Rights, to “encourage national and local institutions concerned with human and people’s rights”.<sup>169</sup>

In practice, the African Commission did not gain much practical experience in this field during the first decade of its existence as it only reached a fully operational status in the 1990s.<sup>170</sup> For instance, in the first Plan of Action adopted in 1988, support to national institutions was limited to the intention to make a recommendation on the establishment of national human rights committees.<sup>171</sup> Such a recommendation was subsequently made in 1989. Apart from inviting all States Parties to take appropriate measures to establish national institutions, the Commission called on them to take due account of the 1978 guidelines in planning the structure and functioning of these bodies. Furthermore, the Secretary-General of OAU was requested to submit a detailed report on existing national institutions.<sup>172</sup>

The most far-reaching activities undertaken outside of the UN occurred in the framework of the Council of Europe. The second medium-term plan of the organisation, which covered the period of 1981-1986, included an objective concerning co-operation with and between national institutions for the promotion and protection of human rights.<sup>173</sup> The first step for the implementation of this objective was the organisation of a seminar on non-judicial means of the protection and promotion of human rights in Siena in 1982. The proposals submitted to the seminar included a recommendation that Member States should set up national human rights commissions and adopt some guidelines on the functions of such bodies.<sup>174</sup> As a result, participants of the seminar agreed that states should create “mechanisms to follow development at the international level and bring them to the attention of the appropriate national authorities”.<sup>175</sup> However, rather than endorsing human rights commissions, the meeting – predominantly attended by representatives of ombudsmen, parliamentary commissioners, mediators and similar bodies – proposed that ombudsmen could adopt a new role extending beyond their traditional jurisdiction in administrative matters.<sup>176</sup> Furthermore, it was envisaged that the Council of Europe could act as a forum for co-ordination and exchange of information as well as act as a “clearing-house” between ombudsmen.<sup>177</sup> These ideas were further elaborated at the first Round Table of the European Ombudsmen organised in Madrid in 1985.<sup>178</sup> Three months after the meeting, the principal decision-making body of the Council, the Committee of Ministers adopted a recommendation in which it invited the Member States to:

*“[...] consider empowering the Ombudsman, where this is not already the case, to give particular consideration, within his legal competence, to the human rights matters under his scrutiny and, if not compatible with national legislation, to initiate investigations and to give opinions when questions of human rights are involved [and] to consider extending and strengthening the powers of the Ombudsman in other ways so as to encourage the effective observance of human rights and fundamental freedoms in the functioning of the administration”.*<sup>179</sup>

In addition, the Committee decided to institutionalise the practice of regular conferences with the ombudsmen of Member States and invited the Secretary-General to ensure that these bodies would be informed of the relevant material related to the promotion and protection of human rights in the Council of Europe on a regular basis.<sup>180</sup> The consideration of human rights commissions was also continued after the endorsement of the “human rights ombudsman”. It was anticipated that the Committee of Ministers would recommend the creation of bodies which would advise governments and individuals on human rights issues and promote education and research in the field.<sup>181</sup> However, the Steering Committee for Human Rights, the governmental

expert body responsible for human rights issues, abandoned this plan in 1986 because “quite a number of the tasks foreseen in the preliminary draft resolution were already being carried out by other bodies in several member states”.<sup>182</sup>

The fact that several international organisations had begun to plan and undertake similar activities in the 1980s bears witness to the popularisation of the concept of national institutions. It is evident that the gradual change in the international status of human rights served as the primary impetus for the search for new and more effective human rights mechanisms. However, the fact that the UN policy-making bodies had endorsed the 1978 guidelines and discussed the issue of national institutions on an almost annual basis since the late 1970s undoubtedly contributed to the growing international awareness of these institutions and also encouraged other international organisations to explore their potential.

### **3.4 The Diffusion of National Institutions**

#### *3.4.1 International Standards for National Institutions: The “Paris Principles”*

As described earlier, the 1980s constituted a period in which the concept of national institutions became increasingly widely known and accepted among governments and concrete measures were initiated by the UN for their establishment. In the 1990s, the UN took one step further as the concept of national institutions and the idea of supporting the creation of these bodies were institutionalised. The consolidation of national institutions was spurred on in 1990 when the Commission on Human Rights adopted a resolution requesting the Secretary-General to convene a workshop which national and regional human rights institutions would also attend. According to the Commission, the main purpose of the workshop was to inquire into the ways in which the co-operation of national institutions with the UN could be improved with a view to increasing these institutions’ effectiveness.<sup>183</sup> The UN Centre for Human Rights later broadened this objective by stating that the meeting would also give an opportunity to discuss the existing or potential forms of co-operation *between* national institutions, to encourage existing national institutions to step up their activities and to exchange experiences with a view to increasing the awareness of national institutions among governments.<sup>184</sup>



The First International Workshop on National Human Rights Institutions was organised in Paris in September 1991 with the co-operation of the UN Centre for Human Rights and the French National Consultative Commission of Human Rights and with the financial support of the French government. The meeting assembled a wide representation of various types of national human rights bodies, intergovernmental and non-governmental organisations as well as experts from different parts of the world and thereby offered a unique platform for the diverse assessments of national institutions.<sup>185</sup> Although the report on the conclusions of the workshop do not explicitly show that the issue of co-operation among national institutions and with the UN was at the centre of discussions, as originally planned, the meeting gave a major impetus to further developments in this field.<sup>186</sup>

By far the most important contribution of the workshop was the discussion on the legal status, structure, mandate and powers of national institutions and the adoption of recommendations thereupon. In this respect, a central role was played by a group of experts and rapporteurs. The core of the group represented the human rights commissions of Australia, Canada, Philippines and Mexico.<sup>187</sup> It is therefore not surprising that the discussion and the recommendations of the meeting centred on the experiences gained with the human rights commission model. In particular, the Federal Human Rights Commissioner of Australia has been considered to have had an important role in the drafting of the workshop recommendations and in the development of subsequent activities in the field.<sup>188</sup>

The recommendations of the workshop were first called “Principles relating to the Status of Commissions and Their Advisory Role”. However, in 1992, the Commission gave these principles a more neutral title “Principles relating to the Status of National Institutions”, and later they have become known simply as the *Paris Principles*.<sup>189</sup> As the contents and significance of these principles have been discussed earlier,<sup>190</sup> it suffices here to note the main developments vis-à-vis the first international standards adopted in 1978 in Geneva. The most important and striking change relates to the considerable clarification of the concept of national institutions. Unlike the 1978 guidelines, which considered national institutions to comprise of all governmental and public bodies concerned with human rights, the Paris Principles defined the national institution more narrowly as the *key* domestic body which has a general competence to promote and protect human rights. Furthermore, important specifications strengthening the status

of the national institution were made regarding its independent status, mandate, and structure, as well as its relations with public authorities and other organisations working in the field of human rights.<sup>191</sup> It is also worth noting that the generous list of functions proposed in the 1978 guidelines was streamlined and adjusted to the capacity of a system based on a single institution.<sup>192</sup>

Despite these improvements, the Paris Principles also had at least one significant shortcoming compared to the 1978 guidelines. This relates to the complaints-handling function, which was introduced only as an *optional* task in the Paris Principles.<sup>193</sup> The official meeting documents do not shed light on why so little importance was given to this important task that appeared already in the 1978 guidelines. However, it is evident that the investigative and supervisory powers of the national institution were among the most sensitive issues discussed during the meeting. By 1991, many states had already created various types of “promotional” agencies, governmental advisory bodies, and “administrative” ombudsmen which did not usually have a formal competence in the field of human rights. Therefore, it must have been difficult to introduce international standards which urged governments to create new institutions or equip the existing ones with the authority to receive human rights complaints.<sup>194</sup> An international expert who attended the meeting confirms this view by saying that “[t]he opposition to including the investigation of individual complaints [in the Paris Principles] came primarily from certain European countries, where national institutions do not enjoy these powers”.<sup>195</sup> It is ironic that ten years later virtually all of the international standards and recommendations – including those developed in Europe – give special attention to the national institution’s complaints-handling role.<sup>196</sup>

### 3.4.2 *International Commitment to “Paris Principles Institutions”*

In the course of the three years following the meeting in Paris, the new international standards for national human rights institutions were discussed in several UN fora. The Commission on Human Rights was the first to assess the results of the workshop. It accepted the idea of setting up national institutions that conform to the Paris Principles in 1992 and asked the Secretary-General to take these new guidelines into account in the UN manual on the establishment and strengthening of national institutions, which was under preparation in the Centre for Human Rights.<sup>197</sup> Although the Commission made its decision unanimously with the support of a wide

group of governments, the original wording of the draft resolution had to be compromised to ensure consensus. Instead of “endorsing” and “promoting” the Principles in a straightforward manner, as proposed in the draft resolution, the Commission chose a more cautious formulation which only “welcomed the guidance” provided by the new standards and bound the Commission to “study and promote” them.<sup>198</sup>

Later in the same year, the Paris Principles were submitted to the consideration of the General Assembly. The Assembly, which had originally scheduled the item of national institutions for its 1993 session, did not, however, show any interest in addressing the question one year in advance. There were only a few token references to the importance of national institutions during the discussion. For instance, the delegation of India, the leading proponent of national institutions in the General Assembly, confined itself to informing the Third Committee about the Indian government’s plans to set up an independent Human Rights Commission of its own.<sup>199</sup>

It was not until almost two years after their adoption that the Paris Principles came into prominence on the international agenda. An important impetus for their wider acceptance was given by the World Conference on Human Rights, which was organised in Vienna in June 1993. In fact, the preparations for the conference also provided an important occasion to diffuse and discuss the concept of national institutions. The agenda-setting began in 1990 when the General Assembly took the decision to hold the Conference in order to “examine the ways and means to improve the implementation of existing human rights standards and instruments” and to “formulate concrete proposals for improving the effectiveness of the United Nations activities and mechanisms in the field of human rights[...].”<sup>200</sup> In the same context, the Assembly established a Preparatory Committee for the World Conference and invited the Commission on Human Rights to make recommendations to the Committee regarding the organisation of the Conference.<sup>201</sup> Consequently, the Commission invited the Preparatory Committee in 1991 to examine the ways and means by which the meeting could encourage the establishment and strengthening of national human rights institutions. In 1992, when endorsing the Paris Principles, the Commission also asked the Committee to consider the possible ways of promoting national institutions that comply with the Paris Principles.<sup>202</sup>

In the forthcoming months, the question of national institutions was linked in various ways to the preparations of the World Conference. In April 1992, the Preparatory Committee decided to open the Conference to national institutions and invited them to take part as observers.<sup>203</sup> This was followed by the Centre for Human Rights which started to campaign, in close co-operation with active national institutions and national institution experts,<sup>204</sup> for the rapid dissemination of the Paris Principles. In the course of the fourteen months preceding the World Conference, these new guidelines were discussed at several regional meetings convened for governments, NGOs and the national institutions. Worth mentioning are in particular the workshops that were organised by the UN Centre for Human Rights and the Commonwealth Secretariat along with the governments of Australia and Canada – the two long-term advocates of national institutions – and with the government of Indonesia, which established its own human rights commission a few days before the beginning of the World Conference.<sup>205</sup> The Commonwealth workshop and the UN workshop on anti-discrimination bodies made a substantial contribution to the pre-World Conference process by lending support to national institutions and the Paris Principles.<sup>206</sup> Even the UN Asia-Pacific Workshop, which was not perhaps equally successful, served as an important occasion to boost the discussion on the eve of the regional meeting for Asia. It brought together almost thirty governments from the region where domestic human rights structures were still relatively weak and knowledge about the Paris Principles institutions was scarce.<sup>207</sup>

The good reputation that the concept of national institutions had earned was echoed at the three intergovernmental meetings that were organised in Africa, Asia and Latin America and the Caribbean. All meetings decided to include national institutions in their final recommendations and welcome the creation of national institutions in general. Some of them took even one step further and recommended specifically the establishment of national institutions which comply with the Paris Principles.<sup>208</sup> However, due regard was also given to issues of state sovereignty and the importance of taking the historical, cultural and social conditions of each country into account.<sup>209</sup> The most far-going statement on this matter was included in the Bangkok Declaration. The representatives of Asian governments were favourable to the idea that the promotion of human rights would be encouraged by co-operation rather than by “confrontation and the imposition of incompatible values” and therefore, they welcomed the “important role played by national institutions in the genuine and constructive promotion of human rights”.<sup>210</sup> However, at the same time, the model based on the Paris Principles was rejected and it was

highlighted that “the conceptualization and eventual establishment of such institutions are best left for the States to decide”.<sup>211</sup>

The results of the pre-conference process as well as the proceedings of other relevant meetings were submitted to the Preparatory Committee, which was responsible for preparing the first draft of the final conclusions of the World Conference.<sup>212</sup> The version adopted at the last meeting of the Committee already included several references to national institutions, and most of these were accepted as part of the final declaration without amendment. Nevertheless, the formulation of two important paragraphs remained unresolved, as could be anticipated following the regional meetings. The first concerned the encouragement of the establishment and strengthening of national institutions, and the second referred to the strengthening of UN activities and programmes in the field.<sup>213</sup> In both cases, the Committee had been unable to reach agreement on the definition of national institutions, and it seemed uncertain whether the final document would include any explicit reference to the Paris Principles.<sup>214</sup> This possibility was strongly rejected by the representatives of some thirty national institutions, who had convened their own parallel meeting in Vienna in mid-June. The group provided additional input to the conclusions of the Conference by putting forward a proposal for recommendations on national institutions with a view to both the Final Declaration and the Programme of Action. Apart from stating that national institutions play a “particularly important and constructive role” in the promotion and protection of human rights, the proposal stressed that despite national circumstances these “national, independent and pluralistic institutions [...] shall have regard to the [...] Principles concerning their status”.<sup>215</sup>

The intensive lobbying for the Paris Principles institutions was successful. The Final Declaration and Programme of Action, adopted by the consensus of 171 states reaffirmed “the important and constructive role of national institutions in particular in their advisory capacity to the competent authorities, their role in remedying human rights violations, in the dissemination of human rights information, and education in human rights”.<sup>216</sup> Furthermore, the Conference recognised the value of the Paris Principles as a benchmark for national institutions and thereby encouraged governments to establish and strengthen national institutions “having regard to the ‘Principles relating to the status of national institutions’”. However, reflecting the need to adjust international

standards to national conditions, the document also acknowledged “the right of each State to choose the framework which is best suited to its particular needs at the national level”.<sup>217</sup>

In addition to endorsing the Paris Principles institutions, the Conference emphasised the further development of international co-operation in the field. According to the Vienna Declaration and Programme of Action, the priority in the co-operation, development and strengthening of human rights should be given to national and international action that aims *inter alia* to assist in strengthening and institution building in the area of human rights.<sup>218</sup> With this goal in mind, it was urged that “[g]overnments, the United Nations system as well as other multilateral organizations[...] increase considerably the resources allocated to programmes aiming at the establishment and strengthening of national legislation, national institutions and related infrastructures”.<sup>219</sup>

The Vienna Declaration and Programme of Action has often been described as one of the most important international human rights document adopted after the Universal Declaration for Human Rights of 1948.<sup>220</sup> At the same time, it has been criticised for not showing new direction to the UN Human Rights Programme.<sup>221</sup> This characterisation also applies to national institutions in a sense that the final document did not provide any new definition or a clear road map for future development of this particular field of work. Notwithstanding, the Vienna meeting marked something of a breakthrough in the evolution of the *international status* of these institutions. Firstly, it placed national institutions within the framework of the UN Human Rights Programme and ensured that the focus of the future human rights work would shift to the domestic level.<sup>222</sup> Moreover, it affirmed that national institutions constitute an important part of the domestic structures of any state committed to human rights and that the Paris Principles provide the set of guidelines that should be followed when building and fortifying such structures.

This international commitment to the Paris Principles institutions was reaffirmed in December 1993 when the General Assembly finally approved the Paris Principles and encouraged governments to establish national institutions with regard to these guidelines.<sup>223</sup> Thereafter, the reference to “effective, independent and pluralistic national institutions for the promotion and protection of human rights, in keeping with the principles relating to the status of national institutions” has formed an inherent part of resolutions adopted on national institutions by the

UN policy-making bodies.<sup>224</sup> It is equally important to note that the support for Paris Principles institutions has been proclaimed in international conferences also after the Vienna meeting. In 1995, the Fourth World Conference on Women encouraged governments to “create or strengthen independent national institutions for the protection and promotion of [...] the human rights of women, as recommended by the World Conference on Human Rights”.<sup>225</sup> Most recently, the concept of Paris Principles institutions has been endorsed by the 2001 World Conference Against Racism, which urged states to create and strengthen independent national human rights institutions in particular with a view to combating racism, racial discrimination, xenophobia and intolerance.<sup>226</sup>

### 3.4.3 *The First United Nations Programme of Action for National Institutions*

As discussed above, the UN Centre for Human Rights began to upgrade its national institutions activities towards the end of the 1980s. However, it was not until the draft medium-term plan for the period of 1992-97 that assistance to national institutions appeared as an independent element of the programme. In the final plan, adopted by the General Assembly in 1990,<sup>227</sup> it is noted that “greater emphasis than ever before will be given to the requirements of national institution building”.<sup>228</sup> The World Conference on Human Rights gave a vital impetus for the further development of these activities by requesting the Centre to assist states in the implementation of human rights and, for this purpose, to include the strengthening of “institutions of human rights and democracy” as a component of the advisory services and technical assistance programme.<sup>229</sup> The General Assembly reaffirmed this goal at the end of 1993 and mandated the Centre to continue its efforts to enhance co-operation between the UN and national institutions and to “respond favourably” to requests for assistance in the establishment and strengthening of these institutions.<sup>230</sup>

The framework for the new approach was laid down in the *Programme of Action for Technical Assistance to National Institutions*, which had the ambitious goal of focusing on the “full implementation” of the Paris Principles.<sup>231</sup> In order to achieve this goal, four broad objectives were set: firstly, to promote the concept of national institutions; secondly, to assist in the creation of independent and effective institutions conforming to the international standards; thirdly, to assist in the strengthening of existing institutions; and finally, to promote cross-border co-

operation between national institutions at regional and sub-regional levels. The means for achieving these goals included the organisation of regional seminars to exchange experiences on the establishment and operation of national institutions, the provision of financial support and expert advice to governments wishing to set up national institutions, the organisation of training sessions for the staff of national institutions and the provision of information and advice on various aspects of national institutions' functioning with a view to strengthening their operational effectiveness.<sup>232</sup> These objectives were introduced and adopted at the Second International Workshop of National Institutions, which took place in Tunis in December 1993. The Commission on Human Rights supported the planned activities in the following spring and requested the Secretary-General to give a "high priority" to requests from Member States concerning assistance for the establishment and strengthening of national institutions.<sup>233</sup>

In practice, the number of activities undertaken in the first half of the 1990s remained very limited, as the Centre for Human Rights was lacking both in expertise and resources.<sup>234</sup> In 1994 and 1995, there were less than ten projects aimed at individual governments or their national institutions. The majority of them supported national institutions through the provision of fellowships and the distribution of information and documentation. In some cases external consultants were also hired to supply governments with expert advice in drafting laws on national institutions.<sup>235</sup>

A far more significant contribution to the expansion of national institutions was made through the organisation of international meetings. The most important of these included the Second and Third International Workshops of National Institutions in Tunis in December 1993 and in Manila in April 1995, and the meetings of the Co-ordinating Committee of National Institutions in February 1994 and 1995.<sup>236</sup> Apart from the fact that these events significantly promoted co-operation between national institutions and the Centre for Human Rights, they advanced the discussion on regional co-operation between national institutions and encouraged these bodies to seek for participation in the UN's overall work on human rights.<sup>237</sup>

The finalisation of the UN handbook on national institutions constituted an equally important step in the promotion of national institutions. The adoption of the Paris Principles in 1991 had only laid down a very general framework for the development of state human rights structures.



Prior to the publication of the handbook, there was no official “commentary” explicating the Paris Principles; nor were there written instructions advising governments on the practical implementation of these international recommendations. The need for such instructions was acute as they were not only required by the governments in the creation of their own national institutions, but also by the Centre for Human Rights which needed some form of minimum requirements to define the types of the institutions falling under the mandate of the new Programme of Action.

The handbook, which was eventually released in late 1995, partially solved the problem by clarifying individual recommendations for the Paris Principles. However, the definition of the concept of national institutions proved to be a much more problematic question. In the light of the difficulties posed by the wide range of existing “national institutions”, it was recognised right from the onset that the concept had not yet fully evolved.<sup>238</sup> While the preparation of the handbook may have represented an opportunity to set clearer benchmarks for the future activities of the UN, the Centre was obliged to adopt a broad concept in line with the resolutions of the UN policy-making bodies. National human rights institutions were thereby defined in loose terms as bodies “established by a Government under constitutions, or by law or decree, the functions of which are specifically defined in terms of the promotion and protection of human rights”.<sup>239</sup>

#### *3.4.4 The Proactive Phase of the United Nations Programme*

The UN’s work concerning the promotion of national institutions was considerably boosted in the mid-1990s when the Centre for Human Rights created a post of a Special Adviser on National Institutions. The post was created as part of a UN “global project” for the support of technical co-operation activities relating to national human rights institutions. The first two-year project was financed through a contribution by the government of Australia to the Voluntary Fund for Technical Co-operation in the Field of Human Rights. The Special Adviser to the High Commissioner for Human Rights on National Institutions, Regional Arrangements and Preventive Strategies was appointed in July 1995.<sup>240</sup> The person who led the UN’s work in this area was *Brian Burdekin*, the former Federal Human Rights Commissioner of Australia and a well-known advocate of independent national institutions and related activities.<sup>241</sup>

The appointment of the Special Adviser marked the beginning of a new and proactive phase in the UN's work on national institutions. The core objectives of this work remained unchanged, however, the concept of national institutions – and in particular that of genuinely independent Paris Principles institutions – was now promoted in a much more systematic and vigorous manner.<sup>242</sup> An important element of the new approach could be seen in the measure of increased flexibility. This was made possible by the independent status of the Special Adviser, most notably his senior position outside of the normal management structure, which made him accountable to the High Commissioner for Human Rights alone. The new arrangement permitted governments and other interested parties to request expert advice directly from the Special Adviser and, in this way, to avoid many hurdles within the slow and inflexible technical co-operation procedure.<sup>243</sup> Firstly, it allowed for a more timely and swift response to requests for advice which was often essential for the advice to have influence on the domestic decision-making process. In addition, the independent role of the Special Adviser facilitated the development and use of new technical assistance techniques, such as informal consultations with various parties interested in the creation of national institutions.<sup>244</sup>

The active promotion of national institutions and the improved access to the advisory services made it easier and more tempting for governments to explore the possibility of developing their state structures as recommended by the UN policy-making bodies. The increased interest in national institutions is evident from the fact that after the first five years of the new proactive approach, the number of UN activities in this particular field had risen fivefold.<sup>245</sup> Some regions benefited substantially from the UN advisory services. For instance, in Africa, nineteen out of the twenty-four national institutions that were in operation or in the process of being formed in 2000 had consulted the Special Adviser.<sup>246</sup>

Within the same period, the national institutions component gained an increasingly central position in the overall programme approach of the Centre, which became known as the Office of the High Commissioner for Human Rights (OHCHR) from 1997 onwards. The development of national structures, including establishment of national institutions, was already considered to be one of the most important technical co-operation aims during the term of the first High Commissioner for Human Rights, *José Ayala-Lasso*.<sup>247</sup> Nonetheless, this work was only consolidated some years later, during the term of the second High Commissioner *Mary*

*Robinson*. Firstly, following the positive statement of the UN Commission on Human Rights in spring 1997,<sup>248</sup> the global project on national institutions was extended with a six-month transitional project aimed at integrating the function of the Special Adviser into the Centre's regular work.<sup>249</sup> In early 1998, the new High Commissioner announced her plans to continue and expand the project on national institutions and to "effectively bring this work into the mainstream of activities" of the Office.<sup>250</sup> As part of these efforts, the Office decided to establish a small National Institutions Team, consisting of two professionals, to support the work of the Special Adviser and to take responsibility in particular for in-house co-ordination and mainstreaming activities.<sup>251</sup> The General Assembly and the Commission on Human Rights praised these measures and encouraged the Office to continue its work and further extend the activities in support of national institutions.<sup>252</sup> Bolstered by this endorsement and the extensive scope of on-going work in the field, the series of global projects was subsequently continued until the retirement of the Special Adviser in early 2003.<sup>253</sup>

As some commentators have pointed out, there was no clear evidence by the end of the 1990s that the UN's support to national institutions made a substantial impact on the promotion and protection of human rights at the national level.<sup>254</sup> The UN activities in the field were still in their early stages, and the experience gained thus far only showed that the establishment of effective national institutions was often a complicated and time-consuming task without any guarantee of definitive success.<sup>255</sup> Regardless of the amount of advice and assistance that was given, complex political processes made it difficult to foresee whether these efforts would result in the creation of credible national institutions. An unwilling opposition could weaken even the most promising initiative and financial constraints or leadership problems could also seriously hamper the work of the national institutions with strong normative foundation.<sup>256</sup>

However, OHCHR considered the strengthening of national institutions to be a worthwhile component of the UN technical co-operation programme. Notwithstanding its potential shortcomings, it was believed that the support to independent national institutions could provide a new and more sustainable means for contributing to domestic policy change from the international level. To start with, institutions that promoted and protected human rights at the national level could improve domestic human rights laws and practices in a more efficient way because they could do so by taking local conditions and traditions into account. Furthermore, due

to their location it was believed that they could supplement regional and international human rights mechanisms, which were not only slow and bureaucratic often but also inaccessible or completely unknown to ordinary people. In addition to this, while national institutions were not replacing international human rights mechanisms, it was felt that they would be better placed to give constructive criticism to governments than any regional or international organisation. Finally, it was envisaged that nationally-based expert bodies could alleviate the difficulties relating to the international treaty monitoring process, for instance, by assisting governments in the preparation of periodic reports and evaluating the content of the information provided.<sup>257</sup> Apart from positive experiences of individual national institutions, it appears that these basic tenets underlying the UN's national institutions work have largely remained unverified. As a consequence, some commentators have questioned the rationale for expanding the national institutions component of the UN Programme until the impact of this work has been studied in more depth.<sup>258</sup>

In addition to the potential effectiveness of national institutions, the long-term need to develop the traditional technical assistance approach might have prompted OHCHR to place more emphasis on its national institutions work.<sup>259</sup> Recognising that the UN technical assistance had been criticised for its lack of clear mission and priorities for a long time,<sup>260</sup> it was undoubtedly hoped that the support to national institutions would bring some innovation and freshness to the programme.<sup>261</sup> The main objective of the late 1990s was the translation of international standards from rhetoric into reality and the creation of a culture of human rights. The promotion of national institutions fitted within this strategy, which underlined the importance of human rights education and the role of domestic human rights mechanisms.<sup>262</sup> Apart from this, the promotion of national institutions appeared to represent a "safer" strategy than many other forms of support. National institutions were generally perceived as bodies which fell outside the traditional sphere of the government.<sup>263</sup> By channelling the assistance to independent institutions the UN could also create a "human rights space" in countries where the government's commitment to reform was weak or uncertain while avoiding the risk of being criticised for supporting abusive government agencies or for wasting resources.<sup>264</sup>

Finally, considering the resource constraints of OHCHR, financial conditions were certainly in favour of the promotion of national institutions. For one thing, UNDP (the United Nations

Development Programme) began to display a growing interest in the establishment of national human rights institutions as part of its programme on democracy, governance and participation. By the end of 1997, it had already made substantial funds available for several projects relating to national institutions.<sup>265</sup> As a programme component, national institutions, thereby, provided a promising way to intensify interorganisational co-operation and obtain additional funding in the field in which OHCHR had the monopoly of expertise. It was also encouraging that the UN's work on national institutions had become popular with donors. As an increasing amount of contributions was now earmarked for the global project and the related activities,<sup>266</sup> this part of the programme became financially self-sufficient and did not significantly burden the regular budget of OHCHR. Surprisingly, voluntary funding continued to provide the financial basis of the national institutions work even after it became an official priority area within the Office's overall strategy.<sup>267</sup> In the light of this situation, support to national institutions probably became one of the most "cost-effective" activities in the history of UN technical co-operation programme.

#### *3.4.5 The United Nations National Institutions Approach*

In order to understand how the UN contributed to the growth of national institutions in the latter part of the 1990s, it is necessary to briefly discuss the activities that spurred on governments to reform their domestic human rights structures in conformity with international recommendations. In this respect, it is worth noting that there was no dramatic change or development in the approach applied by the UN.<sup>268</sup> A great deal of the national institutions work, which was carried out under the auspices of the Centre for Human Rights/Office of the High Commissioner for Human Rights (OHCHR), related to the provision of legal advice to governments who were considering the creation of national human rights bodies. In practice, this advice took the form of consultations with the High Commissioner's Special Adviser or other experienced practitioners or experts and aimed at finding a suitable model for a national institution and drafting founding legislation for such a body.<sup>269</sup> In this regard, a strong emphasis was placed, in particular, on compliance with the Paris Principles.<sup>270</sup> Nevertheless, even if the "human rights commission" was the most important model promoted in the 1990s, support was also provided for the establishment and strengthening of institutions that followed the ombudsman model in many

respects.<sup>271</sup> Furthermore, the development of other human rights structures formed an integral part of the UN's approach in the field.<sup>272</sup>

In practice, the conditions in which many governments set up new institutions with the UN support were often extremely difficult. According to some observers, the UN was in part to blame as it tended to emphasise the necessity of creating new national institutions conforming to the Paris Principles rather than to critically assess the practical utility of national institutions in the given contexts.<sup>273</sup> The fact that there were no clear and transparent criteria for the UN assistance also suggests that it was relatively easy for a government to receive international support even if it was not genuinely committed to human rights reform. However, it should be noted that this problem was common to all international actors in this area, in part due to the lack of an objective "accountability test" for governments.<sup>274</sup>

In addition to legal assistance, the UN provided support for the wider process of preparing the creation of a national institution. For instance, policy advice was given to assist governments in mobilising political support for the establishment and functioning of these bodies. Importance was also attached to the fact that the decision-makers understand the importance of listening to the views of the relevant sectors of civil society. The UN showed example in this respect by regularly including human rights NGOs in the national consultations that preceded the creation of national institutions.<sup>275</sup> However, some critics claim that these consultations did not always serve their purpose as local actors were not familiar with the concept of national institutions and the discussion on other possible ways of promoting and protecting human rights tended to remain limited.<sup>276</sup>

Apart from the pre-establishment phase, policy advice was also given after the adoption of the enabling legislation in order to help the new institutions to develop their operational capacity. *Ad hoc* consultations and technical assistance were provided, for instance, to improve the daily management and the organisational capacity of national institutions and to train the staff of the newly established bodies.<sup>277</sup> By the end of the 1990s, almost thirty governments – mainly those of developing countries – had received advisory services for the establishment or strengthening of their national institutions. Since this time, several established democracies have also become

interested in the potential of national institutions and the geographical focus of the UN work has widened accordingly.<sup>278</sup>

The *ad hoc* expert advice was often complemented by more comprehensive technical assistance projects, which were aimed either at assisting governments to establish new national institutions or to strengthen the capacity of existing bodies. In both cases, the Special Advisor or members of the National Institutions Team usually contributed to the needs-assessment and the project formulation processes as well as to the practical implementation of the projects. While there were only a handful of technical assistance projects with a national institutions component in the early years of the more proactive phase of the programme, this type of assistance became more prevalent at the end of the 1990s.<sup>279</sup> As discussed above, this change can be explained in part by the intensified efforts to integrate national institutions in the overall work of OHCHR. However, an even more important factor was the increased co-operation with UNDP, which announced its new human rights approach to development in early 1998 and introduced support to national institutions as part of its wider goal to develop states' capacity for good governance.<sup>280</sup> Although the co-operation between these two UN agencies was still at its initial stage at the end of the 1990s, it allowed the UN to adopt a more comprehensive and long-term approach for its work on national institutions.<sup>281</sup> Despite this, some critics state that the interorganisational co-operation still requires further improvement.<sup>282</sup>

In addition to advisory services and technical assistance for the establishment and strengthening of national institutions, OHCHR continued its efforts to promote the concept of Paris Principles institutions in the late 1990s. In particular, international and regional meetings provided a useful and cost-effective platform for spreading information on the role and functions of national institutions. In order to raise awareness about these human rights bodies, OHCHR organised seminars in regions that had shown some interest in establishing Paris Principles institutions.<sup>283</sup> Particular emphasis was placed on the countries of Asia and the Pacific, which not only lacked a common regional human rights mechanism but undoubtedly also favoured local or national solutions.<sup>284</sup> The Office also continued to give financial and technical support to the emerging regional co-operation among national institutions as well as to the annual meetings of the International Co-ordinating Committee (ICC), the international network of national institutions.<sup>285</sup>

Finally, it is necessary to mention an area of work which has gained an increasing amount of attention since the mid-1990s, namely the improvement of co-operation between national institutions and the various sectors and bodies of the UN. Following the recommendations of several international meetings of national institutions,<sup>286</sup> the High Commissioner for Human Rights and the UN Centre for Human Rights began to advocate the idea that national institutions should be “fully accepted as natural human rights advocates and partners in international co-operation on human rights”.<sup>287</sup> At first, the focus was placed, in particular, on promoting the participation of national institutions in the work of the Commission on Human Rights. However, since 1999, efforts have also been made to intensify co-operation with other human rights mechanisms, most notably the UN treaty bodies and special rapporteurs.<sup>288</sup>

#### *3.4.6 Developments in the Field of National Institutions*

The activities undertaken by OHCHR become of significance when examining them in the light of three intertwined developments relating to increase in the number of national institutions, the growth of their mutual co-operation, and the rise of the international status of these institutions. Firstly, the number of governmental human rights bodies has increased rapidly in various parts of the world since the early 1990s. This proliferation has been most visible in Africa and the Asia-Pacific region, which have been in the centre of OHCHR’s technical assistance activities. In Africa, the number of human rights commissions grew from one to twenty-four in ten years; in 2003, seventeen of these African institutions were considered to fulfil the Paris Principles criteria.<sup>289</sup> In the Asia-Pacific region, there were only three independent human rights commissions in 1991, whereas a decade later the number of such bodies had risen four-fold.<sup>290</sup> A similar, albeit, less dramatic development has taken place in Latin America and Europe, which have traditionally favoured institutions along the lines of the ombudsman model. From the ombudsmen in Latin America of which there are now more than twenty, ten have been internationally accepted as national human rights institutions. The majority of these has been established or, at least, their enabling laws have been modified after the adoption of the Paris Principles in 1991.<sup>291</sup> In Europe, there were ten accredited national human rights institutions in 2003. The majority of the institutions created in the 1990s were located in established democracies within Western Europe.<sup>292</sup>



Secondly, apart from the global co-operation through the International Co-ordinating Committee, the more active national institutions have developed various regional and sub-regional co-operation mechanisms since the mid-1990s. For instance, the African human rights institutions agreed to create a Co-ordinating Committee of African National Institutions following the First African Conference of National Institutions in Yaoundé, Cameroon in 1996.<sup>293</sup> Later in the same year, the national institutions of Australia, New Zealand, India and Indonesia established the Asia-Pacific Forum of National Human Rights Institutions as a result of the First Asia-Pacific Regional Workshop, which had been organised in Darwin, Australia.<sup>294</sup> The European national institutions had already convened a common meeting for the first time in 1994 at the initiative of the French National Consultative Commission of Human Rights. However, they only decided on the creation of the European Co-ordinating Group at their second meeting in Copenhagen in 1997.<sup>295</sup> Finally, the American national institutions, which had co-operated since the mid-1990s under regional and sub-regional ombudsman associations, held their first regional meeting in 1999. Following their second meeting organised by the Mexican and Canadian Human Rights Commissions in 2000, the American and Caribbean national institutions agreed to establish their own regional network.<sup>296</sup> While the level of organisation and scope of activities differ between these co-operation mechanisms,<sup>297</sup> they all share a common goal of exchanging information and expertise, promoting the independence and effectiveness of national human rights institutions, and developing and maintaining close co-operation with OHCHR and other relevant organisations.

Thirdly, the international status of national institutions has experienced a considerable improvement in the 1990s. Prior to this, governmental human rights bodies were generally not identified as significant domestic partners with a role in the international human rights protection. Nevertheless, following the adoption and international endorsement of the Paris Principles, the organisation of national human rights institutions and OHCHR's "mainstreaming" efforts, national institutions have transformed from being a target of human rights assistance to a human rights actor on its own right. As a sign of this changing status, national institutions have recently attended and contributed to several international human rights meetings and conferences.<sup>298</sup>

Furthermore, it seems that national institutions now have a relatively strong foothold in the daily human rights work of the UN. For example, the UN treaty committees, as well as various human rights bodies and rapporteurs established by the Commission on Human Rights, have shown an increasing interest in the potential of national institutions in the area of human rights monitoring.<sup>299</sup> While this co-operation is still in its early stages, it seems evident that this co-operation can be at best mutually supportive. National institutions can provide the UN experts and expert bodies with necessary up-to-date information, whilst, in return they receive political and moral support, as well as advice for the effective implementation of international human rights norms.<sup>300</sup>

Another important form of co-operation emerged in the context of the annual sessions of the Commission on Human Rights. Since 1996, national institutions have been permitted to address the Commission on their own right under the specific agenda item concerning these bodies. During the sessions of 1996 and 1997, these representations were made from the seat of their government's delegation. However, in 1998, following pressure from the national institution's international network and the activity on this issue by the UN Human Rights Secretariat, national institutions were accorded the right to speak from a separate section of the floor under the nameplate "National Institutions",<sup>301</sup> and this practice continues today. While OHCHR has promised to increase the participation of national institutions in appropriate UN human rights bodies and other international fora, it seems that the governments are not equally enthusiastic about extending the role of national institutions within the activities of the Commission.<sup>302</sup> However, some encouraging steps into this direction were taken in autumn 2003 when the UN Sub-Commission on the Promotion and Protection of Human Rights decided that national institutions can not only be accredited to attend its meetings on their own right but also speak – for the first time – on *any* substantial item on the Sub-Commission's agenda.<sup>303</sup>

To what extent can the positive developments described above be attributed to the work undertaken by OHCHR? The sudden rise in the number of governmental human rights bodies does not, of course, infer that the organisation was directly involved in establishing all of these institutions or that the advice of the UN Special Adviser was automatically accepted and followed by all of the governments and national institutions. The rapid geographical expansion of Paris Principles institutions is nevertheless indicative of OHCHR's success in diffusing the

concept of strong independent human rights bodies and, therefore, in exercising some level of institutional quality control. Similarly, one could also attribute the increasing co-operation among national institutions and with the UN to the activity of the national institutions themselves. Indeed, the global and regional co-operation mechanisms first centred round strong and well-established national institutions that had been engaged in promoting the concept of national human rights bodies. Once these institutions came together, they began to lobby national institutions' participation in the international human rights fora.<sup>304</sup> However, if there had not there been an international catalyst such as OHCHR, which engaged in advancing, co-ordinating and supporting these endeavours, it is unlikely that national institutions would have been able to reach the prominent status that they have today.<sup>305</sup> In conclusion, the UN has played a significant role in both the diffusion and institutionalisation of the Paris Principles institutions. By recommending the creation of these institutions, by assisting governments in setting up and strengthening their own institutions and by promoting the networking of these institutions, it has contributed to the gradual establishment of a new human rights actor.

#### *3.4.7 National Institutions in Other International Fora*

The figures indicating the emergence of new national institutions around the world bear witness to the strong political attention that this new state structure has received. Furthermore, the increasing international co-operation between national institutions and the participation of these institutions in the work of various UN bodies signal the importance attached to them. Nevertheless, the clearest evidence of the institutionalisation of national human rights institutions is the way in which they have been endorsed and promoted *beyond* the UN. As discussed earlier, apart from the UN, many other intergovernmental organisations began to develop various activities in the field of national human rights institutions during the 1980s. This trend grew stronger over the next decade both in terms of the range of activities and in the number of actors.

The Participating States of CSCE (Conference for Security and Co-operation in Europe) expressed their support for the establishment and strengthening of "independent national institutions" for the first time at the Copenhagen Human Dimension meeting in 1990.<sup>306</sup> A year later, at the Moscow Human Dimension meeting, they vowed to take further steps for the support of these institutions, the rule of law, and for bilateral co-operation to encourage their

development.<sup>307</sup> For this purpose, the 1992 Helsinki Summit chose to widen the mandate of the recently established Office for Free Elections from election observation operations to the dissemination of human rights information and the provision of technical assistance for the building of democratic institutions.<sup>308</sup> The title of the office was changed accordingly to the Office for Democratic Institutions and Human Rights (ODIHR). The role of ODIHR was further enhanced in the 1994 Budapest Summit which authorised it to co-operate with other international institutions, including the newly established UN High Commissioner for Human Rights.<sup>309</sup>

Since the adoption of the concept of comprehensive security in the late 1990s,<sup>310</sup> ODIHR has engaged in various activities which are aimed at spreading the idea of national institutions and assisting individual governments in the establishment and development of these bodies.<sup>311</sup> This support has usually taken the form of material assistance or expert advice provided by external consultants, and the geographical focus of this aid has been centred on the Eastern and Central European countries as well as on the former Soviet Republics.<sup>312</sup> Although most of the assistance provided by ODIHR has been directed towards “human rights ombudsmen” rather than to human rights commissions, the organisation has adopted a flexible approach and it follows the relevant international standards, most notably the Paris Principles in the course of its work.<sup>313</sup>

The Council of Europe also intensified its activities in the field of national institutions in the 1990s. Apart from the fact that the Secretariat of the organisation continued the practice of holding biannual round tables with the European ombudsmen, it also considered similar meetings for the European national institutions. The first meeting of this kind was held in November 1994 at the initiative of the National Consultative Commission of Human Rights of France, which had co-organised the first international meeting of national institutions in Paris three years earlier.<sup>314</sup>

This meeting, as well as the fact that the UN had become increasingly active in promoting national institutions in several Central and Eastern European countries prompted the Council of Europe Steering Committee for Human Rights to reconsider the issue of national human rights commissions. The negotiations held in the mid-1990s drew on the Committee’s earlier work, however, the conclusions of the 1993 Vienna Conference and the UN General Assembly resolution endorsing the Paris Principles were also discussed.<sup>315</sup> Although there was some

interest in the UN model, the body finally adopted a broader approach, which went beyond the concept of human rights commissions and the Paris Principles. This approach had also been strongly supported by European national institutions which had held their second regional meeting in Copenhagen in early 1997.<sup>316</sup>

Consequently, when the Committee of Ministers of the organisation convened a meeting in autumn 1997, it did not only introduce the practice of regular meetings with national institutions.<sup>317</sup> In addition, it presented the new European concept of national institutions by inviting the Member States to consider:

*“[...] the possibility of establishing effective national human rights institutions, in particular human rights commissions which are pluralist in their membership, ombudsmen or comparable institutions” [and] draw as appropriate on the experience on existing national institutions, having regard to the [Paris] principles [...] as well as on the experience acquired by ombudsmen, having regard to Recommendation No. R (85) of the Committee of Ministers.*<sup>318</sup>

The Council of Europe Ministerial Conference reiterated this recommendation in November 2000. Six months later, the European Co-ordinating Group of National Institutions was granted an observer status within the Steering Committee for Human Rights.<sup>319</sup>

Since 1997, the Council of Europe has also engaged to an increasing extent in practical activities for the support of national institutions.<sup>320</sup> In addition to the provision of legislative expertise and documentation, the Directorate General of Human Rights (DG II) has organised multilateral meetings and training courses, as well as national training and awareness-raising campaigns to assist national institutions. With the exception of the Central Asia, the work of the organisation has concentrated on the same geographical area as that of OSCE/ODIHR, namely the Central and Eastern Europe and the Caucasus.<sup>321</sup>

More recently, the Council of Europe Commissioner for Human Rights has made an important contribution to the organisation's national institutions activities. The task of the Commissioner, which was established in 1999, is to promote awareness and respect for human rights, including the aim of encouraging the establishment of domestic human rights structures and facilitating the activities of national ombudsmen and similar institutions.<sup>322</sup> As part of this mandate, the Office

of the Commissioner was given the responsibility for the organisation of the biannual meetings for the European ombudsmen in 2001.<sup>323</sup> Moreover, following the combined “Fourth European Meeting for National Institutions” and the “Second Council of Europe Round Table with National Institutions” in November 2002, the Office assumed the role as a liaison office for these institutions. This role includes the task of organising the meetings of the European national institutions.<sup>324</sup> Some initial steps have also been taken to encourage the Member States of the Council of Europe to develop their human rights structures, for instance by providing advice for the establishment and strengthening of their national institutions.<sup>325</sup>

In examining the European context, it is also necessary to mention the support provided to national institutions by the European Union (EU). By 2003, EU had not endorsed the Paris Principles as a model for national human rights institutions.<sup>326</sup> Nevertheless, the Commission already announced in the mid-1990s that one of its main priorities in its positive and constructive approach to human rights is to “support local, national and regional institutions involved in the promotion and protection of human rights, including ombudsmen and others in similar positions”.<sup>327</sup> In the subsequent years, financial support was given to various related activities through the EC assistance programmes and funds directed to third countries.<sup>328</sup> The European Council specifically authorised the assistance aimed at national institutions involved in the promotion and protection of human rights in 1999.<sup>329</sup> Thereafter, several evaluations have recommended that the EU programmes should pay attention to the capacity-building of national institutions. In view of this, the programming document of the European Initiative for Democracy and Human Rights for the period 2002-2004 envisages increasing co-operation in this field with the UN, in particular OHCHR.<sup>330</sup>

In addition to European institutions, interest in the potential of national institutions grew during the 1990s in the framework of the African and American regional organisations, OAU (Organisation of African Unity) and OAS (Organisation of American States). Following many years of inaction and a some token resolutions,<sup>331</sup> the issue of national institutions rose anew to the agenda of the African Commission for Human and Peoples’ Rights when the body adopted the Third Plan of Action in 1996.<sup>332</sup> In this Plan, which covered the period between 1996 and 2001, a particular emphasis was placed on the Commission’s co-operation with potential partners, including national human rights institutions. In this respect, the Commission announced

its intention to focus on the further establishment of national institutions and the setting up of a network between them. The Commission viewed national institutions as useful collaborators both in the promotion and protection of human rights through human rights education, awareness-raising and through the provision of information on human rights violations.<sup>333</sup> As part of its efforts to enhance this co-operation, the African Commission granted an observer status to national institutions that comply with the international standards in 1998.<sup>334</sup>

These steps were praised by the African leaders participating the OAU Ministerial Conference in Grand Bay in 1999.<sup>335</sup> Furthermore, they acknowledged the need to adopt a multi-faceted approach to solve the prevailing problems in the field of human rights and therefore urged states *inter alia* to “establish national institutions and provide them with adequate financial resources and ensure their independence”.<sup>336</sup> Apart from these activities, some observers considered that the Plan of Action did not produce any tangible results.<sup>337</sup> The African Commission has, nevertheless, continued to appeal to governments for the establishment and strengthening of national human rights institutions, and the issue of national institutions remains on the Commission’s agenda.<sup>338</sup>

The discussion on national institutions also resumed in the 1990s in the framework of OAS (Organisation of American States). At the 1994 Miami Summit, the OAS governments noted that significant progress had been made in the development of human rights concepts and norms, however, serious gaps remained in the implementation of these rights. For this reason, they declared their commitment to the advancement of prosperity, democratic values and institutions and their willingness to “work through appropriate bodies of the OAS to strengthen democratic institutions and promote and defend constitutional democratic rule”.<sup>339</sup> In this context, OAS was also assigned the responsibility for initiating programmes which were necessary to support national projects aimed at improving and strengthening national systems for the promotion and protection of human rights.<sup>340</sup> This idea was reiterated in the report of the OAS Secretary-General in 1995, which proposed that the organisation should “provide technical support in the endeavour to evaluate and reform national institutions for the protection of human rights”.<sup>341</sup>

Since the mid-1990s, this assistance has been actively provided by the Inter-American Institute of Human Rights (IHR), an autonomous international organisation that was created in 1980

through an agreement between the Inter-American Court and the host state of Costa Rica in order to educate, promote and investigate human rights issues in the Americas. Following the endorsement of national institutions, the Institute included the ombudsman institutions as one of the specific target groups which could avail of support through the programme providing technical assistance in the field of human rights to state institutions.<sup>342</sup> The OAS General Assembly commended the Institute for its “vital” work in 1995 and 1996 and pledged to support its continuation.<sup>343</sup> This arrangement was extended in 1999, when the Assembly adopted a new Inter-American Human Rights Programme specifically authorising the Institute to undertake a number of activities aimed at strengthening national human rights institutions.<sup>344</sup>

In addition to practical support, the OAS governments expressed their political support to national institutions at the end of the 1990s. Between 1997 and 1999, the OAS General Assembly adopted three resolutions requesting governments to establish new national institutions or to strengthen the existing ones and confirmed its support to the efforts of the ombudsman and similar bodies as an “integral part of the new vision of the OAS”.<sup>345</sup> Furthermore, it encouraged governments and the bodies of the Inter-American system to promote dialogue with national institutions and the regular exchange of information between these institutions.<sup>346</sup>

The call for co-operation was reiterated in 2000, when the OAS General Assembly instructed the Permanent Council of the organisation to “promote [...] the participation by national institutions involved in the promotion of human rights, such as defenders of the people, defenders of the population, human rights attorneys, human rights commissioners (ombudsmen), or others with an equivalent role” in the on-going dialogue concerning the improvement of the Inter-American human rights system.<sup>347</sup> Furthermore, following the Plan of Action adopted at the Third Summit of the Americas in April 2001, the OAS General Assembly took a decision in 2003 to “request the pertinent organs, agencies and entities of the organization to develop co-operative relations and information exchange with the Network of National Institutions [...] in the Americas”.<sup>348</sup>

In addition to regional organisations, the association of the Commonwealth States began to upgrade its national institutions activities in the 1990s. At the 1991 Harare Conference, the Commonwealth Heads of States pledged that their countries would work for the “protection and promotion of the fundamental political values of democracy, democratic processes and institutions that reflected national circumstances, the rule of law and the independence of the



judiciary, just and honest government”.<sup>349</sup> Prompted by this declaration as well as by the recommendations of two expert groups,<sup>350</sup> the Human Rights Unit of the Commonwealth Secretariat launched a special programme on national institutions, which included support for the preparation of national action plans and strategies for the promotion and protection of human rights.<sup>351</sup>

The work on national institutions was reinforced in 1995, when the Commonwealth Heads of Government adopted the Millbrook Commonwealth Action Programme. In the Programme, the Secretariat was requested *inter alia* to “enhance its capacity to provide advice, training and other forms of technical assistance to governments in promoting the Commonwealth’s fundamental political values, including assistance in creating and building the capacity of requisite institutions”.<sup>352</sup> While by 2003 the Commonwealth association had not explicitly endorsed the establishment of national human rights institutions or the Paris Principles, the Secretariat of the organisation has for long viewed both ombudsmen and human rights commissions as an important part of the domestic implementation of human rights.<sup>353</sup>

The practical activities undertaken by the Commonwealth Secretariat have largely concerned the organisation of workshops on the issue of national institutions. It is worth mentioning, in particular, the Ottawa workshop on national institutions, which was organised in preparation for the 1993 World Conference for Human Rights<sup>354</sup> and the first Commonwealth Conference of National Human Rights Institutions in 2000, which brought together the Commonwealth countries, national institutions and NGOs with a view to enhancing the effectiveness of national institutions.<sup>355</sup> In addition to awareness-raising and networking, the Secretariat has contributed to research in the field by preparing the first manual on national human rights institutions even in advance of the 1995 handbook of the UN.<sup>356</sup> In 2001, it published another pathbreaking study, which outlines the best practices for the establishment and strengthening of national institutions.<sup>357</sup>

As shown above, many regional organisations intensified their activities in the field of national institutions during the 1990s, particularly, in the second part of the decade. Nevertheless, the volume of this work was generally speaking much more limited than that undertaken by the UN. Indeed, the UN was the only international organisation for several years which linked its political

support to national institutions to a specific set of international standards. It was also the only actor with in-house expertise and a small secretariat to reinforce its political message through practical advice and assistance. Furthermore, none of the regional organisations had engaged in such a wide range of activities contributing equally to the diffusion of the concept, the establishment and strengthening of national institutions and to the advancement of the international status of these institutions.

Notwithstanding, regional organisations and institutions have also contributed to the expansion of national institutions and their activities influenced governments' perceptions of what are "legitimate" and "necessary" arrangements at the national level. An important *regional* role has been played, for instance, by the Council of Europe and OSCE, which began to contribute to an increasing degree to the creation and capacity-building of national institutions in the late 1990s. It is, however, pertinent to question to what extent these other organisations would have become interested in national human rights institutions if the UN had not begun to popularise and promote the concept at a global level. At the very least, the timing of many of the initiatives discussed above and the fact that the UN was directly or indirectly involved in them suggest that the world organisation has not only diffused the idea of national institutions to new countries but also to other international organisations.<sup>358</sup>

### End Notes to Chapter Three

<sup>1</sup> The “Nuclear Commission” met in New York between 29<sup>th</sup> April and 20<sup>th</sup> May 1946. The issue of the domestic implementation of human rights was discussed broadly during the meeting. According to the Commission, “[...] each Member State must feel bound to accept, in accordance with its system of government, measures to safeguard the observance [of human rights]”. It also suggested unanimously to ECOSOC that one of the programmes of work of the future Commission should relate to “information groups”. As a consequence, it was proposed that ECOSOC recommends the Member States “[...] to establish information groups or local human rights committees within their countries who would transmit periodic information to the Commission on Human Rights on the observance of human rights in their countries both in their legal systems and their jurisdictional and administrative practice.” *E/38/Rev.1 (1946)*, 5-6; *E/HR/15 (1946)*, seventh meeting held on 8<sup>th</sup> May 1946.

It should be noted that a similar idea of national committees and groups was introduced in the context of the Social Commission, which was another functional committee created by ECOSOC in 1946 and renamed as the Commission for Social Development in 1966. The national committees were envisaged to prepare the work of the Social Commission and bring this work to the attention of the public. *E/CN.4/519*, para. 7.

<sup>2</sup> *ECOSOC Res. 2/9 of 21 June 1946 on Commission on Human Rights*, in particular, section 5, “Information groups”.

<sup>3</sup> Evidently, the ECOSOC resolution was weaker than the preparatory group had envisaged. The difference between the views of the Commission and the Council can be better understood in the light of the role of the Commission itself. Originally, it was planned that the Commission would be a body consisting of non-governmental representatives or independent experts and assisting in the consideration of communications on alleged human rights violations received from the public. The proposal on national human rights committees was probably formulated accordingly. ECOSOC did not however accept any of these ideas and the Commission came to be composed of government representatives and, until the late 1960s, it perceived itself primarily as a technical body concentrating in standard-setting and human rights education. Perhaps this is why the tasks of the human rights committee were also reduced from monitoring to a more limited “technical” advisory role. For more on the evolution of the Commission on Human Rights see *Alston (1992)*, 129; *O’Donovan (1992)*, 116-117.

<sup>4</sup> The idea of the institution was first introduced in the 1919 ILO Constitution, however the general principles for the structure and functions of such an institution were only laid down four years later, when the issue of the national implementation of new ILO Conventions became increasingly urgent. *Recommendation of the General Conference of the International Labour Organisation concerning the General Principles for the Organisation of Systems of Inspection to Secure the Enforcement of the Laws and Regulations for the Protection of the Workers*, 29 October 1923. For the original ILO Constitution (prior to its amendment in 1946) and the provision introducing the idea of labour inspection, see *The Peace Treaty of Versailles, 28 June 1919, Part XIII: Labour*, in particular Section II (General Principles), point 9. The amended 1946 Constitution of ILO does not contain any specific provision on the system of labour inspection. However, this system was reintroduced in the *Labour Inspection Convention concerning Labour Inspection in Industry and Commerce of 11 July 1947*.

<sup>5</sup> *Constitution of the United Nations Educational, Scientific and Cultural Organisation, London 16<sup>th</sup> November 1945*, art. VII (1-3).

<sup>6</sup> The principle of non-interference, enshrined in article 2(7) in the UN Charter, was a matter of concern when determining the mandate of the UN Commission on Human Rights. The same concern was present when planning the working methods of UNESCO. Therefore, in matters that fell under the principle of non-interference, the work of UNESCO would be carried through the national commissions “[...] by communicating our [UNESCO’s] ideas to the National Commissions or co-operating bodies [...] and trusting to them to see that they will be carried out”. See the statement of the Executive Secretary of the UNESCO Preparatory Commission recorded in the report on *General Conference, first session, held at UNESCO House, Paris from 20<sup>th</sup> November to 10<sup>th</sup> December 1946*, 21. The need to respect the sovereignty of states was also underlined in the 1923 Recommendation on Labour Inspection of ILO. While noting the urgency of creating this type of system and while referring to it as “one of the most effective means of ensuring the enforcement of Conventions and other engagements”, the Recommendation underlines the responsibility of Member States in the execution of Conventions and gives them the right to “determine in accordance with local conditions” the measures of supervision that they choose to adopt. *Recommendation of the General Conference of the International Labour Organisation concerning the General Principles for the Organisation of Systems of Inspection to Secure the Enforcement of the Laws and Regulations for the Protection of Workers*, 29<sup>th</sup> October 1923.

<sup>7</sup> When considering the possible connection between the UNESCO Constitution and the Nuclear Commission's proposal on national human rights committees the role of individuals is worth noting. For instance, *René Cassin*, a French lawyer and human rights advocate, was a delegate to several UNESCO conferences, including the one in 1945 at which the organisation's Constitution was drafted, and a member of the Nuclear Commission since its establishment in 1946. The fact that Cassin acted as the first director of one of the world's oldest national institutions, which was set up in France in 1947 following ECOSOC Resolution 2/9 (1946), also shows his personal interest in the issue of national human rights institutions. "*René Cassin – Biography*"; "*National Consultative Commission of Human Rights – History*".

<sup>8</sup> As discussed in chapter 2.3 above, Martha Finnemore (1993) has studied this phenomenon in detail. The nature and types of existing UNESCO National Commissions have been studied in *Architecture of National Commissions for UNESCO: Selected Information on Their Status, Composition and Resources* (2003).

<sup>9</sup> Despite this, from the 1960s onwards the national human rights institutions and the UNESCO National Commissions developed in many respects in tandem. Apart from the fact that the idea of "national institutions" and UNESCO Commissions both emerged in the mid-1940s, the functions of both institutions were considerably strengthened in the 1960s and the basic characteristics of these institutions were anchored in international guidelines in the same year, namely 1978. Irrespective of these similarities, the UNESCO Commissions were integrated earlier and more closely in the implementation of the UNESCO programme than the national human rights institutions in the implementation of the UN Human Rights Programme. The evolution of national human rights institutions will be studied in detail in the following chapters. For the evolution and role of the UNESCO National Commissions, see for instance *Evolution of the Role of National Commissions: 7 Key Dates, 27<sup>th</sup> October 2000, Charter of National Commissions for UNESCO*, laying out international guidelines for UNESCO Commissions, and *Proposals by the Director-General on the establishment of a "Special Procedure" to increase participation of national commissions in the execution of UNESCO's programme and to strengthen the accountability arrangements for programme activities carried out by national commissions*, which annex a list of fifteen resolutions of the UNESCO General Conference in 1966-1999 detailing the UNESCO Commissions role in the execution of the UNESCO programme.

<sup>10</sup> The best-known national committee is the predecessor of the present French National Consultative Commission of Human Rights, which was established in March 1947 – nine months after the recommendation of ECOSOC – and called the Consultative Commission for the Codification of International Law. The aim of the Commission was "[...] to assist the French government with regard to its participation in the conception and implementation of the U.N. system". The Commission worked *inter alia* on the first draft of the Universal Declaration of Human Rights. *Paper by Mr. Jean Kahn, Merida, November 1997*

<sup>11</sup> *E/CN.4/519 (1951)*, paras. 2-4 and 9.

<sup>12</sup> *Ibid.*, para. 5.

<sup>13</sup> *Ibid.*, para. 10.

<sup>14</sup> *Ibid.*, paras. 12-19

<sup>15</sup> *E/CN.4/791 (1959)*, 2.

<sup>16</sup> It had even made a decision on this, however, this was reversed by the General Assembly. *Eide (1992)*, 215-216.

<sup>17</sup> *E/CN.4/791 (1959)*, 2.

<sup>18</sup> *ECOSOC Res. 624B (XXII) of 1 August 1956*. The subsequent rejection of the Commission's recommendation was considered as a sign of the reluctance to advocate the establishment of any kind of national advisory bodies. See the statement by the representative of the United Kingdom during the 16<sup>th</sup> session of the Commission on Human Rights. *E/CN.4/SR.647 (1960)*, 3.

<sup>19</sup> After having concluded the work on the Universal Declaration, the UN bodies were occupied with the drafting of the two international human rights covenants. Furthermore, they participated in the development of the new Programme of Advisory Services, which the General Assembly created in 1955 by bringing together the earlier programmes concerning the rights of women, eradication of discrimination and the promotion of the freedom of media. In this context, the Secretary-General was authorised to provide governments with advisory services of experts upon their request, to organise seminars and to provide scholarships and fellowships. Finally, the human rights bodies introduced a system of periodic reporting in 1956. The role of the Commission in the creation of these standards and mechanisms was central. For the general evolution of the international human rights regime see *Buergenthal (1997)* and *Forsythe (1985)*. *GA Res. 926 (X) of 14 December 1955*, paras. 1-2.

<sup>20</sup> The Commission on Human Rights raised this point at its third and fifth sessions. The establishment of national committees was connected to the development of new international instruments and it was felt that the issue could not be dealt with before the work on implementation measures had been concluded. *E/800 (1948)*, para. 22 and *E/1371 (1949)*, para. 30.

<sup>21</sup> In the 1950s, five Western European countries – Belgium, England, France, Italy and Portugal – still maintained colonies in Asia and Africa. The United States began its civil rights legislative programme in 1957 but it only committed to a full dismantling of the system of racial discrimination in the mid-1960s.

<sup>22</sup> It is worth noting that although the American Convention on Human Rights was only adopted in 1969 (it entered into force in 1978), the Inter-American Commission on Human Rights had already been established in 1959 by a resolution of the Fifth Meeting of the Consultation of OAS Ministers of Foreign Affairs. The Commission's Statute was promulgated in 1960 and it limited the functions of the Commission to the promotion of research and education in the field of human rights as well as to issuing of "general recommendations" on the human rights situations. *van der Wilt & Krsticevic (1999)*, 372. The issue of national committees was put forward on the initiative of the representative of Ecuador. Of the seven members of the Inter-American Commission, five were also represented either as members (Mexico, the United States and Venezuela) or as observers (Chile and Ecuador) in the UN Commission on Human Rights, where the discussion on national institutions originally emerged. The members of the Inter-American Commission are listed in *EOA/Ser.LV/II.1, Doc. 32, 14 March 1961*, part II.

<sup>23</sup> It was also proposed that the committees should be composed of "[...] persons representing their respective countries, who are endowed with high moral integrity and an independent spirit, and who have demonstrated their constant adherence to the case of human rights". *Ibid.*, part XII.

<sup>24</sup> This position becomes quite clear from the report of the first session. The whole issue was discussed in the wider framework of the Inter-American Commission's work. The idea of national committees was based on the need to have "groups of qualified citizens" at the national level "who might co-operate with the Commission in the fulfilment of its important task". Likewise, in the resolution, co-operation with national committees ("organisations in the different American countries that are interested in the promotion or protection of human rights") was viewed as an opportunity to better fulfil the functions or powers of the Commission. *Ibid.*

<sup>25</sup> The Inter-American Commission adopted a set of rules of procedure for the establishment of national committees at its fourth session in 1962. The Rules were comprised of four "strategies". Firstly, "representative persons" would be invited to establish the National Committees. Secondly, human rights organisations in various countries would be informed that the "[...] Commission will welcome any co-operation they may offer for the more effective performance of its functions and powers". Thirdly, a list of human rights organisations and associations would be obtained from the State Department of the United States and the most important of these would be selected after which these organisations would be informed on the Commission's willingness to co-operate. Fourthly, the Secretariat of the Commission would be instructed to send the aforesaid persons and organisations the resolution on national committees, and the related basic documents, studies and reports of the Commission. In addition, the Secretariat was given the task of keeping these persons and organisations informed of the future activities of the Commission. *EOA/Ser.LVII.4, Doc. 34, 12 July 1962*, para. X.

<sup>26</sup> See *Medina Qurioca (1988)* and *Davidson (1997)*, 108-109. According to Davidson, there have been earnest attempts to reintroduce the idea after the 1960s, however, a number of obstacles have prevented this from coming to fruition.

<sup>27</sup> *Cassese (1992)*, 37; *Opsahl (1992)*, 371-372. The composition of the major organs of the UN experienced dramatic changes in the 1950s and 1960s. Firstly, in 1955, the organisation accepted sixteen new members at one time, which strengthened the General Assembly's Eastern European (Socialist) group by four and the Third World group by six governments. In 1960, sixteen African states and Cyprus joined the UN with the result that the number of the UN Member States rose to one hundred. From then on, the organisation welcomed between one to six new members from the Third World almost every year. *Basic Facts About the United Nations (1995)*, 307. It is worth noting that by 1960 many Third World countries had already committed to the minimum guidelines of understanding (*Panchasheel*) drafted in 1955 at the Bandung meeting of leaders from Asia and Africa. These guidelines included *inter alia* the principles of mutual respect to each other's territorial integrity, non-aggression and non-interference in each other's internal affairs. Six years later, governments convened a preparatory meeting for the First Non-aligned Summit Conference, which discussed in detail the principal aims and objectives of a policy of non-alignment and adopted these as criteria for membership as well as for the invitations to the First Summit Conference. *The Non-Aligned Movement: Description and History*. However, the United States had also announced in 1953 its intention not to ratify any international covenants and to place more emphasis on human rights education and advisory services. *Eichelberger (1965)*, 78-81.

<sup>28</sup> See *E/CN.4/791(1959)*; *E/3335 (1960)*, paras. 34-36; *E/CN.4/791 (1959)*.

<sup>29</sup> *Ibid.*

<sup>30</sup> *Ibid.*

<sup>31</sup> The discussion was attended by delegations across geographical and political groups and included delegations from Belgium, Venezuela, United Kingdom, Philippines, Lebanon, Austria, and Pakistan. The question of the Commission's competence was brought up by the Ukrainian SSR and the USSR. In the light of the contemporary

composition of the Commission, this meant that half of the members had reservations about the proposal. *E/3335 (1960)*, paras. 3, 38-42 and 45. For a more detailed discussion see *E/CN.4/SR.647* and *SR.678 (1960)*.

<sup>32</sup> These concerns were expressed in particular by Eastern European and Non-aligned countries, such as the USSR, India, Iraq, Poland, and the Ukrainian SSR. *E/CN.4/SR.649 (1960)*.

<sup>33</sup> *CHR Res. 2 (XVI) of 4 March 1960*.

<sup>34</sup> The two draft resolutions drafted during the Commission's session were supported by Austria, Denmark, France, Lebanon, Philippines, the United Kingdom and Venezuela. *E/3335 (1960)*, paras. 43-50; *E/CN.4/SR.649 (1960)*.

<sup>35</sup> *ECOSOC Res. 772 B (XXX) of 25 July 1960*. The Council adopted a somewhat less proactive approach. For example, instead of "to stimulate", the governments were invited to "[...] favour, in such manner as may be appropriate, the formation of such bodies which might take the form, inter alia, of local human rights committees or national advisory committees [...]". (Emphasis added.)

<sup>36</sup> The Secretary-General had addressed a note verbale to the governments concerned in September 1960 appending the text of the resolution of ECOSOC and requesting governments to communicate relevant information preferably by the end of September 1961. The governments which replied by April 1962 included: Argentina, Austria, Byelorussia, Canada, Cambodia, China, Czechoslovakia, Denmark, Dominican Republic, Finland, France, India, Iraq, Ireland, Italy (which was the only country that reported the establishment of a National Advisory Committee pursuant to the resolution of ECOSOC), the Republic of Korea, Lebanon, Pakistan, Poland, Sweden, the USSR, United Arab Republic, the United Kingdom and Northern Ireland, and the United States of America. *E/CN.4/828 (1962)*; *E/CN.4/828/Add.1, Add.2 and Add.3 (1962)*.

<sup>37</sup> In this respect, there were no clear differences between different geographical groups as western countries were equally anxious to prove that the necessary structures were already in place as the countries of the Eastern bloc and those of the Non-aligned group. For instance, India stated that it would be "[...] superfluous to have local human rights committees [...] in this country as they would merely duplicate the work already being done by the existing machinery set up under the Constitution" [which is not specified further in the reply]. Denmark was of the same opinion. It noted that there is not reason to establish local human rights committees in Denmark since such committees cannot be expected to have any practical significance alongside the judicial system, the parliament, the Parliamentary Ombudsman, the mechanisms under the European Human Rights Convention, and the free press. In a similar vein, the USSR affirmed that "[...] public organizations exercise much wider functions [than advisory committees] in the field of the protection of human rights and [...] also work to prevent the possibility of [...] infringements and restore rights which have been infringed". *E/CN.4/828 (1962)*, 11-14 and 23-24. Only a few governments, most notably those of Cambodia and Lebanon, were interested in advisory committees and promised to consider the establishment of such bodies in the future. *Ibid.*, 9 and 18. However, to some extent the claim that appropriate bodies already existed was correct. Examples of this include the Civil Rights Commission and the Equal Employment Opportunity Commission which the United States set up under the 1957 and 1964 Civil Rights Acts. The former was to be an independent body reporting to the Congress and the President. Its tasks related to the preparation of studies and research related to discrimination; the organisation of meetings; the production of documentation for the public; the investigation of complaints (although this was not aimed at dealing with individual cases); and the assessment of legislation and federal government practice. The latter had a mandate limited to the field of employment. Its tasks included the implementation of affirmative action programmes as well as investigation and solving of complaints related to the discrimination. This model also spread to Canada in the 1960s. *Report by J-B. Mar (1982)*, 3-6.

<sup>38</sup> This view was supported, for example, by the Netherlands, the United Kingdom and the Ukrainian SSR, which underlined the importance of the governments' freedom to choose, in the light of their own needs and existing structures, whether to set up new bodies and which bodies to develop. Along with the same lines, China and India pointed out that the present draft resolution went further than the Council resolution 772 B (XXX), which merely invited governments to "favour the formation" of advisory committees. This view was supported by the Netherlands and the United Kingdom. *E/CN.4/SR.707*, 11-14 and *SR.709 (1962)*, 5-7.

<sup>39</sup> The French delegation, which was clearly eager to move forward on the initiative, suggested that the earlier proposal by Mr. Gunewardene would be studied again. Argentina noted that Member States "needed help of the Commission and of the Secretary-General in deciding what functions could be performed by advisory committees". Turkey, Lebanon and Italy were of similar opinion. *E/CN.4/SR.707*, 16 and *SR.709 (1962)*, 10.

<sup>40</sup> The first draft resolution was submitted by the representatives of Austria, France, Lebanon and Turkey, but rejected *inter alia* because it did not give sufficient freedom of action to the government on whether they should establish national institutions. The revised and adopted version, in which the governments were asked to "favour" instead of "promote" the establishment of national institutions, was submitted by the original sponsors together with the representatives of Argentina, Italy and the Netherlands. *E/3616/Rev.1 (1962)*, paras. 278-283.

<sup>41</sup> See for example *GA Res. 36/134 of 14 December 1981* in which the Assembly emphasises the importance of the

integrity and independence of national institutions “in accordance with national legislatures”; *GA Res. 40/123 of 13 December 1985*, *GA Res. 41/129 of 4 December 1986* and *GA Res. 44/64 of 8 December 1989* in which the body underlines the importance of developing, “in accordance with national legislation”, effective national institutions. See also for instance *CHR Res. 23 (XXXIV) of 8 March 1978*. In the 1990s, the formulation was even more affirmative. Member States were encouraged to establish national institutions, but at the same time it was recognised that it is the right of each state to choose the framework best suited to its needs at the national level. For example *CHR Res. 1994/54, 1995/50, 1996/50, 1997/40, 1998/55, 1999/72, and 2000/76*.

<sup>42</sup> *CHR Res. 9 (XVIII) of 27 March 1962*, which was endorsed later by *ECOSOC Res. 888 F (XXXIV) of 24 July 1962*.

<sup>43</sup> *ECOSOC Res. 961 F (XXXVI) of 12 July 1963*.

<sup>44</sup> *A/C.3/SR.1283 (1963)*, para. 5.

<sup>45</sup> By this time, these seminars had been organised in Ceylon and Argentina in 1959 and in Sweden in 1962. According to John P. Humphrey, who was Director of the UN Human Rights Secretariat at the time, these human rights seminars had contributed to promoting the world-wide interest in the ombudsman institution. *Humphrey (1984)*, 289. For the list of UN seminars see *United National Action in the Field of Human Rights (1988)*, 343-345.

<sup>46</sup> *GA Res. 1961 (XVIII) of 12 December 1963*, para. 4. The resolution was adopted with consensus.

<sup>47</sup> In 1963, there were already 112 governments represented at the United Nations General Assembly in comparison to the 21 governments attending the Commission on Human Rights. Many of the Assembly members were newly independent Third World countries, while the doors of the Commission were only opened to new Asian and African Member States in late 1960s. *Basic Facts About the United Nations (1995)*, 307. For a list of members of the Commission on Human Rights since 1946, see the website of OHCHR at [[www.unhchr.ch](http://www.unhchr.ch)].

<sup>48</sup> Furthermore, ECOSOC strengthened the role of the Commission in the system of periodic reporting in 1965. In brief, the Secretary-General was authorised to forward the information received from states in full to the Commission on Human Rights instead providing it with mere summaries of state reports *ECOSOC Res. 1074 C (XXXIX) of 28 July 1965*.

<sup>49</sup> The Non-aligned Movement convened a preparatory meeting for its first intergovernmental Summit in June 1961. The meeting adopted the criteria for participation at the Summit; one of the basic principles adopted concerns the respect for human rights and for the principle of sovereignty and territorial integrity as well as the non-interference in the internal affairs of another country. For more on the background to the movement, see the website of the Non-aligned Movement at [[www.nam.gov.sa/index.html](http://www.nam.gov.sa/index.html)]; *The Non-Aligned Movement: Description and History*, at [[www.nam.gov.za/background/history.htm](http://www.nam.gov.za/background/history.htm)].

<sup>50</sup> In fact, two separate proposals were made. Firstly, Saudi-Arabia proposed that each State Party to the Convention “shall constitute a National Committee” which would investigate the facts of each case and would appeal to a national special tribunal if no satisfactory redress was provided by the government (emphasis added). *A/C.3/L.1297, 23 November 1985*. Secondly, Ghana, Mauritius and Philippines suggested that States Parties “may appoint, elect or indicate a National Committee” (emphasis added). The Committee would seek redress in appropriate cases from the State Party concerned and in the case of an unsatisfactory reaction could communicate the matter to the international treaty committee *A/C.3/L.1291/Add.1, 24 November 1965*.

<sup>51</sup> *GA Res. 2106 (XX) of 21 December 1965*. The final version of the treaty stipulated that a State Party “may establish or indicate a body within its national legal order which shall be competent to receive and consider petitions” (emphasis added). Recourse could only be made to such bodies if the other available local remedies have been exhausted.

<sup>52</sup> According to the proposal, the case could be submitted to the treaty committee both by the national committee and the petitioner if the national committee was unable to reach a satisfactory solution or it dismissed the case. The proposal by Saudi-Arabia followed the proposal it had put forward in 1965 in connection with the Discrimination Convention. However, instead of national tribunals, it was now proposed that the petitioner would turn to the international treaty committee, as suggested in 1965 by Ghana, Mauritius and Philippines. *A/C.3/L.1334, 3 October 1966*.

<sup>53</sup> *A/C.3/L.1407, 23 November 1966*.

<sup>54</sup> During the discussion in the Third Committee, it was pointed out among other things that the proposed article would require constitutional changes, that such bodies would not be needed and that the whole issue was strictly a domestic matter. Jamaica, which finally withdrew its proposal, noted during the plenary session of the Assembly that it had put forward the proposal encouraged by the “progress, which we saw being made at this particular session [...] on the implementation clauses of the covenants”. In response, many delegations had nonetheless claimed that they could not “comfortably pronounce upon a proposal which had not yet been subjected to expert and dispassionate examination [by the Commission on Human Rights]”. *A/PV.1496, 16 December 1966*, paras. 8 and 10.

<sup>55</sup> *GA Res. 2200A (XXI) of 16 December 1966.*

<sup>56</sup> According to the draft resolution introduced by Jamaica, the issue of national commissions to "perform certain functions pertaining to the Covenant on Civil and Political Rights [...] requires further and more extensive study on the part of various governments". With view to this, it was proposed that the Assembly should request the Secretary-General to invite states to submit their comments on the proposal and continue the discussion at its 22<sup>nd</sup> session. *A/C.3/L.1408, 29 November 1966.* The revised text which delegated the further consideration of the issue to the Commission on Human Rights and postponed discussion to the 23<sup>rd</sup> session of the Assembly, the Jamaican proposal was also supported by two other Non-aligned countries: Nigeria and Pakistan. *A/C.3/L.1408/Rev.1, 8 December 1966.*

<sup>57</sup> Particularly, countries from the communist bloc - USSR, Romania, Ukraine - and also countries such as Iraq and India considered the reference to the ICCPR in the preamble to be problematic and tantamount to an amendment of the Covenant. Several delegations also demanded equal treatment of the two Covenants in the preamble of the draft resolution. For the discussion, see *A/C.3/SR.1452, SR.1453, SR.1455 and SR.1496 (1966).*

<sup>58</sup> Problems were seen for instance in the role of national human rights commissions vis-a-vis the implementation of the International Covenant for Economic, Social and Cultural Rights. See for instance the statement of the Japanese delegate, who explained that "she could not see what functions the proposed national commissions could perform", considering that the Covenant was subject to progressive implementation. Similarly, the representative of the United Kingdom asserted that the reference to the Covenant in the preamble of the resolution "made nonsense of a very good idea". *A/C.3/SR.1456 (1966)*, paras. 75 and 81.

<sup>59</sup> The Assembly adopted the draft resolution without changes by 76 votes to 18 with 13 abstentions. The dividing lines between the different blocs were blurred, but it seems that majority of the Western group supported further examination of the issue, while Eastern European group was opposing the idea and Non-aligned countries either supporting it or abstaining from voting. *A/6546 (1966)*, paras. 622-626; *GA Res. 2200 C (XXI) International Covenants on Human Rights of 16 December 1966.*

<sup>60</sup> This interpretation is supported by the fact that at the same session in 1966, the Third Committee discussed the planned International Year of Human Rights in 1968 in greater detail. The Committee could have further elaborated on the recommendation on "intensifying domestic efforts with the assistance of appropriate organizations" that was included in the 1963 General Assembly resolution. Nevertheless, the Committee chose to confirm that it was at the discretion of each Member State to decide upon the appropriate response to the 1963 resolution. In order to give more specific guidance on the possible ways to proceed, the emphasis of domestic efforts was placed on national legislation and educational measures rather than on the issue of institution building. It was underlined that Member States should not add a wide variety of measures to their existing programmes and that an intensive programme activity in this field was already in progress. *A/6619 (1966)*, 3-4 (rec. D). *GA Res. 2217 (XXI) of 19 December 1966*, Annex: Further Programme of measures and activities recommended by the Commission on Human Rights, rec. D.

<sup>61</sup> *E/CN.4/932 (1967).*

<sup>62</sup> The related resolution of the Commission on the Status of Women notes the proliferation of national institutions and the usefulness of the exchange of information on the experience gained regarding the composition, organisation and functions of such bodies. The Secretary-General reported on the results of the inquiry in early 1968. None of the twenty-four countries that had replied had set up national commissions which were independent from the government. Several governments nevertheless pointed out that several bodies already existed for the promotion of the rights of the women. Some also expressed their interest towards such bodies and seriously considered whether their establishment. *E/CN.6/494 (1968).*

<sup>63</sup> Prior to this, in 1968, the United States attempted to place the issue of national institutions on the agenda by stating that the forthcoming year of International Human Rights could serve as an occasion to stimulate the creation of national human rights institutions. The delegation put forward a draft resolution asking the Secretary-General to invite Member States to provide him with information on existing national institutions and to report on the relevant developments in the field to the Commission in its 1969 session. The Commission never dealt with the item due to the lack of time. Instead, the issue was postponed first for its 1969 session and thereafter to the session of 1970. *E/CN.4/L.1035, 7 March 1968; E/CN.4/1029 (1970)*, para. 3

<sup>64</sup> This opinion was stated most clearly by the United Arab Republic, USSR, India, Ukraine, Chile, Uruguay, and the Philippines. *E/CN.4/1063, SR.1064 and SR.1065 (1970).*

<sup>65</sup> Several delegates pointed out that some bodies might already be taking care of the functions similar to those planned for national institutions. Examples included Ombudsmen (Finland) or other complaint-receiving bodies (the USA) or bodies investigating individual human rights violations (Ukraine) as well as the judiciary (Guatemala), the Parliament, the Press and private organisations (the UK). *Ibid.*



<sup>66</sup> In particular, the United Arab Republic and the Ukrainian SSR expressed this view. *E/CN.4/SR.1063*, 185-186 and *SR.1064 (1970)*, 197.

<sup>67</sup> See for instance the statements by Austria, France and the Netherlands, which underlined the governments' freedom to choose models most suitable for them, but at the same time pointed out the need to discuss the issue further in the Commission and to give some sort of guidance as to the functions of national institutions. *Ibid.* It is worth noting that the Dutch delegation was represented in 1970 by Theo van Boven, the future Director of the UN Human Rights Centre, who believed that the "United Nations could encourage their [national institutions'] establishment and make recommendations on the subject". *E/CN.4/SR.1064 (1970)*, 195-196. It hardly is a coincidence that eight years later, when van Boven was heading the UN Human Rights Secretariat, these recommendations were indeed developed at an international seminar and later endorsed by the Commission. See chapter 4.2.3 below.

<sup>68</sup> *E/4816 (1970)*, chapter VII, paras. 101 and 106-108. See also the statements of Austria and France. While the former proposed that national commissions take part in the judicial review of civil and political rights, the latter saw that in some countries such commissions could function as "ombudsmen". *E/CN.4/SR.1063*, 197 and *SR.1064 (1970)*, 201-202.

<sup>69</sup> *E/4816 (1970)*, para.108.

<sup>70</sup> The executive head of the UN Human Rights Secretariat described the change in the role of the Commission in 1968 as follows: "During the past few years, the Commission on Human Rights seems to have entered a new stage in its work. Previously, the Commission had regarded itself as being only academically concerned with violations of human rights, and its functions were largely limited to the preparation of legal instruments. However, recent developments originating from bodies more actively concerned with questions of implementation, have led the Commission to a new approach to the problem of violations of human rights and fundamental freedoms". See *Coomans et al. (eds.) (2000)*, *Human Rights from Exclusion to Inclusion: Principles and Practice. An Anthology from the Work of Theo van Boven*, at 124.

<sup>71</sup> *ECOSOC Res. 1235 (XLII) of 6 June 1967* welcomed the decision of the Commission to discuss gross violations under the agenda item "Question of the violation of human rights and fundamental freedoms, including policies of racial discrimination and segregation and apartheid in all countries, with particular reference to colonial and other dependent countries and territories". Following the Commission's proposal, contained in its resolution 8 (XXIII), ECOSOC authorised the human rights body to begin the consideration of gross violations of human rights, wherever they occur. Despite this, the emphasis was still placed on violations relating to racism and colonialism, which was the approach preferred by the Eastern European and Non-aligned groups. *Ibid.*, para. 2. For the evolution of the mechanism see *Alston (1992)*, 155-157.

<sup>72</sup> *ECOSOC Res. 1503 (XLVIII) of 27 May 1970* authorised the Sub-Commission to establish a working group to examine and to steer the Sub-Commission's attention to communications revealing a consistent pattern of gross human rights violations. After consideration in private meetings, the Sub-Commission could then refer particular cases to the Commission on Human Rights for a decision on further measures.

<sup>73</sup> According to article 9 of the International Convention on the Elimination of All Forms of Racial Discrimination, States Parties are obliged to submit for the consideration of a Committee on the Elimination of Racial Discrimination periodic reports on legislative, judicial and administrative or other measures giving effect to the Convention. Furthermore, article 11 establishes a state complaints procedure, which allows States Parties to steer the Committee's attention to cases in which another State Party does not comply with the treaty obligations. According to article 14, a State Party may also give a separate declaration, which allows the Committee to consider communications from individuals and groups of individuals.

<sup>74</sup> A case in point is the government of New Zealand, which enacted a Race Relations Act in 1971 as response to the new International Convention. As part of the implementation of the Act, it also set up the office of the Race Relations Conciliator. The mandate of this office was enlarged by a Human Rights Commission Act in 1977 by widening the scope of prohibited grounds of discrimination from race to also include gender, marital status as well as religious and ethical beliefs. While this decision was clearly prompted by the entry into force of the two International Covenants, the role of the women's movement in pressuring the government to set up a national institution has also been considered to be crucial. *Bell [undated]*; *Tarnopolsky (1985)*, 101-102.

Similar steps were taken for instance in the United States (the federal Civil Rights Act in 1964, including the creation of the Equal Employment Opportunity Commission and the Community Relations Service); United Kingdom (the Race Relations Act in 1965, including the creation of a Race Relations Board); and Australia (the (federal) Commonwealth Racial Discrimination Act in 1975, including the setting up of the Commissioner for Community Relations). *Tarnopolsky (1985)*; *MacEwen (ed.) (1997)*.

<sup>75</sup> Report by the Council of Europe Consultative Assembly on *Parliamentary Conference on Human Rights (1972)*, 5.

<sup>76</sup> See for example the report by Professor Christian Dominicé in which he suggested that the Commissioner for Individual Rights was a necessary complement to the functioning court system and parliamentary mechanism and that it would be desirable for this institution to be diffused more widely. The potential of the ombudsman institution was discussed in the following general discussion. The opinions expressed in this respect were divergent: some suggested that the ombudsman institutions should be adopted in all countries or at least more widely, whereas some others stated that caution should be exercised when recommending its general adoption. *Ibid.*, 72 and 85-88.

<sup>77</sup> *Ibid.*, 112. The idea was later endorsed by the Parliamentary Assembly, which recommended that the Committee of Ministers of the Council of Europe should invite the governments to consider the possibility of appointing persons with functions similar to those of ombudsmen or parliamentary commissioners and invited national parliaments to give effect to the proposals of the conference. *Council of Europe Directorate of Human Rights (1998)*, 10.

<sup>78</sup> *International Commission of Jurists: The Executive and the Rule of Law: Need for an Ombudsman (1976)*; *Frank (1976)*; *Opsahl (1979)*. The last mentioned underlined the primacy of national implementation in the compliance with international human rights standards. In Opsahl's view, national remedies were insufficient to protect human rights as long as no organ was expressly authorised to directly apply international human rights norms. However, rather than creating new organs and remedies, he suggested that the mandate of the ombudsman could be extended so that he could apply international norms directly and, in general, to express his opinion whenever international human rights were invoked. *Ibid.*, 153, 157-8 and 176. See also *Powles (1978)*, discussing the role and coexistence of ombudsman institutions and human rights commissions in the light of the Canadian experience.

<sup>79</sup> In this respect, the most important developments included the following: Firstly, the Commission had widened its mandate under the ECOSOC resolution 1235 so that instead of the emphasis on racism and colonialism, the focus was now placed on a wider range of human rights violations. Secondly, it started to use various methods through which it could investigate and pressure individual governments. These included the appointment of working groups, special rapporteurs, special representatives and other investigative arrangements through which the Commission could obtain further information on the cases of human rights violations. Thirdly, the 1503 procedure had become operational by the early 1970s and by the end of the decade, the Commission on Human Rights had begun the public consideration of individual situations. For the development of the 1235 and 1503 procedures, see *Alston (1992)*.

<sup>80</sup> In addition, the First Optional Protocol to the International Covenant for Civil and Political Rights introduced for the first time an international mechanism which authorised the respective treaty monitoring committee to receive and consider communications from individuals that claimed to be victims of a violation by a State Party of any of the rights proclaimed in the Covenant.

<sup>81</sup> For the development of the role of the Commission on Human Rights see for example *Tolley (1983)*. The evolution of the European human rights regime is discussed by *Robertson (1975)* and the general developments at the international level by *Farer (1987)* and *Buergenthal (1997)*. For an overview of UN-NGO relations since 1946 see for instance *Stephenson (2000)*. A good example of the expansion of human rights NGOs is Amnesty International, which was established in London in 1961 and created an international secretariat in 1963. By 1977, when the organization received the Nobel Peace Prize, it had developed a network of some 1900 voluntary groups in 33 countries and it directed international attention to human rights practices of 117 countries through its annual report.

<sup>82</sup> *GA Res. 32/123 of 16 December 1977*, para. 2 and annex, paras. 1(e) and 2 (b). The draft resolution was sponsored by 27 countries and adopted without extensive discussion and taking vote. The resolution was introduced by the delegation of Austria at the 70<sup>th</sup> meeting of the Third Committee. *A/C.3/32/SR.70 (1977)*, para. 32. Other supporters of the draft resolution came primarily from Western and Non-aligned groups and included the following countries: Bangladesh, Canada, Costa Rica, Ecuador, Ghana, India, Iran, Italy, Mexico, the Netherlands, New Zealand, the Philippines, Portugal, Senegal, Sweden, Tunisia, Uruguay and Venezuela and were subsequently joined by Australia, Germany, Ivory Coast, Kenya, Morocco, Nicaragua, Surinam and the USA. *A/32/458 (1977)*, 12.

<sup>83</sup> Examples of this include the statements of Australia and New Zealand. *A/C.3/32/SR.50 (1977)*, in particular paras. 57 and 61 and SR.53, paras. 20 and 22.

<sup>84</sup> For instance, Saudi-Arabia underlined the principle of cultural relativism and the role of national contexts in the promotion of human rights. It also supported the idea of establishing national committees that would be "above suspicion" and protected against the interference from their governments and undertake the task of raising human rights matters with their governments and, if necessary, refer the matter to the Secretary-General. Similarly, Saudi Arabia opposed the creation of the UN High Commissioner for Human Rights because he would "never be able to familiarize himself with all the laws, traditions, codes and customs of all of the countries". *A/C.3/32/SR.43 (1977)*, paras. 32-42 and *SR.67*, para. 6. India also preferred that governments would choose a more effective approach by

creating a national mechanism which was directed towards the promotion of human rights. In the same context, it informed the Committee about its plans to set up a Civil Rights Commission. *A/C.3/32/SR.51 (1977)*, in particular para. 36.

<sup>85</sup> *CHR Res. 23 (XXXIV) of 8 March 1978*, para. 1

<sup>86</sup> *Ibid.*, para. 3. The resolution was introduced by India on behalf of Non-aligned countries, such as Colombia, Cyprus, Egypt, Iran, Nigeria and the Syrian Arab Republic, as well as Sweden and Canada. Canada had recently established its own national human rights commission. The resolution was adopted without vote. Interestingly, UNESCO, which had introduced its idea of national institutions at the same time as the UN Commission on Human Rights, was also in the process of developing international guidelines for its National Commissions. These guidelines were adopted by the UNESCO General Conference in November 1978. *Charter of the National Commissions for UNESCO*.

<sup>87</sup> *Ibid.*, Annex: “Some possible functions which could be performed by national institutions in the field of human rights, if so decided by the Government concerned”. Although the draft resolution did not raise any extensive public discussion, several delegations, including those that had often been sceptical towards the idea of national institutions, appraised India’s proposal. However, the reservations that some delegations made after the adoption of the resolution were representative of the concerns shared by many governments: The Soviet representative noted that it would be “superfluous to specify the details of such institutions in the resolution and its annex”. Along with the same lines, the United Kingdom and France underscored that their favourable attitude towards the initiative should not be interpreted as a commitment to set up national institutions as they already had several bodies which fulfilled similar tasks. *E/CN.4/SR.1475 (1978)*, paras. 23-25.

<sup>88</sup> More specifically, it was suggested that institutions should carry out a monitoring function, however, they were not bestowed with the right to receive complaints; nor was it proposed that they should be given the power to conduct investigations.

<sup>89</sup> *CHR Res. 23 (XXXIV) of 8 March 1978*.

<sup>90</sup> See chapters 4.1.1 and 4.1.2 above.

<sup>91</sup> See for example *Pinheiro & Baluarte (2000)*.

<sup>92</sup> Despite the fact that the idea of the role of the ombudsman in the protection of human rights had clearly started to gain ground in the late 1970s and that Portugal had already established the first “human rights ombudsman” in 1975, there were still some apparent differences between the envisaged concept of national institutions and that of the ombudsman. Most importantly, while national human rights institutions (commissions) were seen as bodies, which tried to prevent human rights violations and resorted in particular to the means of education, awareness-raising and advice, the ombudsman was generally viewed as an administrative watchdog which adopted reactive rather than proactive approach and concentrated, in particular, on the investigation of citizens’ complaints.

<sup>93</sup> Race relations commissions began to emerge all over Canada in the 1950s, and similar bodies were set up in the United Kingdom in the 1960s and in Australia and New Zealand in the 1970s. According to *Tarnopolsky (1985)*, the commissions in these four countries were inspired by the American anti-discrimination and human rights commissions set up in various states since 1945.

<sup>94</sup> For instance, the Human Rights Act of New Zealand, which was passed in 1977 and entered into force in September 1978, outlawed discrimination on the grounds of sex, marital status and religious or ethical beliefs. It also resulted in a number of corresponding changes in the 1977 Race Relations Act, including extending the definition of ethnic and national origin to include nationality and citizenship and making the Race Relations Conciliator a member of the Human Rights Commission. For example *Fortuin (2001)* and the website of the New Zealand Commission at [[www.hrc.co.nz/](http://www.hrc.co.nz/)]. The Canadian Human Rights Act was adopted in 1977, and the Federal Human Rights Commission was established in the following year. See for example the website of the Canadian Human Rights Commission at [[www.chrc-ccdp.ca/](http://www.chrc-ccdp.ca/)]. Canada was subsequently one of the sponsors of the UN Commission’s 1978 resolution on national human rights institutions.

<sup>95</sup> *Tarnopolsky (1985)* mentions *inter alia* the following functions which were common to most race relations commissions: the reception of complaints, investigation and conciliation of cases of discrimination, organisation of informational and educational programs and training for professional groups, and research and studies. Similar tasks were given in 1977 to the new anti-discrimination commissions of Canada and New Zealand.

<sup>96</sup> The Deputy Director of the Human Rights Division raised this issue during the Commission’s 1978 session: “The funds made available for the implementation had been reduced to the minimum thus making it very difficult for the Division of Human Rights to comply with the wish of the Commission concerning the contents of the UN Human Rights Programme”. *E/1978/34, part XXI Advisory Services in the Field of Human Rights*, para. 325.

<sup>97</sup> See *Alston (1992)*, 184. The seminar has also been considered as one of the first landmarks in the evolution of national institutions. *Paper by Mr. Jean Kahn, Merida, November 1997*.

<sup>98</sup> Representatives from the following countries participated at the seminar: Afghanistan, Australia, Austria,

Barbados, Benin, Cuba, Ecuador, France, German Democratic Republic, Federal Republic of Germany, Greece, Hungary, India, Ivory Coast, Japan, Jordan, Mongolia, Norway, Panama, Portugal, United Kingdom, Turkey, Ukrainian SSR, the USSR, and the United States of America. *Seminar on National and Local Institutions for the Promotion and Protection of Human Rights, ST/HR/SER.A/2 (1978)*, para. 5. It is worth noting that at the time of the seminar many of these countries had already established ombudsman institutions or equivalent supervisory bodies.

<sup>99</sup> By 1978, it was already quite widely maintained that constitutional guarantees alone could not provide sufficient protection for human rights and this idea also served as a starting-point for the discussions. For instance, the participants of the 1978 seminar felt that there was an increasing need to focus on the implementation at the national and local levels and, for this purpose, to create administrative machinery for the investigation of alleged infringements. Therefore, it was concluded that “[...] new institutions were needed [...]” and “[w]here such institutions already existed, they could be now improved and adapted to meet the international community’s present need for implementation”. Given the inadequacy of legal provisions to ensure the observance of human rights, the promotional function was seen as an indispensable part of the effective protection of human rights. *Ibid.*, para. 162.

<sup>100</sup> This is also reflected in the structure of the seminar report, which is divided into two broad parts. The first part consists of constitutional bodies, protecting and remedial institutions, including *inter alia* judicial and quasi-judicial institutions, the Ombudsmen, parties and party groups and legal and social aid arrangements. The second part deals with “promotional institutions” and covers *inter alia* educational institutions, human rights committees, NGOs and institutions for the dissemination of information. *Ibid.*

<sup>101</sup> This kind of body, as suggested by one expert, would not overlap with the legislative or the judiciary; nor would it function as a super-administration controlling all human rights issues in the country. Instead, it would bring together different human rights actors, including individuals, NGOs, state institutions, as well as regional human rights organs and the United Nations. See in particular the presentation of Mr. Jean-Bernard Marie, representing France. *Ibid.*, chapter III.

<sup>102</sup> *Ibid.*, Chapter V: Guidelines for the Structure and Functioning of National Institutions, para. 185

<sup>103</sup> In addition, national institutions were expected to sponsor conferences, collect, compile and disseminate information. Moreover, they should study legal developments in the system, review laws and policies, contribute to the drafting of laws and encourage the ratification of human rights international instruments. The tasks of national institutions would also include co-operation with educational institutions, trade unions and other domestic human rights actors. They should also participate in the implementation and formulation of educational programmes, assist in the provision of free legal aid and availing themselves of the assistance of individuals, groups of individuals and appropriate associations. Finally, national institutions could assist governments in preparing their periodic reports and co-operate with the UN, specialised agencies and other IGOs in the field of human rights. *Ibid.*, Chapter V.

<sup>104</sup> For instance, one participant stated in the course of the seminar that “[i]t would not be necessary to define their structure since conditions varied from country to country and different economic and social conditions prevailed in different parts of the world”. *Ibid.*, para. 182.

<sup>105</sup> *Ibid.*, Chapter V, guidelines 42-50, citation from guideline 42.

<sup>106</sup> *Ibid.*, para. 180.

<sup>107</sup> *Ibid.*, paras. 177 and 183.

<sup>108</sup> *CHR Res. 24 (XXXV) of 14 March 1979; GA Res. 34/49 of 23 November 1979*. In fact, the General Assembly already considered the results of the 1978 seminar at the 1978 session. However, at this point it only took note of the seminar report, requesting Member States to comment on the guidelines through the Secretary-General and asking the Commission to send its recommendations to the next session of the Assembly. The wording of the 1978 resolution did not entail any clear approval of the guidelines, but one year later the Assembly interpreted its earlier resolution to signify such an endorsement. *GA Res. 33/46 of 18 December 1978*.

<sup>109</sup> The states which supported the Commission’s resolution were: Australia, Canada, Colombia, Cyprus, Egypt, India, Iraq, Morocco, Panama, Senegal and Syrian Arab Republic. *E/1979/36*, paras. 202-204. The General Assembly’s resolution was supported by Australia, Bangladesh, India, Iraq, Jamaica, Jordan, Kenya, Morocco, Sri Lanka, and the Syrian Arab Republic and later joined by Mauritius, Norway and the Philippines. *A/C.3/34/SR.41 (1979)*, paras. 3-5; *A/34/704 (1979)*, paras. 28-30.

<sup>110</sup> In 1979, India stressed that the UN should be careful in preserving the balance between the sovereign rights of states and the human rights. Furthermore, a sceptical attitude was taken towards regional arrangements which were not initiated by the states themselves and which were not based on a certain homogeneity within the region. A better approach was found in the setting up of national human rights institutions, which would assist in making the public aware of their rights and support and strengthen the constitutional human rights safeguards. *A/C.3/34/SR.25 (1979)*, paras. 50-51 and 53. A similar view was expressed in 1985 and 1986 when the delegate noted that the “United Nations has inherent limitations and a balance must therefore be struck between the concept of sovereignty,

the common law of civilized nations and the inalienable rights of human beings in order to promote fuller enjoyment of human rights". The creation of national institutions and the strengthening of existing mechanisms were seen as answers to this problem. *A/C.3/41/SR.37 (1986)*, para. 19; *A/C.3/40/SR.35 (1985)*, para. 3.

<sup>111</sup> The purpose of these notes was to circulate the guidelines for national institutions in order to receive comments and suggestions from governments. By the time that the Commission convened a meeting to consider the results of the seminar in the spring of 1979, the Secretariat had received replies from 14 states. These were: Austria, Japan, Norway, Panama, Seychelles, Thailand, France, the United Kingdom, Surinam, Syrian Arab Republic, Barbados, Kuwait, Spain, and Greece. *E/CN.4/1321 (1979) and Add. 1-2*.

<sup>112</sup> For instance, Austria underlined that the extent to which national institutions are established should be left to individual states, however, the guidelines could become useful when new institutions were established. Norway stated that guidelines form a suitable basis for a follow-up by the relevant bodies of the UN. France believed that the guidelines are a valuable preliminary contribution, but they require more thorough examination. The UK saw that the guidelines, which created certain principles concerning the functions and structure of national institutions, would encourage states to improve their human rights work. National institutions can in its view serve as a useful add to the existing human rights structures. Kuwait and Japan criticised the possible interference in the competence of the judiciary. *Ibid.*

<sup>113</sup> *Ibid.* Most clearly this concern was expressed by the delegate of Germany who noted after the adoption of the 1978 Commission resolution that the national human rights mechanisms of Germany, primarily the independent judiciary, "went far beyond the guidelines". On this basis, his delegation interpreted that the resolution's reference to the establishment of "such" national institutions covered also the mechanisms already in place. *E/CN.4/SR.1522 (1978)*, para. 68.

<sup>114</sup> In the 1979, the Assembly invited governments to establish national institutions "bearing in mind the guidelines". Nonetheless, this reference had already disappeared by 1981 and instead the Assembly invited Member States simply "to take appropriate steps for the establishment [...] of national institutions". It did not make any difference that the Deputy Director of the Division for Human Rights specifically drew governments' attention to the report of the 1978 seminar when introducing the agenda item. The phrase which indicated that the Assembly was "mindful of the guidelines [...] endorsed by the General Assembly" was nevertheless left untouched in the preamble of the 1981 resolution as well as in those of the future resolutions. *GA Res. 36/134 of 14 December 1982; A/C.3/36/SR.35 (1982)*, para. 4. By way of comparison, a reference to the 1991 Paris Principles was always an inherent element of the operative part of the resolutions that the Assembly and the Commission adopted on national institutions in the 1990s.

<sup>115</sup> *Ibid.*

<sup>116</sup> *GA Res. 34/49 of 23 November 1979*. The representative of India explained that the purpose of the wider reporting mandate was to assist states considering the establishment of national institutions. *A/C.3/34/SR.29 (1979)*, para. 23.

<sup>117</sup> *A/36/440 (1981); A/38/416 (1983); A/39/556 (1984); E/CN.4/1987/37; E/CN.4/1989/47 and Add. 1*. The reports were discussed under the agenda item concerning alternative approaches and the ways and means within the UN system for improving the effective enjoyment of human rights.

<sup>118</sup> The first two reports from 1981 and 1983 were divided into national institutions for the protection of human rights and those devoted to the promotion of human rights. These were in turn divided into sub-categories; for instance, the chapter on "protective national institutions" included judicial and non-judicial bodies, human rights commissions, legal counselling and assistance, protection by legislative organs, and the role of NGOs. On the other hand, under the heading of "promotional national institutions", the following institutions were presented: human rights commissions, institutions for the dissemination of information, educational institutions, health care systems and NGOs. In the reports of 1987 and 1989, the dichotomy of promotional/protective was abolished and instead the nature and role of national institutions were discussed under five broad categories: legislative organs, judicial organs, administrative organs, the ombudsman, and NGOs. The criteria for the arrangements to be considered in these reports were still extremely broad as only one of the functions of the institutions needed to be directed towards the promotion or protection of human rights. *Ibid.*

<sup>119</sup> Therefore, the Secretary-General's report indicated that governments and organisations should reply to the next report in a more comprehensive manner and that the Assembly would authorise the Secretary-General to develop a suitable framework for governments' replies. *A/36/440 (1981)*, paras. 10 and 16.

<sup>120</sup> *GA Res. 39/144 of 14 December 1984*, para. 11. The Executive Director of the Human Rights Secretariat, who proposed the publication of a manual on national institutions, told the Third Committee that there was a need for adequate and effective legislation and the establishment of appropriate agencies for the defence of human rights. *A/C.3/39/SR.33 (1984)*, para. 23.

<sup>121</sup> *GA Res. 42/116 of 7 December 1987*, para. 6. The Assembly also requested the Secretary-General to include a list of existing national institutions in his report along with contact details and a bibliography of existing materials. These efforts were clearly targeted at encouraging governments to set up new national institutions. According to John Quinn, who represented the government of Australia in the Third Committee of the General Assembly from 1985 to 1988, the purpose of this new focus was, in particular, to encourage “revision of the guidelines to enhance their practical relevance to member states”. *Quinn (1992)*, 92.

<sup>122</sup> The Commission on Human Rights was, according to its resolution of 1978, to discuss the item on national institutions every three years from 1981 onwards. However, it did not do so until 1987, when it received the first consolidated report on national institutions. This can be explained in part by the fact that the issue of national institutions was part of agenda item “alternative approaches and ways and means for improving the effective enjoyment of human rights” under which governments focused on debating some of the more controversial issues, such as the establishment of the post of the High Commissioner for Human Rights, rather than national institutions. See e.g. *E/1982/12; E/1985/22; E/1986/22*.

<sup>123</sup> *GA Res. 38/123 of 16 December 1983; GA Res. 39/144 of 14 December 1984; GA Res. 41/129 of 4 December 1986; GA Res. 42/116 of 7 December 1987; GA Res. 44/64 of 8 December 1989*. Similarly, *CHR Res. 1987/40 of 10 March 1987; CHR Res. 1988/72 of 10 March 1988; CHR Res. 1989/52 of 7 March 1989*.

<sup>124</sup> *Ibid.*

<sup>125</sup> For instance, in the 1984 resolution, the Assembly decided to “encourage” instead of “invite” all Member States to “take appropriate steps for the establishment of national institutions”. Since 1987, following the wording of the 1987 resolution of the Commission on Human Rights, the Assembly chose directly to “encourage all Member States to establish national institutions”. Furthermore, in the latter part of the 1980s the Assembly underlined the nature of national institutions: since 1986, it no longer only referred to the “importance of integrity and independence” of national institutions but also started to emphasise the importance of developing “effective” national institutions. See *GA Res. 39/144 of 14 December 1984; GA Res. 42/116 of 7 December 1987 and GA Res. 41/129 of 4 December 1986*.

<sup>126</sup> See in particular *GA Res. 42/116 of 7 December 1987 and GA Res. 44/64 of 8 December 1989* as well as *A/42/792*, para. 13 and *A/44/799*, para. 15, respectively.

<sup>127</sup> More “serious” national institutions include the race relations and equal opportunity commissions in Australia (created first in 1981 and became a permanent body in 1986), Canada (1977) and in New Zealand (1977). Nonetheless, by the late 1980s various governmental bodies with broader or narrower human rights mandates and powers had also been established in many other countries. Examples include institutions in Portugal and Spain (“Human Rights Ombudsmen”, 1977 and 1981), Norway (Children’s Ombudsman, 1981), the Netherlands (Advisory Committee on Human Rights and Foreign Policy, 1983), France (National Consultative Commission of Human Rights, 1984), Denmark (Danish Centre for Human Rights, 1987), Togo (National Human Rights Commission, 1987), the Philippines (Human Rights Commission, 1987), Uganda (Inspector-General of Government, 1987), and Guatemala (Attorney for Human Rights, 1987). The Australian delegation, which had been a keen advocate of national institutions in particular since the establishment of its own permanent human rights commission, promoted this institution for instance at the 1988 session of the Commission as a “model of an effective national institution”. The encouragement of national institution building was also mentioned as one of the priority areas of the Australian delegation. *E/CN.4/1988/SR.29/Add.1*, para. 79.

<sup>128</sup> See for example *Carver (1990)*, who assesses the efforts of African governments to investigate human rights violations and *Hatchard (1986)*, who discusses in particular the African ombudsman institutions. Similarly, *Picken (1988, 36)* is critical of the fact that most of the national institutions set up in the 1980s protected governments rather than human rights. The Geneva-based NGO, International Human Rights Service also notes the expansion of national institutions at the end of the 1980s and regrets that “those who create them do not always do so with the aim of promoting human rights”. *Human Rights Monitor April 1991, No 12, 12*.

<sup>129</sup> See chapter 4.2.3 above.

<sup>130</sup> The General Assembly established the Advisory Services Programme in 1955. For the background and difficulties confronted by the “promotional” arm of the UN Human Rights Programme in its early years, see *Humphrey (1984)*.

<sup>131</sup> The number of activities undertaken under the programme was limited. For instance, in the period from 1975 to 1977, the programme had provided for one international seminar, three training courses and 59 fellowship awards. *E/1978/34*, para. 323. For an overview of the UN activities up to 1988, see *United Nations Programme on Advisory Services in the Field of Human Rights (1964 and (1970); UN Activities in the Field of Human Rights (1988)*. According to *Picken (1988, 24)*, the UN Secretariat tried to upgrade the advisory services programme in the late 1970s but these efforts were undermined by a lack of resources. Reflecting these financial difficulties, the Director of the UN Division for Human Rights Theo van Boven stated at the Third Committee in 1979 that the Division was

struggling due to continuous resource problems, which led it to “face difficulties in discharging the responsibilities entrusted to it”. *A/C.3/34/SR.24 (1979)*, paras. 3 and 6-8.

<sup>132</sup> The International Convention on the Elimination of All Forms of Discrimination had entered into force in 1969, the International Covenants on the Civil and Political Rights and on Economic, Social and Cultural Rights in 1976 and the International Convention on the Elimination of All Forms of Discrimination Against Women in 1981. All four treaties obliged States Parties to report periodically to the respective treaty committees on their compliance with the treaty provisions. In addition, the two first mentioned treaties introduced complaints procedures based on the communications of States Parties and individuals.

<sup>133</sup> These included the International Convention against Torture and Other Cruel Treatment, Inhuman and Degrading Treatment or Punishment, which entered into force in 1987; the International Convention on the Rights of the Child, which entered into force in 1990; and the International Convention on the Protection of the Rights of All Migrant Workers and Their Families, which entered into force in 2003.

<sup>134</sup> *Tolley (1983)*, 41. Quotation at 56.

<sup>135</sup> The academic criticism of the UN’s human rights work is summarised for instance by *Forsythe (1985)*. See also *van Boven (1979, 125)* who notes that mainly western countries criticised the organisation. In particular, the United States expressed its discontent with the “selective morality of the UN which threatened the integrity” of the organisation.

<sup>136</sup> See for example the report of the Heritage Foundation from 1984 which notes “the tendency of governments to submit reports that do not deal honestly and completely with the human rights situations in their countries, do not contain all the information needed by international agencies who review them, and are frequently late in reaching these agencies”. *Mower (1984)*, 88. The report is reproduced in *Reforming the United National: New Initiatives and Past Efforts, Vol. II (1997)*, 86-106. Quotation at 88. International Commission of Jurists voiced similar concerns in 1984. *ICJ Newsletter 22 (1984): The need for technical assistance services in the field of human rights*. For a practical example, see *Partsch (1992, 349)*, who notes that the percentage of delayed reports to the Committee on Racial Discrimination rose from 33 in 1977 to 42 in 1982. In order to solve this problem, the UN Secretariat proposed, on the basis of observations made by States Parties, that technical assistance provided through seminars, training programmes and expert advice should be intensified. The meeting of the Chairmen of the Commission and treaty monitoring committees endorsed this view and proposed in August 1984 that the advisory services programme should be steered towards assisting governments in the implementation of international human rights conventions. The recommendations are summarised in *E/CN.4/1985/30*, para. 4.

<sup>137</sup> These negative obligations were first and foremost seen to include the states’ obligation to refrain from violating human rights and from restricting their exercise as well as an obligation to ensure that human rights were not violated by a third party, most notably other citizens. Characteristically, while it was claimed that the duty to refrain and not to restrict did not demand the government to undertake any active measures, the duty to protect required the adoption of legislative measures and the provision of effective remedies, such as the system of domestic courts. One step further was taken by claiming that states also have a responsibility to promote and fulfil, i.e. they should take steps to create conditions favourable for the realisation of human rights. See for example *Nowak (1999)*, 86-88; *Scheinin (2002)*, 30-31.

<sup>138</sup> This is reflected, for instance, in the General Comment 3 of the Committee on Civil and Political Rights. Committee asserts in its recommendation that “[...] the implementation does not depend solely on constitutional or legislative enactments, which in themselves are often not per se sufficient [...] States parties have also undertaken to ensure the enjoyment of these rights to all individuals under their jurisdiction. This aspect calls for specific activities by the States parties to enable individuals to enjoy their rights.” For this purpose, governments are asked *inter alia* to undertake activities to educate the public about their rights and inform administrative and judicial authorities about the obligations which the State Party has assumed under the Covenant. *CCPR General Comment 3, 31 July 1981*. Along with the same lines, the General Assembly noted in its resolution on national institutions for the promotion and protection of human rights in 1981 the “need to create conditions at the national and international levels for the promotion and protection of the human rights”. *GA Res. 36/134 of 14 December 1981*.

<sup>139</sup> See for instance the address by Theo van Boven, Director of the Human Rights Division at the Opening of the Third Committee of the General Assembly on 23<sup>rd</sup> September 1981. According to Boven, “[...] there probably was a tendency, formerly, to see human rights in too narrow terms, too removed from the structural factors which affect their realisation [...] the quintessence of the last five years has been the better recognition that the promotion and protection of human rights per se must go hand in hand with integrated consideration of the interrelationship between human rights and related structural factors, such as the nature of international and national orders in which human rights are to be given expression, or the level of justice in these societies”.

<sup>140</sup> *Huntington (1991)*, analysing the democratization process in some thirty-five countries in Asia, Latin America, Africa and Eastern Europe in the 1970s and 1980s.

<sup>141</sup> This was the case, in particular, if the proposal for such assistance was made by the Commission on Human Rights at the same session where it was publicly assessing and criticising the human rights conduct of the same government. In the late 1980s, the Commission encouraged governments avail more extensively of expert services. See *infra* note and for instance *CHR Res. 1987/37 and 1987/38*.

<sup>142</sup> The first of these was Equatorial Guinea for which the Commission on Human Rights appointed an expert to assist in the restoration of human rights in 1980. In the following year, a similar kind of expert assistance was provided to Uganda. Following the request of the Commission in 1983 that the United Nations should be prepared to assist newly established governments emerging from a period of extreme oppression, this assistance was provided to a number of countries in the subsequent years. These included *inter alia* Bolivia, Guatemala and Haiti. *United Nations Action in the Field of Human Rights (1988)*, 342; *United Nations Fact Sheet No. 3: Advisory Services and Technical Assistance in the Field of Human Rights (1988)*, 6-7. For a detailed overview of the most problematic cases, see *Picken (1988b)*.

<sup>143</sup> *CHR Res. 1984/44 of 13 March 1984*.

<sup>144</sup> According to *Zoller (1989, 9)*, an important role in the development of the technical assistance programme was played by Jan Martenson from Sweden, who served as the Director of the Centre for Human Rights from 1987 to 1992. The lack of funding was reflected, for instance, in the 1985 report of the Secretary-General. Following the Commission's request, it outlined a long-term programme of action for the support of human rights. Only a limited set of activities were proposed on the grounds that such activities could be carried out within the limits of existing resources. Moreover, the Commission was specifically asked to consider how the recommendations of the meeting of the Chairmen of the Commission and treaty monitoring bodies could be implemented and financed. *E/CN.4/1985/30*, paras. 7-8. In the 1985 session of the General Assembly, the same problem was emphasised by the Director of the Centre for Human Rights, who posed the following question to the Third Committee: "How could the Secretariat give better service to the international community? Despite the importance of the organization's activities, its financial and human resources had remained at the same level [...] If there was no increase in resources, programme priorities would have to be readjusted [...]". *A/C.3/40/SR.33 (1985)*, para. 4.

<sup>145</sup> On this basis, it was suggested that for instance a more frequent exchange of information could be encouraged between such institutions. *A/C.3/38/SR.38 (1983)*, para. 61.

<sup>146</sup> *A/C.3/39/SR.33 (1984)*, paras. 23 and 25.

<sup>147</sup> *E/CN.4/1986/34*, para. 1.

<sup>148</sup> *GA Res. 40/123 of 13 December 1985*, para. 6. The resolution, which was adopted without a vote, was put forward by India and also supported by Australia, Iraq, New Zealand, Nigeria, Sri Lanka and Norway. *A/40/970*, para. 5-6. The Executive Director of the Secretariat repeated the appeal for national institutions in 1986 by stating in his speech that "special attention should be given to enhancing the role of national and local human rights institutions". *A/C.3/41/SR.36*, para. 3. In response, the General Assembly reiterated its request concerning the support to national institutions. *GA Res. 41/129 of 4 December 1986*, para. 6.

<sup>149</sup> In his report to the 1986 session of the Commission, the Secretary-General stated that interested governments had been approached and a series of training courses had been funded through voluntary contributions. The Commission was also asked to consider whether a trust fund on advisory services could be created in the future. *E/CN.4/1986/34*, paras. 8-9.

<sup>150</sup> This problem was caused to a large extent by the withholding of financial contributions by the United States. *Cárdenas (2000)*, 70. See the statements of the delegation of Australia and Canada at the 36<sup>th</sup> and 37<sup>th</sup> meetings of the Third Committee in 1987, in connection with the item on national institutions. Australia demanded that such "disproportionate and damaging" cuts "must not be repeated", while Canada pointed out that "any further cuts would have a catastrophic impact". *A/C.3/42/SR.36 and SR. 37 (1987)*, paras. 14 and 3, respectively.

<sup>151</sup> *CHR Res. 1987/38 of 10 March 1987*, para. 2.

<sup>152</sup> *Ibid.*, the preamble and para. 6. The resolution was put forward by Australia and also supported by Canada, Finland, India, Iraq, the Philippines, Sri Lanka and Senegal. *E/CN.4/1987/SR.54/Add.1*, para. 299.

<sup>153</sup> *A/C.3/42/SR.36*, para. 2. In this context, the inauguration of the National Human Rights Commission of Togo was referred to as an "encouraging development, which boded well for similar co-operation in the future". *Ibid.*, para. 3.

<sup>154</sup> In this so-called Third Phase, the establishment of national institutions was regarded as equally important as the preparation of adequate legislation, the creation of administrative and judicial institutions and the integration of human rights into the educational system. *E/CN.4/1987/SR.1*, paras. 9-24.

<sup>155</sup> Under the sixth sub-programme concerning national institutions, the activities centred around regional seminars or training courses with the purpose of developing effective national institutions, maintaining the effectiveness, independence and integrity of the existing national institutions, and enhancing their role as "focal points" for various information activities. Other forms of assistance to national institutions were foreseen in connection with



the regional training seminars (subprogramme 1) and fellowships (subprogram 4). Furthermore, it was suggested that expert advice and technical assistance could be provided to support the government in the establishment of judicial and administrative institutions to protect human rights, including national institutions, (subprogram 3). *E/CN.4/1988/40*, paras. 26-36.

<sup>156</sup> The Director of the Centre for Human Rights, who introduced the outline for the Plan, described the approach as “not rigid”, which allowed for the design of “programmes that were to some extent ‘made to measure’, [...] capable of responding to the specific needs of countries and making the best services available”. *E/CN.4/1988/SR.34*, para. 50.

<sup>157</sup> For instance, under the sixth sub-programme six, the assistance was aimed at “developing effective national institutions, including non-governmental organizations, for the promotion and protection of human rights in accordance with national legislation” and the reference point for the various forms of national commissions was taken from the Secretary-General’s 1987 report. Therefore, it was evident that support was meant at least to national human rights commissions and NGOs. *E/CN.4/1988/40*, para. 35.

<sup>158</sup> For a critical analysis of the proposed plan, past activities and recommended future directions of the Advisory Services Programme, see in particular the papers and conclusions (Stockholm Recommendations) of the seminar on United Nations Assistance to Human Rights. *International Commission of Jurists Swedish Section and the Swedish Save the Children (eds.) (1988)*.

<sup>159</sup> *Ibid.*, Stockholm Recommendations, para. 20-21. Several experts who participated in the Stockholm meeting recommended that more consideration should be given to this type of projects. Potential problems were foreseen for instance with respect to support to national institutions, as these institutions often served a little more than window-dressing. *Alston (1988)*, 96; *Picken (1988)*, 36.

<sup>160</sup> Nevertheless, the chosen priorities were discussed to some extent. Several western delegates (such as Belgium, Norway and the Netherlands) encouraged the Centre to upgrade its support to basic infrastructures, including national institutions, as the priority area. On the contrary, some others, most notably the German Democratic Republic and the USSR, hoped to direct the activities towards seminars, training courses and scholarships, which had formed part of the core of the programme for the past 35 years. According to the USSR, the Centre could nevertheless play a co-ordinating role in the “broad exchange of information and experience” in the field of national institutions. *E/CN.4/1988/SR. 34-36*.

<sup>161</sup> Support directed to “national institutions” was provided for instance to Togo, Guatemala, Colombia and the Philippines. This support was primarily about training the members of these national institutions. In addition, some regional activities were undertaken in 1990. For instance, the Asian and Pacific Regional Workshop which was organised in Manila, the Philippines, also addressed the topic of national and regional institutions for the promotion and protection of human rights. In addition, in the context of the African Commission on Peoples’ and Human Rights, assistance was also provided to national commissions through, *inter alia*, the provision of relevant human rights documentation, the organisation of seminars and conferences to advise governments on the establishment of national commissions and co-operation with national commissions from other regions. See *E/CN.4/1989/42*; *E/CN.4/1990/43*.

<sup>162</sup> Neither did they give clear authorisation to the Human Rights Secretariat to develop the conceptual idea of national institutions. On the contrary, in 1989, the General Assembly surprisingly added a new paragraph to its standard resolution in which it noted the “diverse approaches adopted throughout the world for the protection and promotion of human rights at the national level” and recognised “the value of such approaches”. *GA Res. 44/64 of 8 December 1989*, the preamble.

<sup>163</sup> *CHR Res. 1989/52*, para. 10; *GA Res. 44/64 of 8 December 1989*, paras. 6 and 9; *GA Res. 46/124 of 17 December 1991*, para. 9.

<sup>164</sup> These activities can be seen as part of the wider process relating to emergence of the more active human rights work in the Commonwealth framework. They were preceded by the agreement of the Commonwealth Heads of Governments in 1981 to establish a special unit for the promotion of human rights. This decision came to fruition in January 1985, when the Human Rights Unit became operational as part of the International Affairs Division. *D’sa (1991)*, 318.

<sup>165</sup> *Ibid.*, 319.

<sup>166</sup> *Human Rights Update, June 1988: Survey of national institutions concerned with the promotion of human rights within the Commonwealth*.

<sup>167</sup> *National Human Rights Institutions in the Commonwealth: Directory – Survey and Analysis (1992)*, 1. The first edition of the survey, published in 1990, was called the “Directory of Statutory Human Rights Bodies in the Commonwealth”. The second edition, called “National Human Rights Institutions in the Commonwealth”, was published in February 1992.

<sup>168</sup> The seminar was part of a long series of regional activities organised under the auspices of the UN Advisory

Services Programme. Along with the 1978 seminar on Local and National Institutions for the Promotion and Protection of Human Rights, it has been considered as one of the few seminars that actually produced some concrete and sustainable results. See for example *Picken (1988)* and *Alston (1988)*.

<sup>169</sup> *African Charter on Human and Peoples' Rights (1981)*, articles 26 and 45(a).

<sup>170</sup> The Commission held its first session in November 1987. In 1990, it decided that its annual reports will be published and copies of the African Charter and related information distributed. After five years in operation, the Commission was assessed as being poorly funded, under-staffed and lacking co-operation with local NGOs. Furthermore, the requirement of confidentiality added to the difficulties in the Commission's promotional and protective work. *Welch (1992)*, 54-57.

<sup>171</sup> The preliminary Programme of Action, adopted at the second session of the African Commission, in Dakar, February 1988, is reproduced in part in *Welch (1992)*, 50-51. However, the UN Centre for Human Rights, which started to give assistance to the African Commission in 1988, envisaged a wider set of activities for the support of national institutions. According to the report of the Secretary-General from 1990, "national commissions" were to be assisted for instance through the organisation of seminars and conferences to advise states in the setting up of such commissions and through the co-operation with national commissions from other regions. *E/CN.4/1991/55*, para. 65.

<sup>172</sup> *Resolution on the Establishment of Committees on Human Rights or other Similar Organs at National, Regional or Sub-Regional Levels, adopted by the African Commission on Human and Peoples' Rights, meeting in its fifth ordinary session in 3<sup>rd</sup>-14<sup>th</sup> April 1989, in Benghazi, Libya.*

<sup>173</sup> According to the mid-term plan, "[i]t is useful to study and exchange experiences on the role of national institutions [...] [a]t the same time it is desirable to study the various possibilities of fostering increased collaboration and exchange of views between the national institutions of Member States [...]". *Council of Europe Directorate of Human Rights (1998)*, 7.

<sup>174</sup> *Steering Committee for Human Rights: Implementation of Activity I.11 "Setting up and improving human rights protection mechanism" (Setting up national Human Rights Commissions). Secretariat Memorandum prepared by the Directorate of Human Rights. CDDH (95) 9 rev., 15<sup>th</sup> May 1995, 2.*

<sup>175</sup> *Report by N. Eilshou Holm (1984, 42) on the discussion during the Siena Seminar; Council of Europe Directorate of Human Rights (1998)*, 9.

<sup>176</sup> See the Communication from the "Provedor de Justiça" of Portugal in the *Proceedings of the Roundtable with the European Ombudsmen (1987)*, 22; *Council of Europe Directorate of Human Rights (1998)*, 8-9.

<sup>177</sup> *Ibid.*, 8.

<sup>178</sup> The meeting emphasised the role of the ombudsmen as human rights protectors and outlined some concrete steps for the Council of Europe to provide co-operation between the Ombudsmen and the Council. It was *inter alia* suggested that Ombudsmen could advise potential applicants to use the complaints procedure under the European Human Rights Convention. On the other hand, the European Commission could direct the applicants to turn to their national Ombudsmen in cases that clearly fell outside of the Commission's competence. Furthermore, it was proposed that Ombudsmen could supervise the implementation of friendly settlements under article 28 of the European Convention and to intervene, if necessary, with the competent governments organs to ensure that the legislation and other acts were in compliance with the judgments of the European Court of Human Rights. Regarding co-operation with the Council, it was suggested that the Directorate of Human Rights should inform Ombudsmen of the Council's activities in the field of human rights as well as to transmit information concerning the European Convention, relating to the case law, and other subjects of particular interest to Ombudsmen. *Proceedings of the Round Table with European Ombudsmen (1987)*, 133-134.

<sup>179</sup> *Recommendation No. R(85)13 of the Committee of Ministers of the Council of Europe to Member States on the Institution of Ombudsman, 23 September 1985.*

<sup>180</sup> *Resolution (85)8 adopted by the Committee of Ministers of the Council of Europe on 23 September 1985 on the Co-operation between the Ombudsmen of Member States of the Committee of Ministers and between them and the Council of Europe.*

<sup>181</sup> The Secretariat put forward also a proposal for principles on the functioning and structure of human rights commissions, which could be annexed to the Committee's recommendation. According to the "Principles governing the appointment of national human rights commissions", the commissions could be either general or specialised bodies; their composition and working arrangements should ensure a complete independence and impartiality of the Commission and their members and a balanced representation of the various sectors concerned; and the commissions should be ensured adequate funding. *Steering Committee for Human Rights: Implementation of Activity I.11 "Setting up and improving human rights protection mechanism" (Setting up national Human Rights Commissions). Secretariat Memorandum prepared by the Directorate of Human Rights.: Appendix I, Preliminary*

draft Recommendation No. 5(85) of the Committee of Ministers on the appointment of national human rights commissions.

<sup>182</sup> *Ibid.* CDDH (95) 9 rev., 15<sup>th</sup> May 1995, 3. It was also felt that “given the diversity of the legal systems of member States” it would be “doubtful whether a recommendation in the field would be put into effect in all these states”.

<sup>183</sup> *CHR Res. 1990/73 of 7 March 1990*, para. 3. The draft resolution was introduced by Italy and supported by more or less the same group of countries that had advocated the creation of national institutions in the 1980s: Australia, Bulgaria, the Byelorussian SSR, Colombia, Finland, France, Hungary, Iraq, Italy, the Philippines, Poland, Sri Lanka, the Ukrainian SSR, the USSR, subsequently joined by Madagascar and Nigeria. *E/1990/22*, paras. 315-316. The resolution was adopted without a vote. See *E/CN.4/1990/SR.49 and SR.53*. This initiative was later welcomed by the General Assembly. *GA Res. 46/124 of 17 December 1991*, para. 13. In 1991, the Commission welcomed the Secretary-General’s decision to organise the seminar in 1991 and requested the publication of the proceeding of the meeting and to make use of its results in the finalisation of the UN guidebook on national institutions. *CHR Res. 1991/27 of 5 March 1991*, paras. 9-10.

<sup>184</sup> *E/CN.4/1992/43*, paras. 3-4.

<sup>185</sup> Reflecting the increased interest in national institutions, the workshop was attended by almost fifty representatives of different types of national institutions particularly from European institutions. In addition, some seventy governments, eleven NGOs and eight regional institutions and training institutes were invited to the meeting. Apart from the representatives of the UN Centre for Human Rights, the following intergovernmental organisations were also represented: the International Labour Organisation (ILO), the United Nations Educational, Scientific and Cultural Organisation (UNESCO), the Organisation for Economic Co-operation and Development (OECD), the Commonwealth Secretariat for Human Rights, the European Court of Human Rights, Inter-American Court of Human Rights, and the Inter-American Commission on Human Rights. *Ibid.*, paras. 6-7; the list of participants is included in *E/CN.4/1992/43/Add.1*.

<sup>186</sup> However, the workshop specifically recommended that the UN Voluntary Fund for Advisory Services and Technical Assistance in the Field of Human Rights should be increased so that adequate assistance could be given to national institutions. Furthermore, a brief reference to the national institutions’ co-operation with the UN and other international and regional organisations was made in the recommendations (the Paris Principles) given by the workshop. *E/CN.4/1992/43*, 47 and 49. Following more unofficial and spontaneous co-operation that took place during the World Conference on Human Rights, the national institutions decided to establish a co-operation body (International Co-ordinating Committee of National Institutions) in the subsequent meeting of national institutions, organised in December 1993 in Tunis. At the same meeting, the Centre for Human Rights put forward the Plan of Action on national institutions that would to guide the future UN work in the field. *E/CN.4/1994/45*, paras. 16-17 and Chapter VI: Recommendations of the Workshop, paras. 1(c) and 6.

<sup>187</sup> In addition, representatives of French Institute for humanitarian law and human rights and International Commission of Jurists acted as rapporteurs. *E/CN.4/1992/43/Add.1*.

<sup>188</sup> See for example *Lindsnaes & Lindholt (2000)*, fn 24 at 8. The paper prepared for the meeting by Brian Burdekin, the Federal Human Rights Commissioner of Australia discussed the functions and powers of human rights institutions and drew, in particular, on the experience of the Australian Human Rights and Equal Opportunity Commission. *E/CN.4/1992/43*, paras. 168-213.

<sup>189</sup> *CHR Res. 1992/54 of 3 March 1992*, para. 11.

<sup>190</sup> See chapter three (3) above.

<sup>191</sup> With regard to the mandate, the following six changes are worth mentioning: Firstly, the Paris Principles do not stipulate that the national institution’s advisory role should focus *exclusively* on cases where such an advice is requested by relevant authorities request. Secondly, the composition of the national institution is specifically limited to civil society actors, experts and authorities involved in human rights work. Thirdly, a novelty included in the Paris Principles is the reference that government representatives should only participate in the work of a national institution in an advisory capacity. Fourthly, as if to emphasise the difference between national institutions (human rights commissions) and other governmental bodies, it is specifically mentioned that national institutions should maintain consultation with other bodies responsible for the promotion and protection of human rights, in particular with Ombudsmen and similar institutions. Fifthly, co-operation with other national institutions across borders is a new element that was not yet included in the 1978 guidelines. Sixthly, an important amendment relating to the reinforced status of a national institution was made by adding the requirement of “adequate funding” in the Paris Principles as a central guarantee of national institutions’ independence.

<sup>192</sup> For instance, the broad concept of national institutions as agencies assisting in the “provision of free legal aid”, acting as “centres of information”, and “promoting respect for the rule of law” was narrowed down.

<sup>193</sup> According to the 1978 guidelines, national institutions “should include independent fact-finding bodies [...] [that] should be authorized to investigate complaints” from citizens. This function is considered to be part of national institution’s role in considering and making recommendations on any national state of affairs that the government wants to refer to them. Furthermore, it is proposed that national institutions “should receive complaints” and through this function provide information to the Government and to the people concerning issues related to human rights. See the Guidelines for the Structure and Functioning of National Institutions contained in the report on *Seminar on National and Local Institutions for the Promotion and Protection of Human Rights, ST/HR/SER.A/2*, paras. 3 and 23.

<sup>194</sup> For instance, the National Consultative Commission on Human Rights of France is one of the internationally recognised national institutions, which does not have the authority to receive and investigate human rights complaints.

<sup>195</sup> Interview with Brian Burdekin, September 2003. Burdekin participated in the meeting in his capacity as the Federal Human Rights Commissioner of Australia. Almost ten years later, *Kjaerum (2000, 89)* states that in most European countries national institutions are still not authorised to handle individual complaints. However, it should be noted that in this context Kjaerum only refers to national institutions accredited as such by the International Coordinating Committee of National Institutions.

<sup>196</sup> See chapter 3.1 above. This change can be explained in part by the rise of the so-called “Human Rights Ombudsmen” in the Central and Eastern European and Latin American countries. Apart from acting as administrative watchdogs, these new hybrid institutions were often given a specific mandate to oversee the public authorities’ observance of citizen’s rights and human rights and to receive individual complaints thereupon.

<sup>197</sup> *CHR Res. 1992/54 of 3 March 1992*, paras. 1, 10 and 17.

<sup>198</sup> *E/CN.4/1992/SR.52*, para. 99. In particular the Western group and Eastern European states supported the draft resolution. Judging from the number of other supporters, it seems that the African, Latin American and Asian countries were less enthusiastic about the new guidelines. The entire group of supporters included: Australia, Denmark, Finland, France, Greece, Iceland, Italy, New Zealand and Portugal; Bulgaria, Hungary, Poland, Russia and Ukraine; Burundi, Madagascar, Nigeria; Brazil and Costa Rica; and the Philippines.

<sup>199</sup> ECOSOC decided to transmit the recommendations of the Paris workshop to the General Assembly for their adoption in July 1992, and after this the Secretary-General sent a note to the Assembly, annexing the Paris Principles. *A/47/678/Add.2 (1992); A/47/701 (1992); A/C.3/47/SR.50 (1992)*, para. 61.

<sup>200</sup> In addition, four other objectives were defined for the Conference: 1) to review and assess the progress made in the field of human rights and to identify obstacles to future progress as well as ways to overcome these obstacles; 2) to examine the relation between development and the enjoyment of economic, social and cultural rights; 3) to evaluate the effectiveness of the methods and mechanisms used by the United Nations in the field of human rights; and 4) to make recommendations for ensuring financial and other resources for United Nations activities. *GA Res. 45/155 of 18 December 1990*. For the background of the Conference, see *Martenson (1993)*.

<sup>201</sup> The Preparatory Committee was open to all Member States of the UN and was mandated to make proposals on technical issues related to the Conference as well as on the agenda and the contents of the Final Declaration. *GA Res. 45/155 of 18 December 1990*.

<sup>202</sup> *CHR Res. 1992/54 of 3 March*, para. 13 and preamble, referring to *CHR Res. 1991/30 of 5 March 1991*.

<sup>203</sup> *E/CN.4/1993/33*.

<sup>204</sup> In particular, the Human Rights and Equal Opportunity Commission of Australia played an active role in lobbying for national institutions and the Paris Principles. These efforts include *inter alia* the organisation of an international meeting on anti-discrimination institutions in Sydney in April 1993 in co-operation with the UN Centre for Human Rights and the preparation of documentation on national institutions for the World Conference. See for example “Principles related to the status of national institutions; an analysis of recommendations, resolutions and relevant decisions of international meetings relating to, or convened in preparation for the World Conference on Human Rights”, April 1993; “Composition, Definition and Powers of National Human Rights Institutions”, April 1993; Report of the meeting of representatives of national institutions and organisations promoting tolerance and harmony and combating racism and racial discrimination (Sydney, Australia, April 1993), reproduced in *A/CONF.157/PC/92/Add.2, Add.3 and Add. 5 (1993)*.

<sup>205</sup> These included: the Commonwealth workshop on National Institutions (30 September-2 October 1992) in Ottawa, Canada; the UN Asia-Pacific Workshop on Human Rights (26-28 January 1993) in Jakarta, Indonesia; and the UN meeting of representatives of national institutions and organisations promoting tolerance and racial harmony and combating racism and racial discrimination (19-23 April 1993) in Sydney, Australia. For a list of other meetings arranged prior to the 1993 World Conference by the United Nations Centre for Human Rights and meetings held by intergovernmental organisations and NGOs to which the Centre has been invited, see *A/CONF.157/PC/42/Add.1 (1993)*. President Suharto established the Indonesian national institution on 7<sup>th</sup> June

1993. The Commission began its work half a year later in December 1993. See the homepage of Komnas Ham at [[www.komnas.go.id/english/report/index.html](http://www.komnas.go.id/english/report/index.html)].

<sup>206</sup> In the recommendations of the Ottawa workshop, the Commonwealth governments were invited to establish national institutions or review the structures, jurisdiction, independence and powers of existing institutions paying attention, in particular, to the Paris Principles. As for the future work in the field, it was suggested that Commonwealth governments and relevant international organisations should recognise the establishment and operation of national institutions as an “important subject for international co-operation, including the provision of technical assistance where requested and by facilitating co-operation directly between national institutions in different countries.” Excerpts of the report can be found in *A/CONF.157/PC/42/Add.1 (1993)*, para. 255. Similarly, the Sydney workshop encouraged governments to establish “national institutions with specific responsibilities and adequate powers to combat racism and the practice of racial discrimination” and following the various requirements set in the Paris Principles. Attention was also paid to the operation and development of national institutions as an “important and appropriate subject for international co-operation, including the provision of technical assistance [...]”. *A/CONF.157/PC/92/Add.5 (1993)*, para. 167(a)-(j).

<sup>207</sup> Governments participating at the workshop were mainly concerned with the questions of cultural diversity and regional particularities, as well as the divergent levels of development in Asia to the detriment of the universality of human rights. The issue of national institutions featured in the Chairman’s Concluding Remarks, in which the important role of national institutions in the promotion and protection of human rights was acknowledged. However, characteristically, it was also noted that national implementation mechanisms vary from one state to another, and thereby “national institutions should be considered in the context of the development process of the country”. *A/CONF.157/PC/92/Add.2 (1993)*. For a general description of the Asia-Pacific meetings, see for instance *South Asia Human Rights Documentation Centre: Human Rights Features, HRF/16/00* at [[www.hri.ca/partners/sahrhc/hrfeatures/HRF16.htm](http://www.hri.ca/partners/sahrhc/hrfeatures/HRF16.htm)].

In a resolution on national institutions adopted during the African meeting, the representatives encouraged states “to be guided [by the Paris Principles] in establishing, within the framework of their national legislation, national institutions for the promotion and protection of human rights”. They also requested the UN Secretary-General to “consider favourably applications for assistance made by African Member States regarding the creation and strengthening of national institutions within the framework of the United Nations programme of advisory services and technical co-operation in the field of human rights”. Resolution AFRM/2 on the Role of National Institutions in the Promotion and Protection of Human Rights, paras. 2 and 7, in *A/CONF.157/PC/57 (1992)*, chapter II. At the Final Declaration of the meeting, the representatives of the Latin-American and Caribbean countries drew attention to the “urgent need to establish mechanisms and programmes for the defence and protection of children and adolescents [...] and for Governments to set up national commissions for the monitoring and follow-up of the Convention of the Rights of the Child [...]”. The Final Declaration (San Jose Declaration) of the Regional Meeting for Latin America and the Caribbean, para. 13, in *A/CONF.157/PC/58 (1993)*, chapter I.

<sup>209</sup> The Final Declaration of the African meeting underlines that “no ready-made model can be prescribed at the universal level since the historical and cultural realities of each nation and the traditions, standards and values of each people cannot be disregarded”. The Final Declaration (Tunis Declaration) of the Regional Meeting for Africa of the World Conference on Human Rights, paras. 4-5, in *A/CONF.157/PC/57 (1992)*, chapter I. In a similar vein, the Latin American and Caribbean representatives reaffirm in the Preamble of the Final Declaration their respect for pluralism and the principles of national sovereignty and non-interference in the internal affairs of states and stress the importance of strengthening “broad, non-selective and non-discriminatory international co-operation, designed to strengthen the capacity of States to respect and promote human rights”. *A/CONF.157/PC/58 (1993)*, para. 13.

<sup>210</sup> The Final Declaration (Bangkok Declaration) of the Regional Meeting for Asia, the Preamble and para. 24, in *A/CONF.157/PC/59 (1993)*, chapter I.

<sup>211</sup> *Ibid.*

<sup>212</sup> In reality, the confrontation between the Asian and Western states paralysed the Preparatory Committee and in the end the UN Centre for Human Rights was mandated to prepare the draft outcome, drawing on the conclusion of the regional meetings. *Davidse (1995)*.

<sup>213</sup> In the version adopted by the Preparatory Committee at the 11<sup>th</sup> meeting of its fourth session on 7<sup>th</sup> May 1993, these paragraphs were numbered para. 23 of part II and para. 2 of part III(V). *A/CONF.157/PC/98 (1993)*, Annex II. In the final document, the respective references can be found in para. 36 of part I and in para. 84 of part II(E).

<sup>214</sup> The entire second part of paragraph 23 of part II was placed in square brackets and formulated as follows: “The World Conference on Human Rights encourages the establishment or strengthening of [independent and pluralistic] national institutions [in conformity with national circumstances and laws]”. Apart from the fact that the inclusion of the whole text was thus uncertain, the governments could not agree on the reference to “independent and

pluralistic” national institutions. Similarly, a consensus could not be found on the reference to national institutions being “in conformity with national circumstances and laws”. *Ibid.*

According to paragraph 2 of part III(V), the Conference would recommend the strengthening of the UN activities and programmes to assist states to establish and strengthen their national institutions. However, the stipulation that this assistance should be particularly aimed at governments willing to do so “with due regard to the Principles relation to the status of National Institutions” was placed in square brackets. *Ibid.*

<sup>215</sup> *A/CONF.157/24 (1993)*, Part I, para. 17; Letter dated 17<sup>th</sup> June 1993 from the representatives of national institutions, addressed to the President of the World Conference on Human Rights, transmitting the text of the resolution adopted on 16<sup>th</sup> June 1993, in *A/CONF.157/NI/6 (1993)*.

<sup>216</sup> *A/CONF.157/24 (1993)*, Part I, para. 36. Special attention was paid to the potential of national institutions in combating all forms of racism, xenophobia or related intolerance, in increasing the awareness of human rights and mutual tolerance, and in implementing and monitoring human rights. *Ibid.*, part II, section B, para. 20; section D, para. 82; and section E, para. 85.

<sup>217</sup> *Ibid.*, Part I, para. 36.

<sup>218</sup> *Ibid.*, part II section C, paras. 66-67.

<sup>219</sup> *Ibid.*, part I, para. 34.

<sup>220</sup> For instance, *van Boven (1995)* states that the merit of the Vienna Conference was the reaffirmation and consolidation of already existing achievements and the new impulses given to the promotion of the rights of vulnerable groups and women’s rights.

<sup>221</sup> *Davidse (1995)*.

<sup>222</sup> Reflecting the shift of focus in the UN framework, the number of field presences with both a monitoring and assistance function grew from one in 1993 to almost twenty in 1998. The number of offices concentrating only on technical co-operation activities rose from one to five during the same period. *Gallagher (1999)*, 252 and 263-264. The emphasis which was placed on implementation measures was reflected in the number of principal activities, which rose from 69 in 1994 to 195 in 1997. *Technical Co-operation Programme of the OHCHR: Activities, Administration and Policy, April 1999*.

<sup>223</sup> *GA Res. 48/134 of 20 December 1993*. The resolution introduced by India was adopted without vote with the support of 21 governments, which represented more or less equally the five regional groups: Africa (5), Asia (4), Eastern Europe (3) and Latin American and the Caribbean (5) and the Western Europe and others (4). *A/48/632/Add.2 (1993)*, para. 65. Notwithstanding the strong wording of the resolution, the Indian delegation described the principles annexed to the draft of the same resolution as “only a general framework” and the draft as a document “encourag[ing] countries to exchange experiences in the domain of the question”. *A/C.3/48/SR.50 (1993)*, para. 82.

<sup>224</sup> This quotation comes from the resolution of the General Assembly adopted in 2001. *GA Res. 56/158 of 15 February 2002*. It is only the *formulation* of the reference to the Paris Principles that has changed over the years: The Commission on Human Rights changed the 1992 formulation of “welcome” to the wording “in keeping with” in 1993. This was applied until 1998 when it was transformed into the form “in conformity with” the Paris Principles. The General Assembly’s wording “having regard to” that was used in 1993 was transformed into a cautious “in keeping [...] inter alia with” the Paris Principles in 1995. However, in 1997, the formulation “in keeping with” was applied. For the resolutions on national institutions in the 1990s, see for example the website of the National Institutions Network at [[www.nhri.net](http://www.nhri.net)].

<sup>225</sup> *Beijing Declaration and Platform of Action*, paras. 230 and 232.

<sup>226</sup> *Durban Declaration*, para. 112 and *Programme of Action*, para. 90.

<sup>227</sup> *GA Res. 45/253 of 21 December 1990*.

<sup>228</sup> *E/CN.4/1990/54*, para. 13.

<sup>229</sup> *Vienna Declaration and programme of Action, 25<sup>th</sup> June 1993*, part II, section C, para. 68.

<sup>230</sup> *GA Res. 48/134 of 20 December 1993*, paras. 5 and 7.

<sup>231</sup> *E/CN.4/1994/45*, para. 51.

<sup>232</sup> *E/CN.4/1994/45*, paras. 16-17 and 51-53; *United Nations Fact Sheet No. 3: Advisory Services and Technical Co-operation in the Field of Human Rights (1996)*, 13.

<sup>233</sup> *CHR Res. 1994/54 of 4 March 1994*. The Australian delegation, which introduced the draft resolution, underlined the increasing importance that the Commission attached to national institutions. Reflecting the significant role of the UN in the field, the delegation revised orally the fifth preambular paragraph of the draft on behalf of the other supporters: instead of “catalytic role”, the UN was foreseen to “play an important role” in assisting the development of national institutions. The resolution was adopted, as usual, without vote. *E/CN.4/1994/SR.56*, paras. 50-52.

<sup>234</sup> General Assembly already noted the difficult financial situation of the Centre in 1992 and requested the Secretary-General to ensure that sufficient resources are given to the Centre “to enable it to carry out, in full and on time, all the mandates, including the additional ones [...]”. *GA Res. 47/127 of 18 December 1992*, para. 4. Evidently this did not happen, as some years later, the Commission on Human Rights requested the Secretary-General as a matter of urgency to ensure sufficient funds for the Centre and asked the Secretary-General the General Assembly to ensure that the Centre is provided with appropriate staff and resources from the existing and future regular budgets of UN. *CHR Res. 1994/55 of 4 March 1994*, paras. 4-6. The national institutions activities, which were placed under the wider technical co-operation programme, were assigned to one human rights officer at the Centre. Until the mid-1990s, the expertise in the field was generally based on experiences with specific institutions rather than on a wider understanding of the role and potential of national institutions at the domestic context and at the international level.

<sup>235</sup> The Ombudsman of Costa Rica was provided with two fellowships; the government of Georgia was provided with information and documentation on national institutions; the government of Latvia was assisted in the drafting of the national plan of action, including the establishment of a national institution and later in the drafting a law on a national institutions; the government of Papua New Guinea was given advisory services for the drafting of a law on a national institution and later support to the establishment of a national institution. As there was no in-house expertise in the field prior to 1995, the UN relied to a high degree on external consultants. For instance, in the case of Latvia, Papua New Guinea and Georgia expert advice was provided by the Federal Human Rights Commissioner of Australia. A general overview of the activities undertaken in the framework of the Advisory Services and Technical Co-operation Programme, including national institutions-related activities, see the table 4 under para. 95 and paras. 49-50 in *E/CN.4/1995/89*. For the activities from 1994 to 1995, see *E/CN.4/1994/78*, part D, paras. 100-124 and *A/50/452 (1995)*, paras. 32-33.

<sup>236</sup> The World Conference recommended that “representatives of national institutions should convene periodic meetings under the auspices of the Center for Human Rights”. *Vienna Declaration and Programme of Action*, Part I, chapter III, section II, para. 86.

<sup>237</sup> *E/CN.4/1994/45 (1993)*; *E/CN.4/1996/8 (1995)*; *E/CN.4/1995/89*, paras. 49-52; *E/CN.4/1996/48*, para. 37.

<sup>238</sup> *The UN Handbook (1995)*, para. 39.

<sup>239</sup> *Ibid.* It is noteworthy that this definition does not include any reference to the independence of the national institutions even though it is highlighted that this feature is one of the central elements for the effective functioning of national institutions elsewhere in the handbook. Moreover, unlike the Paris Principles, which underline the importance of creating the national institution by a *legislative* text (i.e. act adopted by parliament), the UN Handbook also refers to bodies created by a decree (i.e. usually established by the government or the president of a country) as “national human rights institutions”.

<sup>240</sup> See for example the Report of the United Nations High Commissioner for Human Rights to the General Assembly, stating that “[...] The High Commissioner has recently established a senior adviser in his office, who is already assisting a number of Governments that have decided to create [...] national institutions”. *A/50/36 (1995)*, para. 11; Summary of Project Evaluation: GLO/95/AH/09 and GLO/97/AH/13 Support to action for national human rights institutions – strengthening national human rights institutions, contained in the *United Nations Voluntary Fund for Technical Co-operation in the Field of Human Rights: Status Report on Technical Co-operation Programme and Project Activities (12<sup>th</sup> issue)*, 30 April 1999.

<sup>241</sup> See chapter 4.4.1 above. Prior to his involvement in the UN, the Federal Human Rights Commissioner of Australia had provided advice to several governments which were planning or in the process of setting up of their own national institutions. His advisory role was particularly important for the Asia-Pacific region. Some of this earlier work on national institutions was undertaken in co-operation with the UN Centre for Human Rights, while most of it was carried out as part of the international activities of the Australian Human Rights and Equal Opportunity Commission.

<sup>242</sup> For an in-house perspective, see for instance the comments on the evolution of the national institutions components by *Ramcharan (1995, 216)* and *Benomar (1998, 239)*. The former notes in the mid-1990s that a large amount of work had been done in the field of national institutions however, this work had been “intermittent over the years”. The latter states three years later that the Centre for Human Rights had developed unique capabilities by 1998, for instance, regarding advisory services concerning national institutions.

<sup>243</sup> The UN Human Rights Secretariat (since 1997, the Office of the High Commissioner for Human Rights) developed its technical assistance procedures considerably in the latter part of the 1990s. At the end of the decade, the increasingly complex project cycle of the organisation consisted needs-assessment missions for mapping out the possible areas of co-operation and project formulation missions for the design of eventual activities in a particular country. An in-house review during which the sustainability and appropriateness of the project were assessed preceded the needs-assessment phase and followed the project formulation phase. The project was then submitted

for an external appraisal by the Board of Trustees of the Voluntary Fund for Technical Co-operation. The final approval of the project rested with both the government receiving assistance and the High Commissioner, who signed the official project document. See for example *Technical Co-operation Programme of the Office of the High Commissioner for Human Rights: Activities, Administration, Policy, April 1999*. It is evident that the careful preparation of each project required a great deal of time; it was often a question of years rather than months. The process was often prolonged further by external factors, such as the changing circumstances on the ground.

<sup>244</sup> As a drawback of this flexibility, external experts have recently criticised the UN national institutions activities for not having made use of the Technical Co-operation Manual setting out a common framework for the assessment of the OHCHR activities. See *From Development of Human Rights to Managing Human Rights Development. Global Review of the OHCHR Technical Co-operation Programme, Synthesis Report, September 2003*, 55. The reason for this is that many activities undertaken by the Special Adviser fell outside the UN technical co-operation programme and they were not therefore processed as part of the normal technical co-operation project cycle, including the in-house project review, project formulation and project evaluation.

<sup>245</sup> While there were less than ten activities carried out in 1995, five years later the UN was already working in some 50 countries and/or with national institutions in them. *E/CN.4/1995/89*, table 4, under para. 95; *Annual Appeal 2001: Overview of activities and financial requirements*, 34.

<sup>246</sup> These countries were: Burundi, Cameroon, Chad, Ethiopia, Kenya, Lesotho, Liberia, Niger, Nigeria, Madagascar, Malawi, Mauritius, Rwanda, Senegal, Sierra Leone, South Africa, Togo, Uganda, and Zambia. *Human Rights Watch (2001)*, 2 and 74. This does not mean that all of the countries would have followed the advice given by the UN Special Adviser.

<sup>247</sup> *A/50/36 (1995)*, paras. 6(g) and 51. The report also notes (in para. 5) that the High Commissioner has attached “primary importance to setting up a framework for a close and continuous co-operation with [...] national institutions for the promotion and protection of human rights” and that (in para. 11) “[a]n overall programme for strengthening existing national institutions, particularly those which have just been set up, is also being prepared”.

<sup>248</sup> The Commission on Human Rights urged the Secretary-General to continue to give high priority to requests for assistance concerning the establishment and strengthening of national institutions and praised the “recently intensified activities” in the field, referring specifically to the work of the Special Adviser. *CHR Res. 1997/40 of 11 April 1997*, paras. 7-8.

<sup>249</sup> Summary of Project Evaluation: GLO/95/AH/09 and GLO/97/AH/13 “Support to Action for National Human Rights Institutions – Strengthening National Human Rights Institutions”, in *United Nations Voluntary Fund for Technical Co-operation in the Field of Human Rights. Status Report on Technical Co-operation Programme and Project Activities (12<sup>th</sup> Issue)*, 30 April 1999.

<sup>250</sup> According to the High Commissioner’s report, this was to include “staff training, support for system-wide coordination of activities relating to national institutions, contacts with regional organizations, collaboration with academic institutions, implementation and evaluation of projects in specific countries and support for the regional and international associations of national institutions”. *E/CN.4/1998/104*, para. 64. The efforts to mainstream national institutions in the work of the Office was also strongly recommended by the external consultants, who evaluated the first two global projects on national institutions in April 1998. See *supra* note.

<sup>251</sup> See for example *Project Document GLO/1998 “Strengthening of National Human Rights Institutions” – Phase II*. The establishment of a national institutions team with two professional staff, which would be financed from the regular budget of OHCHR, was also strongly recommended by the external consultants in their assessment of the implementation of the two first global projects on national institutions. In practice, this goal was not realised until some years later.

<sup>252</sup> See for instance *CHR Res. 1998/55 of 17 April 1998 and Res. 1999/72 of 28 April 1999*. In the first resolution, the Commission welcomed the statement of the High Commissioner that the work on national institutions would be a high priority of her Office and encouraged her to continue the efforts to integrate the national institutions work into the core activities of the Office. In the second resolution, the Commission welcomed the initiative of the High Commissioner to consolidate and strengthen the work of the Office in the field of national institutions. Similarly, in its resolution of 1999, the General Assembly encouraged the High Commissioner to continue and further extend the activities for the support of national institutions. *GA Res. 54/176 of 17 December 1999*.

<sup>253</sup> This post was not refilled. Since early 2003, the work has been carried out by a small National Institutions Team, directed by the Team Leader. In addition, it was envisaged that an external advisory panel of experts with a balanced geographical, linguistic and gender representation, could contribute to the UN’s work by providing additional advice if needed. See *Annual Appeal 2003*, 71.

<sup>254</sup> Some observers have criticised the UN’s approach of relying on the unverified assumption that national institutions provided a direct contribution to domestic human rights records. See *Human Rights Watch (2001)*, 73. Similarly, the former European Ombudsman Jacob Söderman (1995, 8) criticised the idea that the setting up of a



national institution would as such ensure respect for human rights. The report of the *International Council on Human Rights Policy* (2000b, 2) also notes that the attention had thus far been attached to the implementation of the Paris Principles rather than to broader political dynamics and the effectiveness of national institutions.

<sup>255</sup> By late 1999, there was only one technical co-operation project concerning support to a national institution in a specific country that had been completed and evaluated externally. This project, which was implemented in the first half of the 1990s, related to the establishment of a National Institute for the Protection and Promotion of Human Rights in Slovakia – an institute that was at the time perceived to be a “national human rights institution”. See the Summary of project evaluations in 1996-1999, in the *United Nations Voluntary Fund for Technical Co-operation: 13<sup>th</sup> Status Report on Technical Co-operation Programme and Project Activities, 31 October 1999*, 30. However, at the same time, several comprehensive projects including an important national institutions component were underway or in pipeline. Examples of such work include projects in Latvia, Moldova, Georgia, Papua New Guinea, South Africa, and Uganda. *Ibid.*, for a list of projects, 38-40.

<sup>256</sup> An example of the unexpected problems include the technical co-operation project for the establishment of the Slovakian Institute. These problems were in part explained in the project evaluation as a result of an inappropriate project concept and design, as they did not take the realities on the ground sufficiently into account. The project was implemented before the post of the Special Adviser on National Institutions was created. See for example Summary of the project evaluation: SLO/94/AH/2 Establishment of a national institute for the protection and promotion of human rights, in *United Nations Voluntary Fund for Technical Co-operation in the Field of Human Rights: Status Report on Technical Co-operation and Project Activities (3<sup>rd</sup> Issue), 30 April 1996*, 33-38. See also *Rishmawi* (1994), 153 and (1997), 83. Obstacles were also met in Liberia. According to Human Rights Watch (2001, 194), the UN advised the government on the draft bill but this advice was either rejected or ignored by the President’s Office. A well-known case of unexpected leadership problems is the Latvian Human Rights Office. See for instance *International Council on Human Rights Policy* (2000), 77 and *Lindsnaes & Lindholt* (2000), 15.

<sup>257</sup> These arguments for the support of national institutions have been repeated over the years in several speeches by the High Commissioner for Human Rights and the Special Adviser on National Institutions. *Presentation by the Special Adviser* (Chisinau, 1996); *Address by the High Commissioner* (Merida, 1997). See also *Paper prepared by Brian Burdekin, Special Advisor to the United Nations High Commissioner for Human Rights* (1996), 8; *Burdekin & Gallagher* (1998), 26; *Burdekin & Gallagher* (2001), 825.

<sup>258</sup> *From Development of Human Rights to Managing Human Rights Development. Global Review of the OHCHR Technical Co-operation Programme, Synthesis Report, September 2003*, 54. However, this does not mean that individual national institutions had not been successful. See, for instance, the comment by *Dickson* (2002), who states that “human rights commissions can add value to the excellent work which other bodies undertake”. Dickson is the Chief Commissioner of the Northern Ireland Human Rights Commission. A very practical indication of the difficulties that the UN encounters in assessing the results of its national institutions work can be found in the draft medium term plan 2002-2005. According to the Plan, the strengthening of national capacities and infrastructures for the protection and promotion of all human rights is one of the strategic objectives and an “indicator of achievement” in this respect is the “enumeration of national action plans and national human rights institutions established”. *E/CN.4/2000/CRP.2*. In other words, the Plan concentrates on *quantitative* rather than *qualitative* criteria.

<sup>259</sup> However, according to *Human Rights Watch* (2001, 73) some critics claim that the work of UN in the area of national institutions developed by default and as a result of hard work of the Special Advisor rather than as a result of careful contemplation by the key policymakers at OHCHR.

<sup>260</sup> For earlier criticism see for instance *Picken* (1988) and *Alston* (1988). The need for the substantive strengthening of the technical assistance activities of the Centre, in particular, regarding its ability to provide governments with “quality advice”, was pointed out in the mid-1990s in the report of the UN Office of Inspections and Investigations. Report of the Programme and Administrative Practices of the Centre for Human Rights annexed to the document *A/49/892* (1995). *Brody* (1994, 314) encouraged the Centre for Human Rights to make the advisory services programme subject to clear standards, guidelines and evaluations. For internal criticism, see *Benomar* (1998, 241), who stated that the UN technical assistance activities suffered from a lack of clear objectives and priorities until 1995 which meant that “all requests were automatically accepted although this was not advisable in some circumstances”. *Ramcharan* (1995, 201) called for “a bold commitment and action plan to prevent and combat human rights violations” *inter alia* through the improvement of national implementation systems and techniques.

<sup>261</sup> For a positive response see the report of the International Council on Human Rights Policy, which welcomed the priority given to the support to national institutions as it gives for the UN technical assistance activities “some focus and consistency”. *International Council on Human Rights Policy* (2000b), 102.

<sup>262</sup> See for example the report of the High Commissioner for Human Rights José Ayala Lasso in 1995 which underlined that the promotion and protection of human rights depends on appropriate policies and structures at the

national level and that the UN will therefore increasingly address human rights problems in this area. *A/50/36* (1995), para. 2. Similarly, the High Commissioner for Human Rights, Mary Robinson, noted three years later with regard to the interim plan of activities for years 1998-2001, that building national capacity to protect and promote human rights would be a priority objective of the human rights programme. In this context, national institutions are seen to make an addition to other fundamental state structures. *E/CN.4/1998/104*, para. 27. Similarly, *Robinson* (1997); *Ayala Lasso* (1997).

<sup>263</sup> See for instance the *Paper prepared by Brian Burdekin, Special Advisor to the United Nations High Commissioner for Human Rights* (1996), 2; *Burdekin & Gallagher* (1998), 21. *International Council on Human Rights Policy* (2000, 89) states that there is a general tendency among international donors to prefer to assist "safer" institutions, such as human rights commissions, instead of engaging in more risky projects aimed, for instance, at prisons, prosecutor or police.

<sup>264</sup> The Human Rights Secretariat had been criticised since the late 1980s for its dual approach of monitoring and assisting governments, which often seemed to favour positive measures at the expense of critical reporting. For the criticism by NGOs, see *Lawyers Committee for Human Rights: Abandoning the Victims: The UN Advisory Services Program in Guatemala* (February 1990); *Zoller* (1989) from the Geneva-based International Service for Human Rights; *Amnesty International: The UN Advisory Services and Technical Assistance Programme* (February 1994); *Amnesty International: Agenda for the New United Nations High Commissioner for Human Rights* (April 1997). For the criticism by academics and experts, see *Picken* (1988) and *Alston* (1988), who call for clearer and more objective rules on how governments should be assisted and in what circumstances this should take place. The same problems were also pointed out in the 1990s by *Rishmawi* (1994) and (1997); *Alston* (1997) and *Benomar* (1998), 237.

<sup>265</sup> Examples include the projects aimed at developing national human rights institutions in Latvia, Moldova and Bangladesh. For related UNDP project documents, see *Capacity Development of the Latvian National Human Rights Office LAT/96/010*; *Action Research for the Institutional Development of Human Rights in Bangladesh (IDHRB)*, *BGD/95/005*; *Support to Democratic Initiatives in the Field of Human Rights in the Republic of Moldova, MOL/96/001*.

<sup>266</sup> The government of Australia financed the first global project. However, the subsequent global projects had already gained the support of a wider number of donors, including countries such as Sweden, Norway, Denmark, Germany, New Zealand and United Kingdom. In addition to the global projects, earmarked contributions were made for instance to the organisation of the international and regional workshops of national institutions, to support activities for the establishment of national institutions in specific countries and more generally to technical co-operation activities related to national institutions. *United Nations Voluntary Fund for Technical Co-operation in the Field of Human Rights: 15<sup>th</sup> Status Report on Contributions*, 30 April 2000, 56.

<sup>267</sup> There was growing pressure both internally and externally for the broadening of the national institutions work for instance through the assignment of supplementary staff for this area. However, the idea of investing resources in this area seemed to meet some in-house resistance. See for example Summary of the Evaluation: *GLO/95/AH/09* and *GLO/97/AH/13* contained in *Status Report on Technical Co-operation: Programme and Project Activities* (12<sup>th</sup> Issue), 30 April 1999. This cautious attitude can probably be explained in part by the need to find a proper balance in the activities of OHCHR. Given the small size and the limited resources of the overall Technical Co-operation Programme, the highly popular national institutions work could have easily attracted resources at the expense of many other important areas of work.

<sup>268</sup> Compare, for instance, the description of the UN activities before and after 1998 by *Burdekin & Gallagher* (1998) and *Burdekin & Gallagher* (2001).

<sup>269</sup> The practical means of providing advice included negotiations by telephone, written comments and face-to-face consultations with different parties involved in the process during field missions or in connection with national seminars and workshops or during regional or international conferences related to national institutions.

<sup>270</sup> OHCHR has pursued the creation of independent national institutions, which are based on a legislative text, accessible to people, pluralistic in their composition and equipped with adequate resources. In this respect, an exceptionally strong position was taken in the address of the High Commissioner for Human Rights to the annual meeting of national institutions in 2001, pointing out that the support of OHCHR is "contingent on a demonstrated willingness to meet internationally accepted standards and a genuine commitment to produce results", and that for those institutions "which are subservient to Governments that violate their international human rights obligations, support has not been forthcoming – nor will it be." *Address by the High Commissioner* (Geneva, 2001). For the endorsement of national institutions that are independent and fulfil other features mentioned above, see also the following speeches: *Address by the High Commissioner* (Merida, 1997); *Statement by the High Commissioner* (Durban, 1998); *Presentation by the Special Adviser* (Chisinau, 1996); *Presentation of the Special Adviser* (Darwin, 1996).

<sup>271</sup> Examples of the UN support to national institutions which resemble Ombudsmen in their composition, method of appointment, and/or their competence can be found in particular in Central and Eastern Europe, Central Asia and Latin America. These include, for instance, the UN technical assistance and legal advice for the establishment and strengthening of the Parliamentary Advocates of Moldova, the Human Rights Office of Latvia, the Public Defender of Georgia, the Human Rights Ombudsman of Armenia and the Ombudsman of Macedonia. For a more thorough discussion of different types or models of national institutions, see chapter three (3) above. For the activities in 2003 see *National Institutions Programme: Europe, Central Asia and the Caucasus Regions, September 2003*.

<sup>272</sup> See for instance *Paper prepared by Brian Burdekin, Special Advisor to the United Nations High Commissioner for Human Rights (1996); Burdekin & Gallagher (1998)*, pointing out that national institutions are only complementary to other important structures.

<sup>273</sup> *International Council on Human Rights Policy (2000b)*, 102; *Human Rights Watch (2000)*, 75-76. It has been suspected that, in this way, the UN might have sometimes promoted national institutions at the expense of other important human rights sectors of the country. The UN approach can be partly explained by a lack of resources and insufficient in-house co-ordination. In the beginning, the national institutions work was carried out by only one person (the UN Special Adviser), who was a practitioner and an expert of national institutions. In practice, these activities were often carried out in isolation from other technical co-operation activities, which did not always permit an appropriate follow up to advisory services. Furthermore, as the funding of the national institutions work was entirely based on voluntary donations and the donors tended to study the number rather than quality of new institutions, the result-oriented approach was probably considered as the only rational one. All of these factors undoubtedly favoured the "fast growth policy". Finally, it should be noted that the UN policy-making bodies have consistently encouraged the Secretary-General to provide assistance to *any* government requesting for it. In some cases, they have even made the initiative on the creation of a national institution leaving no margin of discretion to OHCHR. See, for instance, *CHR Res. 1997/66 of 16 April 1997*, para. 20, requesting the Chairman of the Commission to appoint a special representative with the mandate to facilitate the creation and effective functioning of an independent national human rights commission in Rwanda.

<sup>274</sup> According to *Cardenas (2003b, 789)*, for instance, some Canadians working in the field of national institutions have admitted that perhaps more attention should be paid to the assessment of government's commitment to international human rights norms and policy reform prior to providing technical assistance.

<sup>275</sup> *Burdekin & Gallagher (1998)*, 25.

<sup>276</sup> See for example *Human Rights Watch (2001, 76)* calling on the UN to integrate consultations with NGOs as a routine part of its assistance for the establishment and strengthening of national institutions. Similarly, *International Council on Human Rights Policy (2000, 102)* urged the UN to seek civil society organisations' views, in particular, on the need for a national institution and on the possible functions of such a body. *Ziemele (2000, 35)* reiterates this point by stating that the effects of international assistance, advice, or co-operation is likely to remain futile unless the recipients understand the reasons and aims of these efforts.

<sup>277</sup> Typical areas that usually require further development include the criteria and procedures for the recruitment of key personnel, the establishment or development of complaints-handling mechanisms, the development of the investigative and conciliation techniques, the establishment and maintenance of functional working relationships with other state and non-state human rights actors as well as with the media and the development of fund-raising and management skills.

<sup>278</sup> The recent reports of the Secretary-General on national institutions concerning activities from 2000 to 2002 describe assistance for the establishment or strengthening of national institutions in countries such as Australia, Canada, Denmark, Germany, Ireland, Japan, New Zealand, United Kingdom, Sweden and Switzerland. *E/CN.4/2003/110; E/CN.4/2002/114; E/CN.4/2001/99*.

<sup>279</sup> According to UN documents, support to national institutions was already regularly included in all projects implemented under the UN Technical Co-operation Programme in the late 1990s. *E/CN.4/1998/104*, para. 41. An outside observer can draw the same conclusion when browsing through the status reports of the Voluntary Fund for Technical Co-operation from the late 1990s onwards.

<sup>280</sup> The first joint projects between UNDP and the Centre for Human Rights had already been carried out in the late 1980s. However, it was not until ten years later, in 1998, that the co-operation between the Centre for Human Rights/OHCHR and UNDP was formalised by a Memorandum of Understanding. Integrating Human Rights with Sustainable Human Development. A UNDP Policy Document, January 1998, 6-11, 13, and 15. It is worth noting that UNDP Regional Bureau for Europe and the CIS had also launched its own regional programme for democracy, governance and participation in 1994. A central part of this programme was the support to the creation and strengthening of ombudsman and national institutions. In this framework, UNDP organised, for instance, workshops on ombudsman and human rights institutions. "*Support for Ombudsman and Human Rights Institutions*". *Regional Bureau for Europe and the CIS [undated]*.

<sup>281</sup> A case in point is the UNDP-OHCHR four-year joint programme, which was launched in 1999 with a view to “testing programme guidelines and methodologies and to identify best practices and learning opportunities in the development of national capacity for the promotion and protection of human rights and in the application of a human rights approach to development programming”. One of the five “windows” of the programme concentrated on assisting in the development of national plans for human rights promotion, including the creation of appropriate national human rights institutions. After a Mid-Term Review in 2000, the programme was revised in February 2002 and is now planned to continue until 2005. In 2003, national plans were prepared or evaluated for instance in Cape Verde, Côte d’Ivoire, Jordan, Lithuania, Mauritania, Moldova, Mongolia, and Nepal. *UNDP/OHCHR Programme Document: Human Rights Strengthening – HURIST, GLO/99/615/A/11/31; HURIST: Human Rights in Practice.*

<sup>282</sup> *Human Rights Watch (2001)*, 73; *From Development of Human Rights to Managing Human Rights Development. Overview of the OHCHR Technical Co-operation Programme, Synthesis Report, September 2003*, 55.

<sup>283</sup> These seminars were organised in Africa, Asia, the Pacific as well as in Central Asia and Eastern and Central Europe. On the other hand, the UN activities in the Latin America and the Caribbean were quite limited until the end of the 1990s. One explanation for this could be the strong Ombudsman tradition that prevailed in this region. Recently, the Latin American ombudsmen have shown growing interest in developing their mandates in accordance with the Paris Principles. See *Statement to Create a Network of National Institutions for the Promotion and Protection of Human Rights of the Americas. The Second Annual Regional Meeting of the National Institutions for the Promotion and Protection of Human Rights of the Americas 19-21 November 2000*, which recognises the importance of full conformity with the Paris Principles.

<sup>284</sup> For the regional preference for local solutions, see for example the statement of the Asian governments in connection with the 1993 World Conference on Human Rights (chapter 4.4.2 above). It is also worth noting that the two major Asia-Pacific donors, Australia and New Zealand, earmarked their contributions specifically for national institutions activities in this particular region. *United Nations Voluntary Fund for Technical Co-operation in the Field of Human Rights: 14<sup>th</sup> Status Report on Contributions, 31 October 1999*, 56.

<sup>285</sup> For related activities concerning national institutions, see the following reports of the Secretary-General on national institutions for the promotion and protection of human rights to the General Assembly and the Commission on Human Rights: *A/54/336 (1999); A/56/255 (2001); E/CN.4/1998/47; E/CN.4/1999/95; E/CN.4/2000/103; E/CN.4/2001/99; E/CN.4/2002/114.*

<sup>286</sup> The national institutions that convened in 1993 recommended *inter alia* that the Commission on Human Rights should “take appropriate measures to ensure that the national institutions participate actively, by right and with a specific status, in the work of the United Nations human rights bodies”. *E/CN.4/1994/45, 23<sup>rd</sup> December 1993, B. Recommendations*, para. 1(a). See also the statement of the Federal Human Rights Commissioner of Australia Brian Burdekin at the 1994 session of the Commission on Human Rights, pointing out that national institutions had decided, at their meeting in 1993, to ask the UN to give “appropriate recognition to the role such institutions played in implementing United Nations human rights standards by according them the appropriate status to enable them to participate in the meetings of United Nations human rights bodies in the same way as intergovernmental organizations and accredited non-governmental organizations”. *E/CN.4/1994/SR.48*, para. 41. Similarly, the Manila Declaration of national institutions of April 1995 stated that “the role of national institutions needs to be formally confirmed with a defined status within the United Nations system”. *E/CN.4/1996/8, Annex IV: Manila Declaration*. In spring 1995, the Coordinator for National Institutions Maxwell Yalden, who represented the Canadian Human Rights Commission, addressed a letter to the Secretary-General to inform him of the national institutions’ desire to be granted a status, similar to that of specialized agencies, within the UN. *A/50/452 (1995)*, para. 35.

<sup>287</sup> See the first report of the UN High Commissioner for Human Rights to the UN General Assembly, *A/50/36 (1995)*, para. 6(f), outlining the fundamental principles which should guide international co-operation in the field of human rights. See also the report of the Secretary-General from 1996 which reminds the Commission on Human Rights of the effective participation of national institutions in the World Conference on Human Rights in 1993 and the success that they achieved in having their own text incorporated as part of the final documents of the Conference. *E/CN.4/1996/48*, para. 55. For a stronger position, see the Secretary-General’s report of 1997, stating that “in view of their past and potential contribution, it would be appropriate for the Commission [...] to make a determination concerning the participation of national institutions [...]” and outlining some possible forms of such participation. *E/CN.4/1997/41*, paras. 41-42. Similarly, the 1997 report to the General Assembly emphasises the benefits of the national institutions’ participation in the organization’s work and refers to the granting of a distinct status to national institutions as giving “tangible form to the frequent expressions of support by the United Nations to the development of such institutions”. *A/52/468 (1997)*, para. 24.

<sup>288</sup> According to the Secretary-General’s report to the General Assembly of 1999, treaty monitoring bodies systematically request States Parties to submit information on their national institutions and that consultations with established national institutions is a normal practice almost for all of the established working groups, special

rapporteurs and independent experts of the Commission. *A/54/336 (1999)*, paras. 41-42. However, *Gallagher (2000, 208-209)* states that national institutions and the treaty monitoring committees have had very little direct contact with each other in the 1990s: “the treaty bodies have paid little attention to human rights institutions in the analyses of States Parties’ reports” and “recommendations to States Parties on the desirability of establishing such institutions are uncommon”. In this regard, the in-house co-operation has begun to improve in the past few years along with the increase in the human resources assigned to national institutions work. This co-operation has also been prompted due to the interest by treaty bodies. See for instance the Secretary-General’s report of 2000, noting that representatives of treaty bodies and special mechanisms have been invited to meetings of national institutions, and the report of 2002, stating that the Secretariats of different treaty bodies regularly consult the National Institutions Team about the work of national institutions in the country under consideration. *E/CN.4/2001/99*, para. 6; *E/CN.4/2003/110*, para. 41. See also chapter 3 (three) above.

<sup>289</sup> See for example *Human Rights Watch (2001)*. In August 2003, the website of the Moroccan national institution, holding the chairmanship of the International Co-ordinating Committee of National Institutions (ICC), listed twenty-five (25) African national institutions. From these seventeen (17) had been accredited as national human rights institutions by the ICC. These institutions were located in Algeria (\*), Burkina Faso (\*), Cameroon, Ghana, Madagascar (\*), Malawi, Mauritius, Morocco, Niger, Nigeria, Uganda, Rwanda, Senegal, South Africa, Chad (\*), Togo and Zambia (\*). Those marked with an asterisk had been accredited with reservation. *Liste générale des institutions nationales de promotion et de protection des droits de l’homme*, [[www.ccdh.org.ma/](http://www.ccdh.org.ma/)].

<sup>290</sup> In August 2003, the national institutions of the following countries had been accredited by the International Co-ordinating Committee: New Zealand (created in 1977), Australia (1986), Philippines (1987), Indonesia (1993), India (1993), Sri Lanka (1997), Fiji (1999), Malaysia (2000), Nepal (2000), Thailand (2000), and Mongolia (2000). In addition, the Asia-Pacific Forum of National Institutions has accredited the national institution of South Korea (2001). See *Ibid.* and the homepage of the Asia-Pacific Forum at [[www.asiapacificforum.net/](http://www.asiapacificforum.net/)].

<sup>291</sup> In autumn 2003, the ten (10) Latin American national human rights institutions accredited by the International Co-ordinating Committee of National Institutions were located in: Argentina, Bolivia, Colombia, Costa Rica, Ecuador (\*), Guatemala (\*), Honduras, Mexico, Peru and Venezuela. Those marked with an asterisk had been accredited with reservation. In addition, there are many other Ombudsmen in Latin America which carry out tasks relating to the protection and/or promotion of human rights. It is worth noting that the eleventh national institution accredited in America is the Human Rights Commission of Canada. See *OMBUDSNET-database* on the website of the Inter-American Institute of Human Rights at [[www.iidh.ed.cr/comunidades/Ombudsnet/](http://www.iidh.ed.cr/comunidades/Ombudsnet/)]; list of national human rights institutions is available at [[www.ccdh.org.ma/](http://www.ccdh.org.ma/)].

<sup>292</sup> Prior to 1991, national institutions or “human rights Ombudsmen” have been set up in Portugal (1977), France (1984), Spain (1981), Poland (1987), and Denmark (1987). However, for instance, the status of the French national institution was strengthened in the 1990s. Furthermore, new internationally acknowledged national human rights institutions have been set up in Sweden (1994), Bosnia-Herzegovina (1995), Ireland (1998), Greece (2000), and Luxembourg (2000). Central and Eastern European countries have established many national human rights bodies that have not been given the status of a “national institution”, but which often carry out tasks similar to those outlined in the Paris Principles. According to some assessments, there were thirty national human rights institutions in Europe in 2003. See the websites of the Moroccan and French national institutions at [[www.ccdh.org.ma/](http://www.ccdh.org.ma/)] and [[www.commission-droits-homme.fr/](http://www.commission-droits-homme.fr/)].

<sup>293</sup> *The Yaoundé Declaration. The First African Conference of National Institutions for the Promotion and Protection of Human Rights, Yaoundé, Cameroon, 5-7 February 1996*, para. 17.

<sup>294</sup> *Larrakia Declaration. Asia Pacific Forum of National Human Rights Institutions, First Regional Workshop, Darwin, Australia, 8-10 July 1996*.

<sup>295</sup> *Recommendation “For the Future”. Second European Meeting on National Institutions for the Promotion and Protection of Human Rights, Copenhagen 22 January 1997*.

<sup>296</sup> *Statement to Create a Network of National Institutions for the Promotion and Protection of Human Rights of the Americas. Second Annual Regional Meeting of the National Institutions for the Promotion and Protection of Human Rights of the Americas, 19-21 November 2000, Mexico City, Mexico*, para. 1.

<sup>297</sup> For instance, the Asia-Pacific Forum has had a permanent secretariat since its establishment under the auspices of the Australian human rights commission. On the other hand, the African network functions as a loose regional association without a permanent secretariat, and the European network only formalised its international work in November 2002 by deciding on the creation of a liaison office under the auspices of the Council of Europe Commissioner for Human Rights. The American network of national institutions, which is the youngest of regional mechanisms, is only in the process of developing its activities.

<sup>298</sup> Examples include national institutions' participation in the World Conference Against Racism in August and September 2001 and in the General Assembly special session on the rights of the child in May 2002 as well as their recent contribution to the preparation of the international convention on human rights of persons with disabilities.

<sup>299</sup> For treaty monitoring bodies and special procedures see chapter 3.2 above. Possible forms of co-operation between treaty bodies and national institutions have been discussed for example by *Gallagher (2000)*. In recent years, it has become a custom for secretariats' of different treaty monitoring bodies to consult the National Institutions Team about the work of national institutions in countries under consideration. *E/CN.4/2003/110*, para. 41. According to UN reports, consultations with national institutions have also become a normal practice for almost all working groups, special rapporteurs and independent experts established by the Commission. *A/56/244 (2001)*, paras. 53-55. At the same time, efforts have been made to ensure that national institutions are better informed about the relevant work undertaken under the UN Human Rights Programme. For instance, one of the stated objectives of the UN national institutions work in 2003 is to work with the Treaty Body Recommendations Unit in order to provide relevant training and assistance to national institutions and to facilitate the participation of national institution in meetings of UN treaty monitoring bodies and those of thematic and country rapporteurs. *Annual Appeal 2003: Overview of activities and financial requirements*, 70.

<sup>300</sup> In this respect, a good example is the recently developed co-operation mechanism for the implementation of the International Convention Against Torture. *Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, GA Res. 57/199 of 18 December 2002, art. 17-20. As the Protocol has not yet entered into force, it is not yet possible to assess the functioning of the new implementation mechanism.

<sup>301</sup> *E/CN.4/1998/47*, paras. 6-9; *CHR Res. 1997/40 of 11 April 1997* (para. 16), asking the Secretary-General to outline options for possible forms of participation and *CHR Res. 1998/55 of 17 April 1998* (paras. 11-13), requesting the Secretary-General to prepare a detailed analysis of the implications of such forms of participation; *CHR Res. 1999/72 of 28 April 1999* (paras. 14-15), resolving that the prevailing practice of allowing national institutions to address the Commission behind the nameplate "National Institutions" may continue. For similar developments at other international human rights fora, see chapter 4.4.6 below.

<sup>302</sup> This line has been followed by the Office of the High Commissioner, which has confined itself to "facilitate the participation of national institutions" in meetings of the Commission and its subsidiary bodies. See *Annual Appeals 2002 and 2003: Overview of activities and financial requirements*, 28 and 70 respectively. For the task of increasing the participation of national institutions in general see *E/CN.4/2003/110*, para. 58.

<sup>303</sup> *E/CN.4/Sub.2/2003/L.10 of 15 August 2003*, para. 19. The national institutions were thereby allowed to make statements on the same basis as NGOs.

<sup>304</sup> For instance, the Asia-Pacific Forum centred firstly round the Australian and New Zealand national institutions, which were acting as the technical secretariat of the Forum and as the regional co-ordinator of the International Coordinating Committee of National Institutions (ICC). Similarly, the European co-operation evolved as a result of the activity by the three of the most internationally active national institutions in the region: the French, Danish and Swedish national institutions.

<sup>305</sup> For the same view, see *Human Rights Watch (2001, 74)*, acknowledging that OHCHR has played a valuable role in supporting the networking of national institutions, advocating the Paris Principles and urging governments to provide a strong legal foundation for their national institutions.

<sup>306</sup> At the meeting, the Participating States recognised the central role played by pluralistic democracy and the rule of law in ensuring the respect for human rights. Along with other measures relating to the achievement and reinforcement of these elements, the governments affirmed that they "[...] will facilitate the establishment and strengthening of independent national institutions in the area of human rights and the rule of law". In a similar vein, they committed themselves to encouraging existing institutions, including the organisations within the United Nations system and the Council of Europe, to continue and expand the work that they had began in this issue-area. *Document of the Second Conference on the Human Dimension of the CSCE, organised in Copenhagen, 5 June-29 July 1990*, para. 27.

<sup>307</sup> *Document of the Moscow meeting of the Conference on the Human Dimension of the CSCE (1991)*, paras. 29-30. See also *Estébanez (1999)*, 336. This meeting was preceded by an expert seminar in Oslo in 1991, which discussed different national institutions – such as courts, national human rights commissions, complaints commissions, Ombudsmen or mediators – that played a role in the promotion and protection of human rights. Special attention was paid, however, to the potential of the Ombudsman institution as an agency, which could increase confidence in the rule of law, promote fair administrative practices and encourage confidence in the government. *Charter of Paris for a New Europe, adopted in the 1990 Summit of the CSCE, organised in Paris, 19-21 November 1990; Report to the CSCE Council from the CSCE Seminar of Experts on Democratic Institutions, 4-15 November 1991*.

<sup>308</sup> The 1991 Oslo expert seminar supported the idea that the CSCE Office for Free Elections be transformed to a “broadly focused office of democratic institutions”. *Ibid.*, part III. *Helsinki Document 1992 of the CSCE, adopted in Helsinki on 10 July 1992*, part VI, in particular para. 5.

<sup>309</sup> At the same meeting, the Participating States decided to institutionalise the CSCE process by establishing it as a permanent organisation, the Organisation of Security and Co-operation in Europe (OSCE). *Budapest Summit Declaration, adopted at the Budapest Summit of the CSCE, 6 December 1994*, part I, para. 1 and part VIII, paras. 8-13.

<sup>310</sup> See in particular the Declaration adopted at the 1996 Lisbon Summit stating that “the OSCE’s comprehensive approach to security requires improvement in the implementation of all commitments in the human dimension, in particular with respect to human rights and fundamental freedoms. This will further anchor the common values of a free and democratic society in all Participating States, which is an essential foundation for our common security”. *Lisbon Summit Declaration, adopted in the Lisbon Summit of the OSCE, organised on 2-3 December 1996*, para. 9.

<sup>311</sup> As an example of the promotion of the concept of national institutions, it is worth mentioning the Human Dimension seminar on “Ombudsman and National Human Rights Protection Institutions” organised in 1998 in Warsaw. This seminar brought together a total of 242 participants, including representatives from 43 Participating States, 11 representatives from different international institutions, and 29 from NGOs. The seminar was organised in co-operation with UNDP and the Council of Europe. OHCHR contributed to the meeting with two moderators. *Human Dimension Seminar on Ombudsman and National Human Rights Protection Institutions, Warsaw, 25<sup>th</sup>-28<sup>th</sup> May 1998 – Consolidated Summary*. The technical assistance activities with a view to supporting individual governments were carried out in the 1990s under the general Rule of Law Programme of ODIHR. See for instance “What is ODIHR?”.

<sup>312</sup> For instance from 1998 to 2000, assistance was provided to governments or ombudsman institutions of Albania, Armenia, Belarus, Azerbaijan, Estonia, Georgia, Kazakhstan, Kyrgyzstan, Russia, Turkey, Ukraine and Uzbekistan. In 2003, ODIHR gave support for the establishment or the work of national institutions in five countries: Kyrgyzstan (in co-operation with UNDP), Uzbekistan, Armenia, Azerbaijan and Georgia. For ODIHR Projects for 2003 see [[www.osce.org/odihr/projects/](http://www.osce.org/odihr/projects/)]; ODIHR Rule of Law Projects 2000 at [[www.osce.org/odihr/unit-rol.htm](http://www.osce.org/odihr/unit-rol.htm)]; ODIHR Technical Assistance Projects 1999 [[www.odihr.org/actionp2.html](http://www.odihr.org/actionp2.html)]; for ODIHR projects prior to October 1998, see *Ombudsman and Human Rights Protection Institutions in OSCE Participating States. OSCE Human Dimension Implementation Meeting, October 1998: Background Paper 1 by Dean M. Gottehrer*.

<sup>313</sup> See for example the following press releases: “OSCE’s human rights office calls for strengthening of new Ombudsman office in Kazakhstan”, 21 October 2002; “OSCE holds workshop on Ombudsman institution in Yugoslavia”, 12 July 2001.

<sup>314</sup> The meeting was organised in co-operation with the Sub-Committee on Human Rights of the Parliamentary Assembly of the Council of Europe. It endorsed the Paris Principles and expressed its hope that the Council of Europe should institute the practice of biannual meetings for European national institutions, the next meeting being in 1996. Resolution No. 2 on National Institutions for the Protection and Promotion of Human Rights (paras. 2 and 5), contained in *First European Meeting of National Institutions for the Promotion and Protection of Human Rights: Final Report and Resolutions, Strasbourg, 7-9 November 1994*.

<sup>315</sup> *Steering Committee for Human Rights: Implementation of Activity I.11 “Setting up and improving human rights protection mechanism” (Setting up national Human Rights Commissions). Secretariat Memorandum prepared by the Directorate of Human Rights. CDDH (95) 9 rev., 15 May 1995*. The memorandum refers also to the recent UN work in the field and annexes the 1993 UN General Assembly resolution, including the 1991 Paris Principles.

<sup>316</sup> *Ibid.*; *The Recommendation “For the Future”. The Second Meeting of European National Institutions for the Promotion and Protection of Human Rights. Copenhagen, 22 January 1997*. The meeting lobbied for a broader approach, in line with the structures that were already in place in Europe. It is worth noting that, for instance, the three most influential national institutions in Europe – the Ombudsman against Ethnic Discrimination of Sweden, the Danish Centre for Human Rights and the French National Consultative Commission – had been internationally accredited as national institutions, however, they were not Paris Principles institutions in the strict sense of the word. Therefore, the meeting recommended *inter alia* that “the so-called Paris Principles be revised or supplemented to take account of other independent statutory institutions focusing on the promotion and protection of human rights, such as human rights ombudsmen” and that “the Council of Europe in its continued efforts in the field of human rights will include all types of independent statutory institutions focusing on the promotion and protection of human rights”.

<sup>317</sup> *Resolution (97)11 of the Committee of Ministers on co-operation between national human rights institutions of Member States and between them and the Council of Europe*, paras. a and c. The first Council of Europe Round Table with National Human Rights Institutions, which was simultaneously considered as the Third European meeting of National Institutions, was held in Strasbourg, from 16<sup>th</sup> to 17<sup>th</sup> March 2000.

<sup>318</sup> On the basis of the recommendation and the related explanatory memorandum, it is clear that the Committee of Ministers does not favour any particular model, but equally endorses the Paris Principles institutions and the traditional ombudsman model with an extended human rights mandate. Various other bodies of the Council of Europe have also recommended the setting up of specialised institutions, for instance, for the promotion and protection of the rights of the children and for the combat against discrimination and xenophobia. See *ECRI General Comment 2 on the establishment of national institutions to combat against racism from 1997* as well as *Recommendation 1286 (1996)* and *1460 (2000) of the Council of Europe Parliamentary Assembly* requesting the Committee of Ministers to ask the Member States to appoint national children's Ombudsmen.

<sup>319</sup> *Ministerial Conference and Commemorative Ceremony of the 50th anniversary of the European Convention of Human Rights, Rome, 3-4 November 2000: Resolution II on Respect for Human Rights, a Key Factor for Democratic Stability and Cohesion in Europe: Current Issues*, para. 42; *Council of Europe Committee of Ministers, 752<sup>nd</sup> meeting, Appendix 10 (Item 4.2): Granting of observer status with the CDDH to the European Co-ordinating Group of National Institutions for the promotion and protection of human rights, 16 May 2001*.

<sup>320</sup> The 1999 activity report of the Council of Europe notes the continuing trend that had already begun in 1997: the increasing interest in expert input and training concerning national institutions. The corresponding need for expertise and support for both the establishment of national institutions and the management of such bodies is also recognised. *Activities of the Council of Europe 1999 - Report*, 121.

<sup>321</sup> See the Council of Europe database concerning human rights co-operation and awareness division at [[www.coe.int/T/E/Human\\_Rights/Awareness/](http://www.coe.int/T/E/Human_Rights/Awareness/)]. Furthermore, the Council of Europe has acted as the sponsor of the Task Force on Good Governance created under the Stability Pact for South Eastern Europe in 1999 and, in this capacity, it co-ordinated the implementation of a one-year project aimed at the establishment of independent national institutions in the respective geographical area. *Human Rights Information Bulletin No. 48, November 1999-February 2000*, 56. As a result of the project, assistance has been provided for instance to ombudsmen in Kosovo, Bosnia-Herzegovina, Serbia, Montenegro, Macedonia, Albania, and Moldova.

<sup>322</sup> The tasks of the Commissioner also include the provision of advice and information on the protection of human rights and prevention of human rights violations. In this respect, the Commissioner should make use and co-operate with human rights structures in the Member States and where these do not exist, the Commissioner should encourage their establishment. The Commissioner may act on any information relevant to its functions and national Ombudsmen or similar institutions are specifically mentioned as one source of such information. *Resolution (99) 50 of the Committee of Ministers on the Council of Europe Commissioner for Human Rights, 7 May 1999*, in particular art. 1, 3(b)-3(d) and 5.

<sup>323</sup> For other ombudsman meetings see the Annual Reports 2001 and 2002 of the Commissioner for Human Rights at [[www.coe.int/T/E/Commissioner\\_H.R/Communication\\_Unit/](http://www.coe.int/T/E/Commissioner_H.R/Communication_Unit/)].

<sup>324</sup> "Creation of an office liaison for the European National Human Rights Institutions within the Council of Europe Commissioner for Human Rights", 24 January 2003. According to its terms of reference, agreed upon by the Presidency of the European Co-ordinating Group and the Commissioner for Human Rights during the national institutions meeting in November 2002, the purpose of the liaison office is also to promote the role of European national human rights institutions within the Council of Europe; inform national institutions about relevant Council of Europe activities; promote the establishment and development of European national institutions, for instance through the provision of technical assistance; and to collect and disseminate information on the activities of European national institutions.

<sup>325</sup> See *Recommendations of the 2<sup>nd</sup> Council of Europe Round Table with National Human Rights Institutions/ 4<sup>th</sup> European Meeting of National Institutions, in Belfast/Dublin, 14-16 November 2002*, theme 3, para 7(b), envisaging that the Commissioner's Office would "help in defining and interpreting the roles and powers of national institutions by providing an independent opinion if and when requested" in the future. Examples of this new activity include the *Opinion 2/2002 of the Commissioner for Human Rights, Mr. Alvaro Gil-Robles on certain aspects of the review of powers of the Northern Ireland Human Rights Commission* and the *Opinion 7/2004 of the Commissioner for Human Rights, Mr. Alvaro Gil-Robles, on the creation of a national body for counteracting discrimination in Poland*.

<sup>326</sup> However, in 2000 and 2002, the European Council issued two directives requesting the EU Member States to establish or designate a body/bodies to promote the equal treatment of all persons without discrimination on the grounds of racial or ethnic origin and to promote, analyse, monitor and support equal treatment of all persons without discrimination on the grounds of sex. Neither of these directives makes specific reference to the Paris Principles or any other international standards. *European Council Directive 2000/43/EC*, art. 13 and *European Council Directive 2002/73/EC*, art. 8a.

<sup>327</sup> *Communication from the European Commission on "The European Union and the External Human Rights Policy: from Rome to Maastricht and Beyond"*. COM (95) 567 of 22 November 1995, 6.



<sup>328</sup> Funding has been provided through external assistance programmes (such as Phare and Tacis), European Development Fund resources for the African, Caribbean and Pacific countries as well as through the European Initiative for Democracy and Human Rights programme. Examples of this support to national institutions include funding provided in 1995 for the first intercontinental conference which brought together “all the institutions for the promotion and protection of human rights” of three continents (Africa, America and Europe). *Report on the implementation of measures intended to promote observance of human rights and democratic principles (for 1995)*, COM(96) 673, 17 January 1997, 11. During the period from 1996 to 1999, assistance was also given for training quasi-judicial Ombudsmen and for the establishment of offices for the promotion and protection of human rights in the African, Caribbean and Pacific countries as well as for the strengthening of national commissions for human rights and regional Ombudsmen in the Latin America. Furthermore, EU financially supported the organisation of an international conference “Human Rights Commission and Ombudspersons’ Office in Ethiopia”. *On the Implementation of measures intended to promote observance of human rights and democratic principles in external relations for 1996-1999*, COM(2000) 726 final, 14 November 2000, 17-18 and 68.

<sup>329</sup> *Council Regulation (EC) No 975/1999 and No 976/1999 of 29 April 1999*, laying down the requirements for the implementation of development co-operation operations and for the Community operations, other than those of development co-operation, which contribute to the general objective of developing and consolidating democracy and the rule of law and to that of respecting human rights and fundamental freedoms in third countries. According to the Regulations, the EC is authorised to provide financial and technical aid aimed at “supporting local, national, regional or international institutions, including NGOs, involved in the protection, promotion or defence of human rights”. *Ibid.*, paras. 2.1 (e) and 3.1 (e), respectively.

<sup>330</sup> *Commission Staff Working Document. European Initiative for Democracy and Human Rights programming document 2002-2004. Brussels, 20 December 2001, Rev.1 – final*, 25-26.

<sup>331</sup> See for example the resolutions of the Assembly of Heads of States and Governments in 1992 and 1993 in which governments are urged to implement article 26 of the African Charter by establishing and strengthening national institutions. *Resolution on the African Commission on Human and Peoples Rights, 28<sup>th</sup> Ordinary session of the Assembly of Heads of States and Government of the Organisation of African Unity, 29 June-1 July 1992, Dakar, Senegal*, and *29<sup>th</sup> Ordinary session, 28-30 June 1993, Cairo, Egypt*.

<sup>332</sup> For the adoption of the Plan of Action, see *Final Communiqué of the 20<sup>th</sup> Ordinary Session of the African Commission on Human and Peoples’ Rights, 21-31 October 1996*, para. 12. The earlier plans of action adopted, firstly, in 1988 and, then, for the period from 1992 to 1996 had only partially been implemented because of the resource constraints faced by the Commission. The 1996 Plan of Action therefore continued rather than introduced new activities for the promotion and protection of human rights. *African Commission on Human and Peoples’ Rights: Mauritius Plan of Action 1996-2001*, Introduction and Part I, para. 1.

<sup>333</sup> *Ibid.*, paras. 64-68. As the Secretary to the African Commission asserted, national institutions “[...] will promote citizenship by disseminating the [OAU’s Human Rights] Charter [...] in that role, [...] these institutions will be the logical designers of strategies for how the African Commission, NGOs and other donors can assist local civic education efforts”. See the article “*OAU has role in Civic Education, Says Human Rights Official*”, on the website of CIVITAS Africa.

<sup>334</sup> At the 24<sup>th</sup> Ordinary session in October 1998, the Commission decided that national institutions could be given an observer status, similar to the one given to NGOs. In practice, the observer status was only given for the first time to three national institutions in spring 2000. *Final Communiqué of the 27<sup>th</sup> Ordinary session, 27 April- 11 May 2000*, para. 9. By mid-2003, this status has been accorded to thirteen African national institutions. *Sixteenth Annual Activity Report of the African Commission on Human and Peoples’ Rights, 2002-2003. Assembly (AU) 7(II)*, 16.

<sup>335</sup> While affirming the interdependence of the principles of good governance, the rule of law, democracy and development, the governments noted that problems relating to bad governance and corruption, the lack of independence of the judiciary and freedom of the press and association, ignorance and illiteracy and the absence of independent human rights institutions were among the reasons underlying human rights violations in Africa. *OAU First Ministerial Conference on Human Rights in Africa: Grand Bay (Mauritius) Declaration and Plan of Action, 16 April 1999*, paras. 4, 8 and 15.

<sup>336</sup> *Ibid.*, paras. 4, 8 and 15.

<sup>337</sup> See for example the report by *Human Rights Watch (2001)* which states that apart from the introduction of the Plan of Action and the submission of a document to the first OAU ministerial conference on human rights in Africa in 1999, “the African Commission has not made greater efforts towards a more nuanced and advocacy-oriented approach to ensure that the national human rights institutions set up in Africa are autonomous and credible”. See also the annual activity reports and final communiqués of the African Commission between the years 1993-1999, which only include a few references to national institutions.

<sup>338</sup> See for instance *Fifteenth Annual Activity Report of the African Commission on Human and Peoples’ Rights*,

2001-2002, *Done at the 31<sup>st</sup> Ordinary Session of the African Commission held from 2<sup>nd</sup> to 16<sup>th</sup> May 2002 in Pretoria, South Africa*, paras. 37 and 39.

<sup>339</sup> See the *Declaration of Principles of the Miami Summit of the Americas on "Partnership for Development and Prosperity: Democracy, Free Trade and Sustainable Development in the Americas"* (1994).

<sup>340</sup> In the Plan of Action adopted at the Summit, three areas of action were identified in particular, including: to create access to justice and effective means to enforce basic rights and to contribute to the climate of respect for human rights; to develop programs for the promotion and observance of human rights, including educational programs to increase awareness of human rights; and to review training curricula for law enforcement agents. The main points of the Programme of Action are reproduced in "*A New Vision of the OAS*", a working document presented by César Gaviria, Secretary-General of the OAS, to the Permanent Council on 6<sup>th</sup> April 1995.

<sup>341</sup> *Ibid.* Gaviria discusses in his paper more widely the weaknesses of the contemporary OAS system, including the problems related to the promotion and protection of human rights, and provides some guidelines for reform.

<sup>342</sup> Support to national institutions was located under the Inter-American Program for the Promotion of Human Rights. The Ombudsman Programme was funded from the regular budget of the IIHR. See the website of the IIHR at [[www.iidh.ed.cr/](http://www.iidh.ed.cr/)]; *Annual Report 1997 of the Inter-American Commission on Human Rights of the Organisation of American States*.

<sup>343</sup> *AG/RES.1334 (XXV-O/95) on Support for the work of the Inter-American Institute of Human Rights* in which the General Assembly draws attention to the mission of the Inter-American Institute and urges it to continue its vital work and guarantees to support the Institute "so it may continue to carry out education and training activities". In *AG/RES.1405 (XXVI-O/96)*, the Assembly also praises the Institute for its activities to advance the teaching, promotion and harmonious application of international provisions on human rights and urges it to foster the exchange of technical information and educational tools. In *AG/RES.1665 (XXIX-O/99)*, the Assembly encourages international and regional financial institutions to "give their backing and support to the various programmes of the Inter-American Institute of Human Rights and to strengthening the Institute itself".

<sup>344</sup> *AG/RES.1663 (XXIX-O/99) on Inter-American Programme for the Promotion of Human Rights, 7 June 1999*. Under the present "Ombudsman and Human Rights" programme, the IIHR supports national institutions by acting as a technical secretariat to the Ibero-American Federation of Ombudsman and to the Central American Council of Ombudsman and by implementing bilateral projects with ombudsman offices in the Latin America and in the Caribbean. Homepage of the IIHR at [[www.iidh.ed.cr/comunidades/Ombudsnet/English/programa.htm](http://www.iidh.ed.cr/comunidades/Ombudsnet/English/programa.htm)].

<sup>345</sup> *AG/RES.1505 (XXVII-O/97) on the Support for International Exchanges of Experience Among Ombudsmen, 5 June 1997; AG/RES.1601 (XXVIII-O/98) and 1670 (XXIX-O/99) on the Support for the Work of Defenders of the People, Defenders of the Population, Human Rights Attorneys, and Human Rights Commissioners (Ombudsmen) in the Context of Strengthening Democracy in the Hemisphere, 3 June 1998 and 7 June 1999*.

<sup>346</sup> *Ibid.*

<sup>347</sup> *AG/RES.1701 (XXX-O/00) on Evaluation of the Working of the Inter-American System for the Protection and Promotion of Human Rights with a view to Its Improvement and Strengthening, 5 June 2000*.

<sup>348</sup> *AG/RES.1925 (XXXIII-O/03) on Strengthening of Human Rights Systems Pursuant to the Plan of Action of the Third Summit of the Americas, 10 June 2003*. The Third Summit of the Americas, organised in Quebec in 20<sup>th</sup>-22<sup>nd</sup> April 2001, adopted a Plan of Action committing the governments to "strengthen the capacity of governmental institutions mandated with the promotion and protection of human rights, such as national human rights institutions, thereby recognizing the important function that they perform, and contribute to the successful establishment of a network of all such institutions of the Hemisphere" and to "[...] foster independent national human rights institutions by seeking, where appropriate, technical and financial support from multilateral organizations, MDBs and specialized multilateral agencies".

<sup>349</sup> The 1991 Harare Commonwealth Declaration. See the website of the Commonwealth Secretariat at [[www.thecommonwealth.org/](http://www.thecommonwealth.org/)], visited in May 2004. See also the *Background Paper for the Commonwealth Conference of National Human Rights Institutions (2000)*, 1-2.

<sup>350</sup> The two working groups recommended assistance to national institutions. The governmental working group of experts was formed at the Kuala Lumpur meeting of the Heads of Government in 1989 with a view to identifying programmes of enhanced co-operation in the area of human rights and the means of achieving this aim. The group recommended *inter alia* that the Commonwealth Secretariat Human Rights Unit should develop a series of programmes with longer-term goals and objectives, such as a national institutions programme. *Ibid.*; *Report of the Commonwealth Governmental Working Group of Experts on Human Rights, July 1990*, 6-7. This recommendation was further developed in the report by the Advisory Committee of the Commonwealth Human Rights Initiative, an umbrella body established in 1987 by five Commonwealth NGOs. According to Advisory Group's report, "[g]overnments should consider the establishment of special institutions with responsibility for the monitoring and enforcement of human rights". Ombudsman institutions and human rights commissions were mentioned as

examples of such bodies. *Put the World to Rights: Towards a Commonwealth Human Rights Policy. A Report by a Non-governmental Advisory Group chaired by the Hon. Flora MacDonald, August 1991, 22-23 and 179.*

<sup>351</sup> Its earliest activities included the organisation of the pilot workshop on the creation of national human rights strategies, including the establishment of national institutions, in Zambia in June 1992, and the publication of a manual to accompany it. *Setting National Human Rights Strategies: Manual (draft) by John Hatchard.*

<sup>352</sup> Millbrook Action Programme, adopted 12<sup>th</sup> November 1995, contained in *Commonwealth at the Summit. Vol. 2: Communiqués of Commonwealth Heads of Government Meetings 1987-1995.*

<sup>353</sup> The Secretariat has for instance interpreted the words “requisite institutions” of the Millbrook programme to include also national human rights institutions. *National Institutions: Best Practice. Commonwealth Secretariat 2001, 2.*

<sup>354</sup> *Commonwealth Workshop on National Human Rights Institutions, Ottawa, Canada, 30 September-2 October 1992.*

<sup>355</sup> The Conference brought together fifty-eight delegates of national institutions, governments, OHCHR, governmental aid agencies and international organisations. The purpose of the Conference was to enhance the effectiveness of national institutions in the framework of the 1991 Harare Principles. It produced *inter alia* a set of recommendations vis-à-vis the role that the Commonwealth Secretariat should play in the field of national institutions. In addition, the Secretariat was encouraged to continue co-operation with OHCHR in the establishment and strengthening of national institutions and it was also asked to consider the convening of periodic meetings between all of the relevant national bodies, facilitate the creation of an association of national institutions for the exchange of information and experience, and to create an expert group to formulate best practices on the establishment and status of national institutions. *Protecting Human Rights: the Role of National Institutions, Legal and Constitutional Affairs Division of the Commonwealth Secretariat, August 2000, 6-8.*

<sup>356</sup> The scarce literature on national institutions was complemented as early as in 1990 and 1992 with two directories on national institutions located in the Commonwealth area. In 1993, these surveys were supplemented with a Manual on National Human Rights Institutions, aimed at providing guidance to those governments considering the establishment or strengthening their national institutions. See for instance the forewords by the Head of the Commonwealth Secretariat’s Human Rights Unit, in *National Human Rights Institutions: Manual (1993); National Institutions in the Commonwealth. Directory - Survey and Analysis (1992).* Apart from a discussion on ombudsman institutions, the last mentioned publication also includes a chapter on national human rights commissions, written by the Federal Human Rights Commissioner of Australia Brian Burdekin.

<sup>357</sup> *National Human Rights Institutions: Best Practice. Commonwealth Secretariat (2001).* The publication is a result of the 2000 Conference which established an expert group to identify effective ways of establishment and functioning of national institutions. The group included several practitioners from the Commonwealth region as well as the UN Special Adviser on National Institutions.

<sup>358</sup> Consider for instance the following examples, as discussed above in chapters 4.1-4.3: both UN and OAS debated a similar idea of national committees for human rights in the early 1960s; the UN seminar which was organised at the end of 1970s inspired the drafters of the OAU Charter, which now includes a specific provision on national institutions; the Centre for Human Rights assisted the African Commission in drafting and implementing its Plans of Action, including the goal of promoting national institutions; the Council of Europe included national institutions in its programme of activities and began to discuss a recommendation on human rights commissions only a few years after the adoption and endorsement of the first UN guidelines on national institutions in 1978 and 1979; the Commonwealth Secretariat began to study the scope of national institutions in the Commonwealth region in the late 1980s at a time when also the UN had engaged in a similar activity. After the 1993 Vienna Conference and the General Assembly endorsement of national institutions, several organisations introduced national institutions as part of their agenda. For example, in 1994, OSCE, which had recommended the creation of national institutions in 1990 and 1991, upgraded its activities in the field, including co-operation with the UN Centre for Human Rights; the Council of Europe began to reconsider the recommendation on national human rights commissions in 1995 and endorsed the creation of national institutions in 1997; the Commonwealth included national institutions as part of its Plan of Action in 1995; OAU made a similar move in 1996; OAS began to discuss national institutions after its 1994 Summit and expressed its support for ombudsmen and similar bodies for the first time in 1997. While many of the developments of the 1990s can, of course, be also attributed to the expansion of various national institutions and thereby to a growing demand for support to such bodies by governments, the way in which many international organisations define the term “national institution” bears witness to the influence of the UN resolutions, recommendations and activities.

#### 4 SUMMARY AND CONCLUSIONS

In the past decade, a new human rights actor has emerged on the international scene, namely independent national human rights institutions which are based on a set of internationally endorsed standards, the so-called Paris Principles. The Paris Principles envisage the creation of a specific type of national body which is designed to be a guardian, advisor and educator of human rights. It relies upon national governments for its establishment, appointment and funding, however, it should carry out its work impartially, without outside interference, and co-operate closely with other human rights actors both domestically and internationally. A decade ago, only few national human rights institutions existed, whereas today these institutions can be found in at least sixty countries and many international actors support the creation and strengthening of these structures. It is quite extraordinary that one institutional model – albeit a flexible one – has reached such prominence both on the international human rights agenda and in the domestic structures of states.

This study has shown that the present concept and status of national human rights institutions is the outcome of a long process, which began over fifty years ago and which is closely intertwined with the gradual strengthening of the international human rights regime, in particular the one based on the activities of the UN. Historically, the evolution can be divided into three broad stages: the introduction and development of the idea (1946-1978), the “popularisation” of the concept (1978-1990), and the expansion of national human rights institutions (from 1990 onwards). It should be noted that this division is only indicative of the general trend; in practice, the three stages have overlapped and they have all witnessed a gradual development, popularisation and diffusion of the concept. Nevertheless, a chronological categorisation is helpful when exploring the origins and dynamics behind the phenomenon of national institutions. In this respect, it is worth paying particular attention to three parallel lines of development: the specification of the concept of national institution, the changing attitude of governments towards the idea of national human rights bodies and the widening of the scope of activities of the UN in this field. The end of the Cold War and the collapse of the communism clearly marked a turning-point in the development of each of these areas.

#### 4.1 Specification of the Concept of National Institutions

The idea of national bodies which would participate in the promotion of human rights was first introduced in 1946 when the international group of experts preparing the future work of the Commission on Human Rights proposed that governments should set up “national committees” or “information groups” to provide the Commission with information on states’ observance of human rights. The UN Economic and Social Council (ECOSOC) endorsed this idea in a more moderate form, stating that these national institutions could co-operate with governments in advancing the work of the future Commission. The role reserved for the earliest “national human rights institutions” was therefore directed towards the support of governments’ participation in the international human rights fora, rather than the promotion and protection of human rights at the domestic level.

It was only during the course of the next thirty years that the concept started to evolve towards the contemporary notion of a “national human rights institution”. In this respect, two important milestones can be identified. The first was the resolution of the Commission on Human Rights adopted in 1962, which drew on a proposal put forward by the former Chairman of the Commission two years earlier. In this resolution, governments were asked to favour the creation of “national advisory committees for human rights” or similar bodies, which could, for instance, study human rights issues, examine the situation at the national level, offer advice to the government, and help to create public awareness about human rights. Although the sensitive issues relating to the status, structure and powers of such institutions were effectively avoided, this resolution set out the first blueprint for the basic functions of national institutions, namely monitoring, advice and education.

The second milestone was the international seminar, which was organised by the UN in 1978 at the request of the Commission on Human Rights. The objective of the meeting was to suggest guidelines for the structure and functioning of national institutions. The fifty recommendations which were drawn up and subsequently endorsed both by the General Assembly and the Commission on Human Rights, represented the first effort to create a uniform concept of national institutions. Unlike before, these bodies were no longer only defined in terms of their functions, but also in terms of their autonomous, impartial status and their pluralistic

composition. Furthermore, the guidelines broadened the mandate of national institutions considerably. Instead of only being government advisers, human rights monitors and public educators, they were envisaged as advocacy-oriented “public service bodies”, which could also provide free legal assistance, investigate complaints, and apply concrete remedies to individual cases of human rights violations. Nevertheless, the 1978 guidelines did not yet capture in full the modern concept of national institution. Firstly, instead of recommending the creation of *one* key body, the guidelines implied that several national institutions could be established. Furthermore, even though these institutions were given a broad mandate, many of their tasks – most notably those relating to the provision of advice – depended upon the initiative of the government.

Twelve years later, the Commission on Human Rights finally asked the Secretary-General to organise an international workshop in order to reconsider the issue of national institutions. This workshop, which took place in 1991, was the first international meeting which was not convened only to discuss national institutions, but also to engage these institutions in the discussion. Following the recommendations of a group of practitioners, the meeting adopted a new set of international guidelines (“the Paris Principles”), which specified the nature, functions and structure of national institutions. Most importantly, they introduced the concept of *key* national body which would have the general competence in the field of human rights and build close links with other relevant actors both at home and abroad. Furthermore, the principles strengthened the mandate of national institutions, developed the requirements of independence, and elaborated upon the pluralistic composition of these bodies. This new concept was endorsed by the UN Commission on Human Rights in 1992 and by the World Conference on Human Rights and the UN General Assembly in 1993.

Thereafter, the idea of independent human rights bodies has also been approved by several other intergovernmental organisations as well as by international NGOs and expert bodies in the field of human rights. Some of these refer specifically to the Paris Principles, while some others have chosen for a more flexible approach or developed more precise guidelines, which are often strikingly similar to the recommendations adopted in 1991. Moreover, ten years after the international endorsement of the Paris Principles, over fifty governments around the world have created domestic human rights bodies conforming to international requirements. These institutions have succeeded in developing active forms of regional and international co-operation

and also gained some influence at international human rights fora. Apart from the fact that national institutions can presently contribute to international human rights activities by participating at various human rights meetings and conferences, they have also been accorded the right to address several international policy-making and expert bodies in the field. Reflecting the increasing importance of national institutions, their role in the implementation of human rights was recently recognised in a legally binding human rights instrument, the Optional Protocol to the International Convention Against Torture.

#### **4.2 The Changing Attitudes of Governments**

The progress made in the field of national human rights institutions would not have been possible without sufficient political support. Although some governments insisted for several decades that the Commission on Human Rights was not competent to deal with the issue of national institutions as it belonged to the domestic jurisdiction of states, the creation of these institutions has never encountered any clear opposition. Notwithstanding this, governments have been reluctant to accept international guidance in the field. Prior to the late 1970s, several objections were made to promoting a specific model of national institutions or even to defining the tasks that these bodies could undertake. The majority of governments were supportive, in principle, of the idea of domestic human rights bodies, however, they also believed that the government should have a right to decide whether or not these institutions should be set up and how they should be formed. Some governments, mainly those from the Eastern European and Non-aligned groups, explained that this was due to the need to respect each state's legal and political traditions and the principle of state sovereignty. Others, in particular many Western governments, claimed that sufficient structures for the protection of human rights were already in place and therefore, it was not necessary to create additional structures. As a consequence, since the early 1960s, all decisions taken by the UN policy-making bodies on national institutions have been complemented with assurances that the ultimate decision always rests with the national governments.

However, when the international human rights monitoring grew stronger, governments began to reconsider the role of national institutions. As late as the 1970s, one of the main problems

relating to this particular type of body was the lack of conceptual clarity: there was no concise description of the form and function of these bodies. A small group of Western European governments had already advanced the idea that the UN could adopt a more visible role and provide some guidance on the functions of national institutions. This idea did not however gain sufficient support until the end of the 1970s, when many Non-aligned states began to view national institutions as a means for addressing human rights problems without compromising the principle of state sovereignty. The process culminated in 1977 and 1978, when the UN policy-making bodies requested the Secretary-General to organise an international seminar on national institutions in order to draft some possible guidelines for such agencies.

In the 1980s, governments no longer discussed whether national institutions were a desirable part of state structures. The UN policy-making bodies adopted resolutions almost annually recommending the creation of such institutions and, by the end of the decade, even the remaining sceptics, notably the Eastern European states, had given their support to national human rights bodies. The idea that the UN could undertake more active steps to promote national institutions also started to gain ground. Following the shift from standard-setting to implementation and the revaluation of the UN technical assistance activities, the General Assembly authorised the Secretary-General to also provide assistance to the establishment of national institutions. Paradoxically, there was no unified model for the UN Secretariat to follow. The policy-making bodies had avoided referring directly to the 1978 guidelines ever since their initial endorsement; instead, they simply promoted the creation of “effective” and “independent” national institutions, as well as the exchange of information on such bodies and on their establishment. As a consequence, the 1980s witnessed the emergence of a wide range of different kinds of “national institutions” with mandates and powers of varying strength.

It was only in the early 1990s, following the adoption of the 1991 Paris Principles, that governments came to accept the idea that all national institutions should fulfil certain minimum criteria. The final breakthrough took place in 1993 when the World Conference on Human Rights endorsed the establishment of national institutions in accordance with the Paris Principles. Since then, reference to these Principles has become an inherent part of UN resolutions, along with the guarantee of the state’s right to choose the most suitable legal framework for their national institutions. Furthermore, since 1994, governments have repeatedly asked the Secretary-



General to give a “high priority” to requests for assistance from governments wishing to establish and strengthen their national institutions.

### **4.3 The Expanding Role of the United Nations**

It is doubtful that the concept of national institutions would have become so widely accepted if there had not been an international forum such as the UN. Since the 1940s, the UN and its various bodies have provided governments with an important platform for discussion and the exchange of opinions on the structure and tasks of national institutions. These discussions have not only made governments reconsider and redefine both their own role and the UN’s role in the promotion and protection of human rights but also to develop a stronger concept of national human rights institutions. Evidently, the contribution of individual governments or “norm entrepreneurs” to this development has been central and, in principle, any international organisation could have provided a suitable “site for socialisation of states beyond the nation states”. However, by the time the first international guidelines were adopted in 1978, the UN was one of the few organisations in which governments had seriously discussed the question of *domestic* implementation. Moreover, even though domestic human rights structures had also been considered in other international fora, the UN was the first organisation which actually succeeded in creating a strong coalition for the support of independent national institutions.

However, the UN has been much more than a mere forum for intergovernmental negotiations. Since the late 1940s, its Human Rights Secretariat has also engaged in the development, popularisation and diffusion of the new concept. In the first three decades, the governments were still reluctant to accept the idea that the UN could lend support to national institutions and, therefore, the role of the Secretariat was less visible. During this period, it contributed to the development of national institutions mainly through its routine tasks, such as informing governments on the relevant UN resolutions, asking for information on their national human rights structures and future plans in this respect, and reporting on these developments to other members of the international community. Major part of this activity was limited in the beginning to acting as a “messenger” between intergovernmental fora and individual governments. Nevertheless, the Secretariat had the monopoly on collecting, arranging and presenting

information and therefore it had some influence in the eventual content of the reports and the subsequent debates.

In addition to reporting, the Secretariat made several – albeit not always successful – efforts during the period from 1940s to 1960s to place the issue of national institutions on the Commission’s agenda and even to influence the direction of the intergovernmental discussion. One of the most striking attempts in this respect was the 1951 memorandum of the Secretary-General, which suggested the introduction of guidelines and proposed certain functions for national institutions. It is likely that the UN also played an important role in the strengthening of the concept of national institutions. Consider for instance the “milestones” in the evolution of national institutions, which were discussed above. None of these emerged directly from the intergovernmental fora; instead, they were developed in more private settings, often with the support of the Human Rights Secretariat. The most obvious example is the 1978 international seminar which the Secretariat organised as part of its advisory services and which ultimately resulted in the first international guidelines on national institutions.

In the 1980s, the UN’s role in the promotion of national institutions became increasingly apparent. Apart from the fact that the Secretariat followed the requests of policy-making bodies and prepared several substantive reports on existing national institutions, it also issued several recommendations for advancing the concept and developing the future work in the field. It is worth mentioning, for instance, the Secretariat’s proposals for the preparation of a manual or guidebook on national institutions and planning more concrete activities for the support of national institutions. The UN policy-making bodies welcomed the Secretariat’s initiatives, and by the end of the decade, the organisation had already undertaken its first technical assistance activities for the promotion of national institutions. This policy approach was developed further in the 1990s. Firstly, the Secretariat contributed to the development of a more coherent conceptual framework for the UN’s work in this field. Although the meeting was organised upon the initiative of the Commission on Human Rights, the Secretariat had prepared the documents for the meeting and it had chosen the participants and those who would act as experts and rapporteurs of the workshop. Following the Commission’s approval of the Paris Principles in 1992, the Secretariat began to lobby for a new concept of national institutions, together with a

group of influential human rights commissions, in order to ensure that it would be recognised by the World Conference on Human Rights.

The success gained in Vienna in 1993 paved the way for a more active role for the UN in the field of human rights. In the following years, the Secretariat developed the Programme of Action for technical assistance to national institutions, which emphasised the diffusion of the concept of Paris Principles institutions, assisting governments in establishing and strengthening such institutions and supporting regional co-operation between national institutions. Initially, the resources available for undertaking these activities were very limited. However, the UN was able to adopt a considerably more proactive role in the mid-1990s, following the appointment of the Special Adviser on National Institutions and the growing co-operation with a financially stronger actor, the United Nations Development Programme (UNDP). In addition to the organisation of international and regional seminars and workshops, the UN began to focus on various on-site activities, such as the provision of expert advice and technical and material assistance. In other words, the activities were directed increasingly towards assisting individual governments to build their own national human rights structures.

The evolution of national institutions shows that the UN has played an important role in the development and establishment of national human rights structures by functioning both as an intergovernmental arena and as a human rights actor. While it is evident that the UN has not worked in a vacuum, its role has been decisive. If governments, national institutions and individual experts had not been interested in promoting the concept of independent national institutions, the UN would have run short of human resources and financial means which were necessary for the promotion of national institutions. However, at the same time it is clear that without an international organisation such as the UN, these “norm entrepreneurs” would not have found an international actor capable of facilitating, co-ordinating and lobbying the necessary support for their own efforts.

Table 2. Dominant trends in the three phases in the evolution of the national human rights institution.

Period	Concept of national institution	Attitudes of Governments	Role of the UN
<b>Introduction and development of the idea (1946-1978)</b>	Bodies which study human rights, examine situation in the country, educate the public and offer advice to governments (CHR res. 1962)	National institutions as an issue for the domestic jurisdiction of states; tasks often covered by existing arrangements; no unified model can be created; governments should decide institutions' functions	"Forum" for discussion and exchange of information and experience
<b>Popularisation of the concept (1978-1990)</b>	Autonomous, impartial statutory bodies with pluralistic composition, which provide information, study and monitor the observance of human rights and assist governments in their requests (the 1978 guidelines)	National institutions as a useful addition to existing structures if equivalent bodies do not already exist; variations possible in line with the national context	"Forum" for exchange of information on various types of national institutions; "actor" developing technical assistance activities for national institutions
<b>Expansion of national institutions (1990-)</b>	Key national human rights actor with pluralistic composition, which are established by a legislative text to promote and protect human rights through advice, education and settlement of individual cases and to co-operate with other relevant human rights actors domestically and internationally (the Paris Principles)	National institutions as a necessary addition to domestic human rights structures, in particular, in new and emerging democracies; room for variation as long as certain minimum criteria are fulfilled	"Forum" for exchange of information; "actor" promoting the concept, advancing the international role of national institutions and implementing on-site activities for the support of national institutions

## BIBLIOGRAPHY

<b>1 ARTICLES AND MONOGRAPHS</b> .....	<b>ii</b>
<b>2 INTERGOVERNMENTAL ORGANISATIONS</b> .....	<b>x</b>
2.1 UNITED NATIONS .....	x
2.1.1 <i>Economic and Social Council</i> .....	x
2.1.2 <i>Commission on Human Rights</i> .....	x
2.1.3 <i>General Assembly</i> .....	xiv
2.1.4 <i>United Nations Secretariat</i> .....	xviii
2.1.5 <i>Treaty Bodies and Special Rapporteurs</i> .....	xx
2.1.6 <i>Other United Nations' Documents</i> .....	xxii
2.2 UNITED NATIONS RELATED PROGRAMMES AND ORGANISATIONS .....	xxiii
2.3 COMMONWEALTH ASSOCIATION .....	xxiv
2.4 COUNCIL OF EUROPE .....	xxv
2.6 EUROPEAN COMMUNITIES AND EUROPEAN UNION .....	xxvi
2.7 INTER-PARLIAMENTARY UNION .....	xxvii
2.8 ORGANISATION OF AFRICAN UNITY AND AFRICAN UNION .....	xxvii
2.9 ORGANIZATION OF AMERICAN STATES .....	xxviii
2.10 ORGANISATION FOR SECURITY AND CO-OPERATION IN EUROPE (CSCE/OSCE) .....	xxix
<b>3 GOVERNMENTS AND NATIONAL INSTITUTIONS</b> .....	<b>xxx</b>
<b>4 NON-GOVERNMENTAL SOURCES</b> .....	<b>xxxii</b>
<b>5 INTERVIEW</b> .....	<b>xxxiii</b>

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## **2 INTERGOVERNMENTAL ORGANISATIONS**

### **2.1 United Nations**

#### **2.1.1 Economic and Social Council**

##### **ECOSOC Resolutions**

ECOSOC Res. 2/9 of 21 June 1946 on Commission on Human Rights.

ECOSOC Res. 624 B (XXII) of 1 August 1956 on Periodic Reports on Human Rights and Studies of Specific Rights or Groups of Rights.

ECOSOC Res. 772 B (XXX) of 25 July 1960 on National Advisory Committees on Human Rights.

ECOSOC Res. 888 F (XXXIV) of 24 July 1962 on National Advisory Committees on Human Rights.

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## **5 INTERVIEW**

Burdekin, Brian. Visiting Professor, Raoul Wallenberg Institute. Formerly Special Adviser on National Human Rights Institutions to the UN High Commissioner for Human Rights, 16 September 2003 (telephone interview).

## **Principles relating to the status of national institutions<sup>1</sup>**

### Competence and responsibilities

1. A national institution shall be vested with competence to promote and protect human rights.
2. A national institution shall be given as broad a mandate as possible, which shall be clearly set forth in a constitutional or legislative text, specifying its composition and its sphere of competence.
3. A national institution shall, inter alia, have the following responsibilities:
  - (a) To submit to the Government, Parliament and any other competent body, on an advisory basis either at the request of the authorities concerned or through the exercise of its power to hear a matter without higher referral, opinions, recommendations, proposals and reports on any matters concerning the promotion and protection of human rights; the national institution may decide to publicize them; these opinions, recommendations, proposals and reports, as well as any prerogative of the national institution, shall relate to the following areas:
    - (i) Any legislative or administrative provisions, as well as provisions relating to judicial organizations, intended to preserve and extend the protection of human rights; in that connection, the national institution shall examine the legislation and administrative provisions in force, as well as bills and proposals, and shall make such recommendations as it deems appropriate in order to ensure that these provisions conform to the fundamental principles of human rights; it shall, if necessary, recommend the adoption of new legislation, the amendment of legislation in force and the adoption or amendment of administrative measures;
    - (ii) Any situation of violation of human rights which it decides to take up;
    - (iii) The preparation of reports on the national situation with regard to human rights in general, and on more specific matters;
    - (iv) Drawing the attention of the Government to situations in any part of the country where human rights are violated and making proposals to it for initiatives to put an end to such situations and, where necessary, expressing an opinion on the positions and reactions of the Government;

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<sup>1</sup> Annexed to *GA Res. 48/134 of 20 December 1993*.

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- (b) To promote and ensure the harmonization of national legislation regulations and practices with the international human rights instruments to which the State is a party, and their effective implementation;
  - (c) To encourage ratification of the above-mentioned instruments or accession to those instruments, and to ensure their implementation;
  - (d) To contribute to the reports which States are required to submit to United Nations bodies and committees, and to regional institutions, pursuant to their treaty obligations and, where necessary, to express an opinion on the subject, with due respect for their independence;
  - (e) To cooperate with the United Nations and any other organization in the United Nations system, the regional institutions and the national institutions of other countries that are competent in the areas of the promotion and protection of human rights;
  - (f) To assist in the formulation of programmes for the teaching of, and research into, human rights and to take part in their execution in schools, universities and professional circles;
  - (g) To publicize human rights and efforts to combat all forms of discrimination, in particular racial discrimination, by increasing public awareness, especially through information and education and by making use of all press organs.

#### Composition and guarantees of independence and pluralism

1. The composition of the national institution and the appointment of its members, whether by means of an election or otherwise, shall be established in accordance with a procedure which affords all necessary guarantees to ensure the pluralist representation of the social forces (of civilian society) involved in the promotion and protection of human rights, particularly by powers which will enable effective cooperation to be established with, or through the presence of, representatives of:
  - (a) Non-governmental organizations responsible for human rights and efforts to combat racial discrimination, trade unions, concerned social and professional organizations, for example, associations of lawyers, doctors, journalists and eminent scientists;
  - (b) Trends in philosophical or religious thought;
  - (c) Universities and qualified experts;
  - (d) Parliament;
  - (e) Government departments (if these are included, their representatives should participate in the deliberations only in an advisory capacity).

2. The national institution shall have an infrastructure which is suited to the smooth conduct of its activities, in particular adequate funding. The purpose of this funding should be to enable it to have its own staff and premises, in order to be independent of the Government and not be subject to financial control which might affect its independence.

3. In order to ensure a stable mandate for the members of the national institution, without which there can be no real independence, their appointment shall be effected by an official act which shall establish the specific duration of the mandate. This mandate may be renewable, provided that the pluralism of the institution's membership is ensured.

#### Methods of operation

Within the framework of its operation, the national institution shall:

(a) Freely consider any questions falling within its competence, whether they are submitted by the Government or taken up by it without referral to a higher authority, on the proposal of its members or of any petitioner;

(b) Hear any person and obtain any information and any documents necessary for assessing situations falling within its competence;

(c) Address public opinion directly or through any press organ, particularly in order to publicize its opinions and recommendations;

(d) Meet on a regular basis and whenever necessary in the presence of all its members after they have been duly convened;

(e) Establish working groups from among its members as necessary, and set up local or regional sections to assist it in discharging its functions;

(f) Maintain consultation with the other bodies, whether jurisdictional or otherwise, responsible for the promotion and protection of human rights (in particular ombudsmen, mediators and similar institutions);

(g) In view of the fundamental role played by the non-governmental organizations in expanding the work of the national institutions, develop relations with the non-governmental organizations devoted to promoting and protecting human rights, to economic and social development, to combating racism, to protecting particularly vulnerable groups (especially children, migrant workers, refugees, physically and mentally disabled persons) or to specialized areas.



Additional principles concerning the status of commissions  
with quasi-jurisdictional competence

A national institution may be authorized to hear and consider complaints and petitions concerning individual situations. Cases may be brought before it by individuals, their representatives, third parties, non-governmental organizations, associations of trade unions or any other representative organizations. In such circumstances, and without prejudice to the principles stated above concerning the other powers of the commissions, the functions entrusted to them may be based on the following principles:

- (a) Seeking an amicable settlement through conciliation or, within the limits prescribed by the law, through binding decisions or, where necessary, on the basis of confidentiality;
- (b) Informing the party who filed the petition of his rights, in particular the remedies available to him, and promoting his access to them;
- (c) Hearing any complaints or petitions or transmitting them to any other competent authority within the limits prescribed by the law;
- (d) Making recommendations to the competent authorities, especially by proposing amendments or reforms of the laws, regulations and administrative practices, especially if they have created the difficulties encountered by the persons filing the petitions in order to assert their rights.

**National human rights** institutions have increasingly been the object of academic study, leading to their recognition as a distinct, and in many ways unique, concept in international human rights law and practice. In this study, the author takes a systematic and analytical approach, by looking into how the United Nations has contributed to the increasing role played by national human rights institutions on the international scene.

Focusing on the evolution and spreading of national human rights institutions and the decade-long work by the United Nations in this field, this study introduces one more case demonstrating that international organisations can indeed make a difference.

After discussing the normative status of the Paris Principles, the study sets out by analysing the concept of national human rights institutions and its historical evolution from the 1940s to 1990s. It then moves on to describe and analyse the strategies and forms of active support used by the UN to advocate national institutions through the 1990s. Finally, the study concludes by identifying three main stages and three important lines of development in the evolution of national institutions in the United Nations framework.

This study is based on the author's PhD dissertation "Establishing National Human Rights Institutions: The Role of the United Nations", defended at the Department of Law of the European University in November 2004.

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