

States are required to report, under article 16 on the "measures which they have adopted and the progress made in achieving the observance of the rights recognised".²³⁶ As in article 2(1) there is an implicit question-mark over how, and to what extent, the reporting obligation extends to those rights that are not "recognised" in the Covenant. Although this question was raised by the Secretary-General in 1956,²³⁷ no explanation was given in the drafting process that followed. The practice of the Committee, reinforced by the acquiescence of the States Parties, indicates that it is understood that reports are required on all the rights in the Covenant on the same basis.

It is also possible to argue here that in so far as those rights not "recognised" are capable of immediate implementation there will be less emphasis on the "progress made" (although as the ICCPR illustrates, this is not entirely out of place with the immediate realisation of rights). It would then suggest that the current interpretation of the provision requires that States report on the "measures they have adopted" with regard to all of the rights; in addition, they will have to show the "progress made" with regard to those rights expressly recognised in the Covenant.

However, there is no indication that the Committee has taken such a stance, indeed it has leaned towards interpreting its powers in accordance with the object or purpose of the implementation system as a whole, in which debate on the minutiae in the wording of Part IV is generally absent. Thus the reporting guidelines (and the debate in the Committee during their drafting) show no signs that the Committee wishes to confine the information contained in the reports to that indicating the "measures adopted" or the "progress made". Rather, the Committee has taken the view that all States Parties are obliged to submit all information necessary for the Committee to make an evaluation of the extent to which they comply with their obligations under the Covenant. Capotorti finds this to be an inevitable conclusion given the power to request submission of reports, which "includes the power to request supplementary information, and this is tantamount to determine the questions to which the States are asked to answer."²³⁸

It is clear nevertheless that with respect to the second periodic reports the Committee, like the HRC, will lay greater emphasis on the "progress made" in the realisation of the rights. As such, it will attempt

²³⁶ The ICCPR contains a substantially similar format in article 40 where States Parties "undertake to submit reports on the measures they have adopted which give effect to the rights recognized herein and on the progress made in the enjoyment of those rights".

²³⁷ UN Doc.A/2929, *supra*, note 33, at 117 para.5.

²³⁸ Capotorti, *supra*, note 15, at 135.

to avoid the repetition of questions asked in the first stage of reporting and concentrate on the changes that have occurred in the intervening period. Nevertheless, the Committee has at the present stage, had no experience of considering a second periodic report in which it considered the first report itself. The many questions of continuity relating to what issues to raise, and how to follow up on issues considered previously, will have to be dealt with when the Committee comes to consider such periodic reports.

Under article 17 States parties should indicate the "factors and difficulties" affecting the degree of fulfilment of the rights.²³⁹ Alston has described the problem facing the Committee in persuading States to be open about the difficulties encountered in implementing the Covenant as the "principle dilemma".²⁴⁰ In one case, a State objected to the requirement that States should indicate the difficulties experienced in the realisation of the rights. In particular it argued that the Covenant used the term "may" which indicated that reporting on the difficulties experienced was optional.²⁴¹ It was quickly responded that

"it would make a mockery of the Covenant and distort its very spirit to suppose that it only obliged States to report on the positive aspects of developments; that would also mean disregarding the preparatory work and the international follow-up of the Covenant".²⁴²

This conclusion appears to have been accepted by the State concerned. That it is important for States to report on the problems encountered is conditioned by the assumption that no State will consistently apply the Covenant without problems,²⁴³ and that the Committee has a role to play in facilitating technical assistance.

In general the Committee has received reports that are brief,

²³⁹ Nowak, in noting that the Torture Convention does not explicitly ask for information on the progress made or the factors and difficulties experienced in implementation, comments that

"...it is implicit in any efficient reporting procedure that States parties shall submit all information relevant to the implementation of its international obligations, including both positive and negative developments."

Nowak, *supra*, note 103, at 498.

²⁴⁰ Alston P., "Implementing Economic, Social and Cultural Rights: The Functions of the Reporting Obligations", *Bull.H.R.*, 5 (1989).

²⁴¹ Walkate (Netherlands), E/C.12/1989/SR.15, at 9, para.56.

²⁴² Alston, E/C.12/1989/SR.15, at 15, para.87.

²⁴³ Alston (Abyss), *supra*, note 30, at 360.

generalised and incomplete.²⁴⁴ They have often impeded the process of considering pertinent issues by the fact that the representative has had to fill out the written report orally before the Committee. To some extent the unsatisfactory nature of the reports has been a result of the poor quality of the original reporting guidelines and the difficulties experienced by States parties in drafting the reports. More evidently, however, the reports show a lack of commitment or concern with economic, social and cultural rights generally.

The Committee, for its part, has been extremely active in trying to improve the general methodology and content of the reporting process. In its first General Comment, the Committee stressed that reporting was not merely a "procedural matter designed solely to satisfy each State Party's formal obligation to report to the appropriate international monitoring body".²⁴⁵ It thereafter outlined a number of different objectives that the reporting process was intended to promote. It is perhaps correct to say that even if the Committee only manages to induce States to report in a full and timely manner, that in itself will be a considerable achievement. Whether or not the Committee should set its sights so low, it is clear that poor reporting is a matter that will not be overcome in a short space of time. Accordingly, the Committee has also taken a number of steps towards improving the quality of State reports.

In line with its right to control the content of State reports, the Committee has adopted a set of reporting guidelines to ensure that the principal issues are dealt with in a "methodical and informative manner".²⁴⁶ These "general guidelines" were adopted at the Committee's fifth session to replace the existing guidelines drafted by the Secretary General following an ECOSOC resolution in 1976.²⁴⁷

The old guidelines were considered too general²⁴⁸ and

²⁴⁴ See e.g. Concluding observation on the report of Luxembourg, Neneman, E/C.12/1990/SR.36, at 8, para.31.

²⁴⁵ General Comment No.1, *supra*, note 27, at 87, para.1.

²⁴⁶ E/1992/23, *supra*, note 166, at 7, para.22.

²⁴⁷ ECOSOC Resn.1988(LX), (11 May, 1976), in UN Doc.E/C.12/1989/4, at 3 (1988). A compilation of these guidelines is to be found in E/1991/23, Annex IV, *supra*, note 98, at 88-110.

²⁴⁸ E/1987/28, *supra*, note 164, at 49, para.308.

rendered out of date by the new reporting periodicity.²⁴⁹ In addition to reflecting the developments in the substantive content of the rights, the Committee hoped to ease the reporting burden on States by simplifying the guidelines and providing a consolidated general section to be used in all human rights reporting systems.²⁵⁰

During the drafting of the guidelines, two points of view presented themselves: on the one hand it was felt that the guidelines should be shorter rather than longer, taking into account States' ability to provide detailed reports in the light of their being at present overburdened by reporting obligations²⁵¹ and the ability of the Committee to cope with the voluminous reports that might result.²⁵² On the other hand it was argued that detailed reporting guidelines would help, rather than impede States that have problems with the reporting requirements. Advocates of the latter position correctly pointed out that the reporting guidelines would enable States to have a clearer idea of what was required,²⁵³ would avoid the inclusion of information that was not necessary and would help the domestic authorities responsible for the drafting of the State report, to distribute the various parts of the report to the relevant authority. In addition it might have been argued that although the concerns of developing States have to be considered when drafting such guidelines,²⁵⁴ the fact that many Western States are also party to the Covenant should not be forgotten. To "pitch" the guidelines at a very general level would

²⁴⁹ E/1990/23, *supra*, note 184, at 73, para.288.

²⁵⁰ The meeting of Chairpersons recommended that an agreement should be made as to a consolidated introductory section for all human rights reports covering matters such as the size and organization of the country and its legal and judicial system. Alston, E/C.12/1989/SR.1, at 10, para.47.

²⁵¹ *See e.g.*, Neneman, E/C.12/1990/SR.15, at 11, para.56. One member noted that if the guidelines were made too complicated, States whose statistical services were not sufficiently developed might be deterred from reporting at all. Neneman, E/C.12/1987/SR.23, at 3, para.11.

²⁵² *See e.g.*, Neneman, E/C.12/1989/SR.23, at 11, para.90; Mrachkov, E/C.12/1989/SR.3, at 5, para.14.

²⁵³ *See e.g.*, Sparsis, E/C.12/1990/SR.47, at 6, para.20.

²⁵⁴ Note could be made, however, that the guidelines of the African Commission under the African Charter on Human and Peoples' Rights are said to be "far more lengthy than those available for other international human rights instruments". Gaer, *supra*, note 26, at 31.

not encourage the presentation of sufficiently detailed reports by the more developed States.²⁵⁵

It was stressed, however, that if detailed guidelines were adopted, emphasis should be placed on the provision of technical assistance to those States that lack the requisite bureaucratic organisation.²⁵⁶ In this respect it was noted that the "Country Profile" section in the guidelines could be prepared by the Secretariat if the State party so wished.²⁵⁷

In the end the guidelines as finally adopted at the Committee's fifth session, generally reflect the latter point of view. On the whole the guidelines represent a considerable improvement. They reflect a greater understanding, on the part of the Committee, of the central issues pertaining to each rights, and avoid the necessity of duplicating reports submitted to other human rights bodies and specialised agencies. Not only will they save a great deal of the Committee's precious time by avoiding the necessity of asking for basic factual information, they will enable it to pinpoint the crucial issues more effectively.

Although lengthy, it is clear from statements made during the adoption of the guidelines, they are not definitive. Thus at the Committee's sixth session, following a study undertaken by a Committee member on the rights of the elderly, a list of additional questions was drafted for insertion into the reporting guidelines.²⁵⁸ Although the questions were not adopted at that session, the Committee was clearly willing to revise the reporting guidelines at appropriate times. It will be essential for the Committee to use this ability to make appropriate changes to the content of the guidelines as it develops a greater understanding of the normative content of the rights.

F) CONSIDERATION OF STATE REPORTS

The technique adopted by the Committee in the consideration of State reports is one of conducting a "constructive and mutually rewarding dialogue"²⁵⁹ with State representatives.

²⁵⁵ Higgins comments that:

"While wordiness is no guarantee of worth, a serious report must necessarily be of a certain length; as must a serious examination."

Higgins, *supra*, note 160, at 19.

²⁵⁶ See e.g., Konate, E/C.12/1990/SR.47, at 8, para.29.

²⁵⁷ See, Alston, E/C.12/1989/SR.23, at 12, para.93.

²⁵⁸ E/1992/23, *supra*, note 166, at 132-134.

²⁵⁹ E/1992/23, *supra*, note 166, at 10, para.33.

Representatives of the reporting States "are entitled, and indeed are strongly encouraged, to be present at the meetings of the Committee when their reports are examined".²⁶⁰ The Committee describes the procedure undertaken in its report:

"31... The representative of the State party was invited to introduce the report by making brief introductory comments and responding to the list of issues drawn up by the pre-sessional working group. A period of time was then allocated to enable the representatives of the specialised agencies to provide the Committee with any observations relevant to the report under consideration. During the same period, members of the Committee were invited to put questions and observations to the representative of the State party. As a matter of practice, the members who had participated in the pre-sessional working group were expected to limit their additional questions and the Committee accorded priority to those members who were not present at the pre-sessional working group. A further period of time, usually not on the same day, was then allocated to enable the representative to respond, as precisely as possible, to the questions asked. It was generally understood that questions that could not adequately be dealt with in this manner could be the subject of additional information provided to the Committee in writing.

"32. The final phase of the Committee's examination of the report consisted of a period during which members were invited to offer any concluding observations they wished to make on the basis of all the information available to them. Rather than taking place on the same day as the final set of replies by the representative of the State party, it was agreed that this final phase would be held at least one day later in order to provide adequate time for members to reflect on the information provided and to reach a balanced evaluation. To facilitate the process it was agreed that

²⁶⁰ *Ibid*, at 9, para.31. Rule 62 of the Rules of Procedure provide:

"Representatives of the reporting States are entitled to be present at the meetings of the committee when their reports are examined. Such representatives should be able to make statements on the reports submitted by their States and reply to questions which may be put to them by the members of the Committee."

Supra, note 118, at 14.

the Chairman would request a particular member, ideally not from the same region as the reporting State, to take initial responsibility for drafting a text which would reflect the views of the Committee as a whole. The Committee would then discuss the draft with a view to adopting it by consensus. The final phase of the consideration of the report did not involve the representative of the State party although the latter was entitled to observe the work of the Committee in this regard. Once the concluding observations were adopted, they were forwarded to the State party concerned and included in the Committee's report. If it so wished, the State party might address any of the Committee's concluding observations in the context of any additional information that it provided to the Committee."²⁶¹

1) Theoretical Underpinnings of the Constructive Dialogue

The constructive dialogue is primarily intended to allow the Committee to enter into a mutually beneficial dialogue regarding the degree to which the State concerned has fulfilled its obligations under the Covenant, without the necessity of formal declarations of compliance or non-compliance.²⁶² There are a number of benefits of such an approach. First, in so far as representatives provide answers to the issues of concern it allows the Committee to make a more precise analysis of the problems and intricacies of the situation.²⁶³ Secondly, it gives the Committee an opportunity to offer informal suggestions and recommendations based on their wide experience in the field.²⁶⁴ Thirdly, it avoids the type of confrontation that may occur with governments following formal declarations of non-compliance.²⁶⁵

2) Effectiveness of the Approach

As Nowak commented, "the efficiency of the procedure depends however primarily on the willingness of States representatives to get down to the problems and engage in a

²⁶¹ E/1992/23, *supra*, note 166, at 9, paras.31-2.

²⁶² *See e.g.*, Robertson, *supra*, note 22, at 344.

²⁶³ Das, *supra*, note 175, at 258.

²⁶⁴ *Ibid.*

²⁶⁵ Fischer, *supra*, note 22, at 168.

constructive dialogue with the Committee".²⁶⁶ Despite the problem of postponements,²⁶⁷ the constructive dialogue approach has been a relatively successful experience for the Committee. It has not suffered for example the problems of the HRC with the refusal of certain States to participate in the process.²⁶⁸ Indeed, in general the participation of States has been good and a number of the discussions detailed and informative.

However the unwillingness of certain States to participate in good faith has presented the Committee with a number of problems. Despite the fact that the approach is supposedly one of mutual benefit, the Committee is often faced by representatives that are either inept, consummately evasive or disarmingly open.

The Committee has consistently emphasised the desirability of States parties' reports to be presented by experts in the fields concerned.²⁶⁹ Unfortunately, a certain number of States continue to dispatch representatives who do not possess sufficient experience or knowledge to be able to answer the questions of the Committee in a proficient manner.²⁷⁰ The Committee has adopted the policy of naming the representatives of the States concerned in Annex V of its annual reports presumably with a view to indicating which States take the reporting process seriously. In addition, it was suggested at the Committee's sixth session, that the Committee should make clear that delegations composed solely of a single Ambassador would in most cases be inadequate.²⁷¹

Although this remains a problem, to a large extent States have provided more than one person in their delegations and have displayed a considerable amount of expertise.²⁷² It is considered that the Committee should look towards the presence of larger delegations with broad expertise. Inevitably, questions generally cover a large range of subjects that are not necessarily the

²⁶⁶ Nowak, *supra*, note 103, at 201.

²⁶⁷ See *below*, text accompanying notes 324-332.

²⁶⁸ See, "Human Rights Committee: Commentary", 20 *I.C.J.Rev.*, 25 (1978). This has not, however, been an enduring problem for the HRC, see, McGoldrick, *supra*, note 23, at 82.

²⁶⁹ See *e.g.*, Mratchkov, E/C.12/1991/SR.10, at 9, para.46; Cf.E/1988/14, *supra*, note 165, at 62, para.362.

²⁷⁰ See *e.g.* concluding observation on the report of Mexico, Alston, E/C.12/1990/SR.11, at 7, para.40.

²⁷¹ See, Alston, E/C.12/1991/SR.10, at 9, para.48.

²⁷² See *e.g.* the list of State delegates which participated in the Committee's sixth session. E/1992/23, Annex V, at 139-141.

responsibility of any single person in the government administration. Thus unlike bodies dealing with civil and political rights, the presence of the Minister of Justice, for example, would not be adequate.²⁷³ A good indication of the ability of the representatives to answer questions is the number of advisors present, and the range of expertise that they bear.²⁷⁴

It is apparent that the Committee, as indeed with many other human rights committees, is often faced by the evasive diplomat who circuitously avoids the questions.²⁷⁵ It is clear that a certain amount of persistence is warranted in such situations and indeed is sometimes enough to elicit adequate responses.²⁷⁶ In addition it is open for the Committee to respond that its questions have not been answered in an adequate manner and request additional information be supplied at a later date.

The fact that the Committee has only a single three-week session per annum also places a certain pressure on the constructive dialogue in terms of time.²⁷⁷ The tendency of State representatives to present their reports at great length²⁷⁸ and of members of the Committee to duplicate their questions²⁷⁹ has stimulated the Committee to place time limits on the various sections of the Constructive dialogue.²⁸⁰ In part this was the response to paragraph 7 of ECOSOC resolution 1987/5²⁸¹ in

²⁷³ Cf. Gaer, *supra*, note 26, at 38.

²⁷⁴ A good example is that of Spain, which was represented for its report on articles 13 to 15 by a delegation of four, including the Deputy Director-General for Legal Affairs for the Ministry of Education and Science, Technical Advisors to the Ministry of Culture and the Ministry of Education and Science, and a Counsellor to the Permanent Mission of Spain at the UN Office in Geneva. See, E/1992/23, Annex V, *supra*, note 166, at 140.

²⁷⁵ See e.g., Representative of Colombia, E/C.12/1990/SR.13-14.

²⁷⁶ See, Dormenval, *supra*, note 10, at 33.

²⁷⁷ It has been noted that lack of time has also seriously affected the operation of CEDAW, see, Burnes A., "CEDAW's Tenth Session", 3 *N.Q.H.R.*, 340 (1991).

²⁷⁸ Cf., Higgins, *supra*, note 160, at 19.

²⁷⁹ Cf., Dormenval, *supra*, note 10, at 32.

²⁸⁰ The suggestion was first made at the Committee's first session that, in order to expedite the Committee's procedure, it might adopt the practice of the specialised agencies and set time-limits on statements. Sparsis, E/C.12/1987/SR.23, at 5, para.23.

²⁸¹ ECOSOC Resn.1987/5, (May 26 1987), in, UN Doc.E/C.12/1989/4, at 27 (1988).

which the Committee was requested, *inter alia* to explore ways of expediting consideration of reports. It was thus decided at the Committee's fourth session that, in line with the practice of the HRC, up to three meetings would be used to consider a report. Accordingly it allocated the following "indicative" times for each "global" report:

- 1) Up to 30 minutes of general introductory comments by the representative of the State party;
- 2) Up to two hours for the representative to respond to the list of written questions.
- 3) Up to three hours for observations from representatives of the Specialised Agencies and questions from members of the Committee.
- 4) Up to two hours for further replies by the State Party.
- 5) Finally, up to one hour, on a subsequent day, for concluding observations by members of the Committee.²⁸²

It is clear from the Committee's practice that these time limits are primarily "indicative", relating more to the need to fulfil its schedule than to engender more accurate and concise responses from the State representative. At its fifth and sixth sessions for example, there is little evidence that these limits were strictly imposed.

Although there is certainly a need for the Committee to maintain a degree of flexibility in the process to allow for real dialogue to take place,²⁸³ State representatives still spend an excessive amount of time discussing irrelevant issues. It is submitted that a greater emphasis should be placed upon the use of time limits to enforce more concise responses. In that respect the Committee might consider take up the proposal made in its second session of imposing time limits on individual answers.²⁸⁴

Certain members of the Committee have also looked towards eliminating duplicitous questioning to expedite the consideration of reports. Although an immoderate amount of duplication in the questioning would not be propitious, not only do State representatives show consummate ability in assimilating various questions on a single issue in giving their response, but the repetition of certain questions gives an indication of the relative

²⁸² Cf. E/1992/23, *supra*, note 166, at 10, para.24.

²⁸³ See e.g., Simma, E/C.12/1991/SR.10, at 11, para.54.

²⁸⁴ See, Sparsis, E/C.12/1988/SR.2, at 2, para.5.

importance of the matter raised.²⁸⁵ The practice seems to be that members repeat questions that they consider to be of considerable importance. It would be unfortunate if this mechanism for assessing the degree of consensus within the Committee over a particular issue was lost.

Several other possibilities for expediting the questioning process have been discussed, such as limiting the Committee to a single set of questions,²⁸⁶ and limiting the oral questions to those members not members of the pre-sessional working group.²⁸⁷ It is considered that in accordance with the idea of setting up a dialogue, the Committee should maintain its ability to ask further questions on issues that have not been adequately responded to. Despite the limits of time and the necessity of allowing all the members of the Committee to ask questions at some stage, it should not be necessary that the members of the Committee generally, or of the pre-sessional working group in particular, be restricted from asking further questions when required.

One of the major problems with the questioning process is that the questions tend to be general and unfocussed.²⁸⁸ Little attention is paid to the actual text of the Covenant and quite often questions are asked as to matters that appear to have only indirect relevance to the rights concerned. It has been noted that this is partially due to the fact that the Committee is still adjusting to the "global" report system.²⁸⁹ Accordingly, it has been suggested that the Committee should deal with each right in turn followed by the

²⁸⁵ The Committee commented in the report of its second session: "It was noted, however, that some duplication was both inevitable and desirable and that it would not be appropriate to seek to limit the type of issues which Committee members might wish to raise." E/1988/14, *supra*, note 165, at 59, para.345.

²⁸⁶ *See*, Jimenez Butragueno, E/C.12/1989/SR.8, at 11, para.63.

²⁸⁷ *See*, Simma, E/C.12/1989/SR.8, at 11, para.62.

²⁸⁸ As Alston noted:

"Regarding the process of questioning... the only way to elicit detailed and focused responses from the Governments concerned was to begin by asking very specific questions. A general question inevitably gave rise to a standard response whereas a specific one, requesting facts and figures which were generally available to the Government, led to targetted and meaningful dialogue. Similarly, a precise question based on information in the Committee's possession would yeild an explicit confirmation or denial, as the case may be. In any case the question and the Government's recorded answer would constitute a tangible contribution to the international debate."

Alston, E/C.12/1991/SR.10, at 5, para.25.

²⁸⁹ *See*, Alston, E/C.12/1991/SR.10, at 5, para.26.

government response.²⁹⁰ It is considered that this might go some way towards focussing the attention of the Committee members upon specific issues, but the principal initiative will have to be taken by the individual Committee members themselves.

Committee members should attempt to relate each question to the specific rights in the Covenant and to demonstrate more clearly their understanding of the guarantee.

One method of ensuring more specific and informed questions would be to introduce a form of division of labour within the Committee, under which members of the Committee would be assigned responsibility for questions in certain areas.²⁹¹ This is a mechanism that has been instituted in other fora.²⁹² Although this might discourage members from asking questions on issues outside their area of responsibility,²⁹³ it would encourage individual members to become specialists in their designated areas and thus engender a greater specificity in questioning. An additional benefit would be to enable the Committee to identify those areas in which it requires further specialist input in future years. It is submitted that the Committee should reconsider the benefits of such an approach with a view to instituting it at some point in the future.

3) The Pre-Sessional Working Group

In response to a request by the Committee,²⁹⁴ ECOSOC in resolution 1988/4 authorised the creation of a pre-sessional working group²⁹⁵ whose principal task (although it had no fixed mandate and could undertake a variety of tasks²⁹⁶) would be "to identify in advance the questions which might most usefully be discussed with the representatives of the reporting States."²⁹⁷ By doing so, it was thought that it would improve the efficiency of the system and facilitate the task of States parties by providing advance

²⁹⁰ *Ibid.*

²⁹¹ *Cf.* Alston, E/C.12/1988/SR.2, at 3, para.8.

²⁹² For example within the Committee of Independent Experts to the European Social Charter.

²⁹³ *See e.g.*, Rattray, E/C.12/1988/SR.22, at 4, para.24.

²⁹⁴ E/1988/14, *supra*, note 165, at 60, para.348; recommendation: at 62, para.361.

²⁹⁵ ECOSOC Resn.1988/4, *supra*, note 247, at 31, para.10.

²⁹⁶ *See*, Alston, E/C.12/1989/SR.1, at 7, para.36.

²⁹⁷ E/1992/23, *supra*, note 166, at 7, para.24.

notice of the issues that might arise in the examination of reports.²⁹⁸ The establishment of the pre-sessional working group was a logical step in the work of the Committee²⁹⁹ given the diverse range of issues covered, their complexity, and the need for precise and detailed information. It has also been noted that by removing the element of surprise, the chances of an altercation between the State concerned and the Committee has been reduced.³⁰⁰

Accordingly a pre-sessional working group composed of five members, appointed by the Chairman, with due regard for a balanced geographical distribution, met for five days prior to the Committee's third, fourth, fifth and sixth sessions. Following a request by the Committee at its fourth session, ECOSOC approved the holding of the working group's session at a time one to three months prior to the Committee's session,³⁰¹ despite the additional (if only marginal) cost. The change in schedule was aimed at allowing sufficient time for the list of questions to be translated into the appropriate language, the transmission of the list to the capital concerned and the preparation of adequate responses by the relevant State Party. It would also allow greater time for the translation and dissemination of the list of issues to Committee members.³⁰² Although the pre-sessional working group met some three months before the Committee's sixth session,³⁰³ there was considerable agreement within the Committee that additional time had to be given to the States concerned.³⁰⁴ It therefore requested that the arrangements be made for holding the meetings of the working group in May, June or July as from 1992.³⁰⁵

Each member of the working group is assigned a particular report, or reports, taking into consideration the preferred areas of expertise.³⁰⁶ He or she is then required to make a particularly

²⁹⁸ E/1988/14, *supra*, note 165, at 62, para.361.

²⁹⁹ E/1992/23, *supra*, note 166, at 8, para.25.

³⁰⁰ *See*, Rattray, E/C.12/1987/SR.4, at 11, para.4.

³⁰¹ ECOSOC Decn.1990/252, (May 25 1990).

³⁰² E/1989/22, *supra*, note 170, at 75, para. 338.

³⁰³ It met from 16-20 September 1991, *see*, E/1992/23, *supra*, note 166, at 3, para.11.

³⁰⁴ *See e.g.*, Rattray, E/C.12/1991/SR.10, at 9, para.44.

³⁰⁵ E/1992/23, *supra*, note 166, at 5, para.17.

³⁰⁶ *Ibid*, at 8, para.26.

detailed study of the report and draw up, with the assistance of a file of information provided by the Secretariat,³⁰⁷ a draft list of the issues which appear to be important for consideration by the working group as a whole. The final lists of issues are then sent to the States concerned and made available to members of the Committee. They are intended to highlight the issues that the working group thought to be important and in no way preclude members of the Committee from raising other issues during the consideration of the report in plenary.³⁰⁸

A list of such questions is transmitted to the permanent delegations of the relevant States together with a copy of the Committee's most recent report and a note which reads:

"The list is not intended to be exhaustive and it should not be interpreted as limiting or in any other way prejudging the type and range of questions which members of the Committee might wish to ask. However, the working group believes that the constructive dialogue which the Committee wishes to have with the representatives of the State party can be facilitated by making the list available in advance of the Committee's session."³⁰⁹

Certain operating problems have been identified with regard to the pre-sessional working group. It was noted by one member of the Committee at its fourth session that, following the experience with the Mexican report, there was a need to streamline the questions prepared by the pre-sessional Working Group.³¹⁰ This was partially evident from the reaction of Luxembourg at the Committee's fourth session to the lengthy list of issues presented to it by the working group, when it asked for a postponement in the consideration of its report.³¹¹ It was noted, however, that the length of the list of issues was partially a reflection of the poor quality of the report.³¹²

Similarly, during the fifth session a certain amount of inconsistency was apparent in the work of the pre-sessional working group. The members of the group did not place emphasis

³⁰⁷ *Ibid.*

³⁰⁸ *See*, Alston, E/C.12/1989/SR.1, at 7, para.36.

³⁰⁹ E/1992/23, *supra*, note 166, at 8, para.28.

³¹⁰ *See*, Alston, E/C.12/1990/SR.7, at 5, para.21.

³¹¹ *See*, Alston, E/C.12/1990/SR.12, at 1, para.2.

³¹² *See*, Simma, E/C.12/1990/SR.12, at 1, para.4.

on the same problems and often the questions reflected the personal interests of the drafter.³¹³ It was noted however that this was somewhat inevitable, given that the questions were to an extent, a reflection of the adequacy of the report itself. As one member commented:

"each list of issues related to a particular case; it was to some extent the reverse reflection of the report with which it dealt and of which it sought to fill the gaps concerning the nature and the amount of information given."³¹⁴

It should be assumed, however, that some of the unnecessary inconsistencies will be ironed out in future with the operation of the revised reporting guidelines and the aid of the Secretariat.

Nowak considers that the consequences of the use of the pre-sessional working group by the HRC has been "to protract rather than streamline the procedure, and the hope for more controlled exchange of views and information between States representatives and members of the Committee has not materialised yet." He goes on to assert that it is only the oral questions that really stimulate "a spontaneous and critical discussion".³¹⁵ However, it must be stressed that for the CESCR the work of the pre-sessional working group is an important element in extending what would otherwise be a brief and unsatisfactory dialogue. The fact that the process is more protracted is really of concern only in so far as it is a drain on the financial resources of the UN which, in the case of the pre-sessional working group, is marginal.

From the point of view of supervising State compliance with the obligations, a sustained dialogue will enable greater specificity and more accurate evaluation. In addition it would be inaccurate to maintain that the Committee does not, by use of the working group, exercise more control over the exchange of views. The pre-sessional working group in theory enables the Committee to direct the oral presentation primarily at those issues of concern to the Committee.

It has to be said that the Committee's consideration of reports has not improved dramatically since the operation of the pre-sessional working group. The questions asked in plenary sessions appear to be equally general, and it is still rare for the Committee to enter into a detailed debate about the issues that have

³¹³ See, Sparsis, E/C.12/1990/SR.33, at 2, para.2.

³¹⁴ Simma, E/C.12/1990/SR.33, at 2, para.3.

³¹⁵ Nowak, *supra*, note 103, at 201.

arisen. The main function of the working group, as indicated above,³¹⁶ has been as a means of ensuring that the Committee is provided with all the information requested by the reporting guidelines.

It is considered that the full potential of the pre-sessional working group will only be realised once States have undertaken to report in a full and accurate manner, and when the Committee has access to sufficient alternative sources of information such that problem areas may be identified at an early stage in the constructive dialogue process. Until that time the working group will function in its present limited manner.

Outside the operation of the constructive dialogue, the Committee has also been able to use the pre-sessional working group to undertake a number of tasks that would otherwise consume the Committee's own precious working time.³¹⁷ In particular, the working group has been mandated with:

- i) the allocation of time limits for the consideration of State reports;³¹⁸
- ii) the transitional arrangements for the extension of the periodicity of reporting to five years.³¹⁹
- iii) making a preliminary study of the draft general guidelines.³²⁰
- iv) considering the issue of how to deal with supplementary reports containing additional information and formulating comments and recommendations on them.³²¹
- v) examining draft general comments.³²²
- vi) considering the structure of the general discussion.³²³

³¹⁶ *See above*, text accompanying note 314.

³¹⁷ For the work of the pre-sessional working group at the Committee's sixth session, *see*, Texier, E/C.12/1991/SR.1, at 7-8, paras.36-8.

³¹⁸ E/1989/22, *supra*, note 170, at 2, para.13. *See*, Alston, E/C.12/1989/SR.1, at 8, para.38

³¹⁹ E/1989/22, *ibid*, at 2, para.13; *See also*, Alston, E/C.12/1989/SR.1, at 8, para.39.

³²⁰ *See*, Simma, E/C.12/1990/SR.1, at 6, para.37

³²¹ UN Doc.E/1990/23, *supra*, note 184, at 3, para.11. Prior to the fourth session the pre-sessional working group considered the additional reports received from the Netherlands, France and Zaire.

³²² E/1992/23, *supra*, note 166, at 9, para.30.

³²³ *Ibid*.

4) Non-Appearance Before the Committee

A recurring problem for the Committee has been the continual deferral by States Parties of the consideration of their reports after they have been scheduled in the Committee's work. Thus at the Committee's fifth session, six States³²⁴ asked to postpone the consideration of their reports until the following Committee session. At the Committee's sixth session, two States made similar requests.³²⁵ For a State to postpone at the last moment seriously disrupts the Committee's procedures. Not only is the Committee forced to re-schedule its consideration of other reports but it is also unable to request new States to appear before it at such short notice.

It was decided at the Committee's fifth session, following the procedure of the HRC,³²⁶ that "on the third occasion that a State party's report is scheduled for consideration, it will, except in truly exceptional circumstances, proceed with the consideration of the report whether or not a representative of the State party concerned is able to be present."³²⁷ It was also decided that this should be reflected in the Committee's rules of procedure.³²⁸ The adoption of this working practice at the Committee's fifth session appeared to have immediate results. Iran eventually appeared before the Committee and two other States (Afghanistan and Panama) made official pledges to submit their reports in time for the Committee's next session, which in fact they did.

The Committee is prepared, however, to accept that States may have a valid reason for their non-appearance.³²⁹ Panama, for example, in asking for a postponement of the consideration of its

³²⁴ Afghanistan, E/C.12/1990/SR.27, at 3, para.16; the Islamic Republic of Iran, *ibid*; the Democratic People's Republic of Korea, *ibid*; Yemen, *ibid*; Syria, E/C.12/1990/SR.29, at 2, para.1; and Panama, E/C.12/1990/SR.35, at 12, para.48. Of these States, the Iranian report had been scheduled for consideration at the Committee's third session and that of Afghanistan at the Committee's first session. Tikhonov, E/C.12/1990/SR.27, at 4, para.18.

³²⁵ Czech and Slovak Federal Republic, E/1992/23, *supra*, note 166, at 14, para.5; and Belarus, *ibid*.

³²⁶ The HRC has actually gone as far as considering a state report without the representative being present (It first did this in 1983 at its 20th session with the report of Guinea). "Human Rights Committee: Commentary", 33 *I.C.J.Rev.*, 39 (1984). Nowak M., "UN Human Rights Committee: Survey of Decisions given up till 1984", 5 *H.R.L.J.*, 199, at 200 (1984).

³²⁷ E/1991/23, *supra*, note 98, at 9, para.35.

³²⁸ E/C.12/1990/SR.28, at 2.

³²⁹ *See*, Sparsis, E/C.12/1990/SR.23, at 12, para.55.

report referred to the fact that it did not have the necessary technical expertise to answer the questions presented to it.³³⁰ The Committee agreed to the postponement of consideration on the basis of the political upheavals experienced in that country since the report was drafted. In such cases however the Committee hoped that the State concerned would notify the Committee as far in advance as possible to avoid last minute withdrawals that may disrupt the work of the Committee.³³¹ Ideally, the Committee should be left enough time to call upon another State to present its report.³³²

It is considered that in the majority of cases, States could quite easily predict, at the time of the meeting of the pre-sessional working group, whether or not they will be able to present the report in the following months. The Committee should seek to gain an undertaking from the States at that time, to the effect that they consider themselves capable of presenting the report at the next session of the Committee. Only in cases where the State has experienced some upheaval in the intervening period should the Committee agree to postpone the consideration of the reports.

5) Sources of Information

Perhaps the most crucial factor in the success of any reporting procedure is the extent to which the supervisory body has access to information other than that provided by the State concerned.³³³ If reliance is placed merely upon the information provided by the State, it is the State that controls the terms of discussion by raising or avoiding issues at will. "Alternative" sources of information provide the Committee concerned with a necessary foil to evaluate the State reports and contribute towards a more balanced assessment of the actual situation in a given country. Additionally, in so far as such information may contain allegations regarding violations of the Covenant upon which the Committee may rely in making its evaluation of the report, the

³³⁰ See, Klein, E/C.12/1990/SR.35, at 12, para.48.

³³¹ E/1990/23, *supra*, note 166, at 76, para.306.

³³² See, Neneman, E/C.12/1990/SR.35, at 13, para.53.

³³³ The Committee makes the following comment in its annual report: "The Committee has consistently noted that access to all relevant sources of information pertaining to economic, social and cultural rights was essential in order to enable it to discharge its monitoring functions effectively". E/1992/23, *supra*, note 166, at 100, para.384.

provision of alternative information can operate in a manner similar to that of a petition.³³⁴

In reality, however, States never have a complete monopoly over the information available to a Committee: Committee members will inevitably bring with them information they have gathered generally as experts in their fields. Nevertheless, in a number of Committees this is the extent to which reference may be made to alternative sources of information. As has been noted, there has been a reluctance, on the part of monitoring bodies, to institutionalise the receipt of information from other sources upon the false premise that it is necessarily less accurate.³³⁵

There are a number of benefits to be gained by allowing a supervisory committee open access to alternative sources of information. First, it removes from individual members the burden of seeking relevant information informally and allows for more consistent and greater amounts of information to be available. Secondly, it allows the Committee as a whole to assess the relevance and accuracy of the information provided. Thirdly, it provides Non-Governmental Organisations (NGO's) with a permanent and formal mechanism through which they might present their concerns which might encourage greater participation. Finally, it allows for the involvement of the Secretariat which might actively seek information on the Committee's behalf.

The text of the Covenant itself makes scant reference to the use of alternative sources of information. Although the specialised agencies may submit reports to ECOSOC "on the progress made in achieving the observance of the provisions of the present Covenant falling within the scope of their activities",³³⁶ nothing is said about the possibility of their participating in the consideration of the reports or of any other bodies submitting information to ECOSOC. The Committee, however, in stressing the importance of alternative information in enabling it to discharge its monitoring functions effectively, has taken the unprecedented step of officially inviting "all concerned bodies and individuals to submit relevant and appropriate documentation to it."³³⁷ The basis for this step and the various forms of information received will be addressed below.

³³⁴ See, in relation to CERD, Buergenthal, *supra*, note 10, at 202.

³³⁵ Alston, *supra*, note 30, at 496.

³³⁶ Article 18 ICESCR.

³³⁷ E/1992/23, *supra*, note 166, at 100, para.386.

a) The Specialised Agencies

As noted above, the Covenant makes specific reference to the possibility of the Specialised Agencies reporting to ECOSOC in the supervisory process. Indeed, that all but two articles in Part IV of the Covenant refer in some manner to the Specialised Agencies, emphasises the important role envisaged for them during the drafting of the Covenant.³³⁸

Although there was considerable textual support for the participation of the Specialised Agencies in the consideration of State reports, following the entry into force of the Covenant, attempts were made to minimise their input. A number of States (particularly the USSR) opposed the consideration of the Agencies' reports and attempted to prevent the Agencies from commenting on State reports, or speaking within the Working Group.³³⁹ The result was that the ILO at least, ceased to prepare special reports for the Working Group.

Although it is clearly unfortunate that the Agencies were actively discouraged from participating in the supervision of the reports, two important points were raised about the of the form of their participation. First, it is apparent that the Agencies may receive copies of the relevant parts of State reports,³⁴⁰ and may submit reports "on the progress made",³⁴¹ but it is open to question whether they are entitled to comment specifically upon the reports of States parties. Ramcharan argues that whereas the travaux préparatoires were "inconclusive" on the point, at the end of the Council discussion "there was a clear agreement among all representatives that the specialised agencies could not comment on the reports of States Parties."³⁴²

It is considered that this is not the most obvious inference to be made from the text of the Covenant. It leaves the Specialised Agencies in the curious position of being able to utilise the information in the States reports to draw up their own reports under Article 18, but not being able to refer to the State reports *per se*. The Committee has not actively sought to clarify this issue.

³³⁸ See above, text accompanying notes 38-40, and 50-60.

³³⁹ See generally, Samson, *supra*, note 38, at 635-637. For an overview of the ILO experience see, "Impact of ILO Policies on the UN", ILO Doc. GB.225/IO/3/3, 16-22 (1984).

³⁴⁰ Article 16(2)(b).

³⁴¹ Article 18.

³⁴² Ramcharan, *supra*, note 63, at 159.

In practice the ILO has undertaken to submit reports "on the results of the operation of various ILO supervisory procedures in the fields covered by the Covenant".³⁴³ The reports do not make specific reference to the State reports, nor do they attempt to make a separate evaluation of the implementation of the Covenant.³⁴⁴ On the other hand, the most recent report of UNESCO, despite being less comprehensive and more general than the ILO reports, does make reference to the State reports indicating matters that have not been dealt with and discrepancies in data.³⁴⁵ As no mention has been made of this development it is assumed that it is satisfactory to all concerned.

The second issue that was raised in the Working Group concerned the active participation of the Agencies in the oral discussion of the reports. Although the Covenant does not refer to the possibility of the Specialised Agencies assisting ECOSOC in the consideration of reports, the Council expressly authorised representatives of the agencies to "take part in the proceedings of the Working Group".³⁴⁶ Samson argues that the attempt to prevent the representatives from speaking "would have been contrary not only to the terms of the Council Resolution establishing the Working Group and to the Rules of Procedure of the Council, which were expressly applicable, but to the relationship agreements between the UN and the specialised agencies".³⁴⁷

The Committee has specifically endorsed in its Rules of Procedure, the right of Specialised Agencies to participate in the debate on State reports within the Committee. Rule 68 in particular states:

"The specialised agencies concerned shall be invited to designate representatives to participate at the meetings of the Committee. Such representatives may make statements on matters falling within the scope of the activities of their respective organisations in the

³⁴³ UN Doc.E/1992/4, at 1 (1991). The reports of the ILO to the Committee are to be found in documents: E/1987/59 (1986); E/1988/6 (1987); E/1989/6 (1988); E/1990/9 (1989); E/1991/4 (1990); E/1992/4 (1991).

³⁴⁴ *See*, Dao (ILO), E/C.12/1988/SR.2, at 5, para.21.

³⁴⁵ *See e.g.*, Comments of UNESCO on the reports of Argentina, the Philippines and Ecuador, UN Doc.E/1990/8, (1989).

³⁴⁶ ECOSOC Resn.1988 (LX), *supra*, note 247, at 5.

³⁴⁷ Samson, *supra*, note 38, at 637.

course of the discussion by the Committee of the report of each State party to the Covenant."³⁴⁸

Amendments made at the fourth session of the Committee in light of its established practice, make it clear that this rule does not impede the representatives of the Specialised Agencies from making specific comments as appropriate.³⁴⁹ Nor are the representatives limited to making those comments at the end of the discussion.³⁵⁰ In fact, the representatives of the Specialised Agencies are generally requested to be the first to make comments upon the report following its oral presentation by the State representative concerned. They have not, however, taken it upon themselves to become involved in the debate at later stages.

It is clear that not all specialised agencies are directly involved in the matters covered by the Covenant. Only a limited number participated in the drafting of the Covenant, and an inter-agency consultation in 1976 elicited interest only from the ILO, WHO, UNESCO and the FAO.³⁵¹ Although the provisions of the Covenant certainly do not limit the participation to these specialised agencies, there is no correlative power for the Committee to demand co-operation. The Committee has recently noted the importance of economic, social and cultural rights in the work of the international financial institutions of the UN.³⁵² As such it has read the reference in article 22 to specialised agencies as including, in addition to the above four agencies, the World Bank (IBRD) and the IMF.³⁵³

A differentiation might be made between co-operation with the ILO for example and co-operation with the financial institutions such as the IMF. Whereas the former can contribute directly to the elucidation of standards within the Covenant, the latter is relevant only in so far as aid given by the institution may effect the economic, social and cultural rights of the population concerned.³⁵⁴ Accordingly it might be concluded that the financial

³⁴⁸ Rules of Procedure, *supra*, note 123, at 16.

³⁴⁹ E/1990/23, *supra*, note 184, at 74, para.293.

³⁵⁰ *Ibid.*

³⁵¹ Sohn, *supra* note 61, at 32-33.

³⁵² E/1990/23, Annex III, *supra*, note 184, at 86-89.

³⁵³ *Ibid.*, at 86, para.2.

³⁵⁴ *See*, Harris D., "Commentary by the Rapporteur on the Consideration of States Parties' Reports and International Co-operation", 9 *Hum.Rts Q.*, 147, at 153 (1987).

institutions have little part to play in the supervisory role of the Covenant.³⁵⁵ However, given the possible utility of statistical indicators in the Committee's supervision of the implementation of the Covenant,³⁵⁶ the financial institutions and other UN organs might have a significant role to play in providing the Committee with an idea of the current level at which certain rights are enjoyed and the progress made over time.³⁵⁷ It is considered that the cooperation of such agencies as the IMF and the IBRD, although not foreseeable in the near future,³⁵⁸ would contribute enormously to the general effectiveness of the Committee's supervision.³⁵⁹

As the Committee noted in its General Comment No.2, "the attendance by representatives of the appropriate United Nations bodies at its first four sessions has, with the notable exceptions of ILO, UNESCO and WHO, been very low. Similarly, pertinent materials and written information had been received from only a very limited number of agencies."³⁶⁰ Even given the fact that the Committee's experience is better than that of its pre-decessor, it is submitted that this is something of an overstatement. The Specialised Agencies have great potential for assisting and developing the work of the Committee and have, as yet, done very little.

³⁵⁵ The term supervision here is intended to exclude the provision of technical assistance (article 22), to which the Committee's General Comment No.2 was directed.

³⁵⁶ See, The General Discussion at the Committee's sixth session, E/1992/23, Chap.VII, *supra*, note 166, at 81-86, paras.332-351.

³⁵⁷ For the potential role of the World Bank in the implementation of the right to food, see, Van Hoof G. and Tahzib B., "Supervision with Respect to the Right to Food and the Role of the World Bank", in de Waart P., Peters P., and Denters E.(eds), International Law and Development, 317 (1988). Alston comments:

"...the position with respect to the right to food or the right to education in a given country would be described in infinitely more detail and in a far more informative way in internal reports regularly prepared by the World Bank, the FAO, UNICEF, and other agencies than in the reports submitted to the Committee by the States themselves."

Alston, *supra*, note 30, at 500.

³⁵⁸ Although such agencies are becoming more involved in the question of human rights generally, their reports are still confidential.

³⁵⁹ Cf. Limburg Principle 96, 9 Hum.Rts Q., 122, at 134-5 (1987).

³⁶⁰ General Comment No.2, UN Doc.E/1990/23, Annex III, at 86-7, para.4, UN ESCOR, Supp.(No.3), (1990).

At the Committee's first six sessions, only the ILO and UNESCO have attended every session. The WHO has attended four sessions and the FAO only two. Similarly, whereas the ILO has submitted written information every session, UNESCO has submitted only two reports and the FAO and WHO have as yet submitted no written information to the Committee. Even the ILO, which has by far the best record, has limited itself to providing the Committee with the relevant extracts of ILO supervisory procedures.

The possible reasons for the poor record of participation are diverse. One may surmise that it is a result, in part at least, of the hostility shown by the Working Group to the Specialised Agencies. Other reasons include the more general inability of the UN and the Agencies to co-operate successfully³⁶¹ and the traditional concern that involvement in human rights would politicise the work of the Agencies and prejudice their future effectiveness.

It is curious that the Committee has not made a concerted effort to encourage the Agencies concerned to resume the form of participation that they were willing to undertake in 1976. At that stage the ILO, for example, resolved to entrust the Committee of Experts on the Application of Conventions and Recommendations with the task of examining the State reports and other available information on the implementation of the Covenant.³⁶² It is considered that ideally this is the level of co-operation that the Committee should look towards.

The attitude of members of the Committee, however, has been that the best way to use the experience of the Specialised Agencies was not necessarily through asking them for information or requesting them to attend the Committee meetings. Rather, members of the Committee should be authorised to make their own inter-disciplinary studies and obtain the necessary information themselves for presentation to the Committee at a later stage.³⁶³ Although this would certainly allow the Committee to tailor the substance and form of the information received from such sources to suit its own needs and would help develop the personal expertise of the Committee members, it is a rather poor substitute for the full participation by the Agencies themselves.

³⁶¹ See, Samson, *supra*, note 38, at 669-670.

³⁶² *Ibid*, at 636.

³⁶³ See, Alston, E/C.12/1989/SR.2, at 7, para.32.

b) Non-Governmental Organisations

The Covenant makes no reference to the participation of Non-Governmental Organisations in the supervisory process. However, by mandating ECOSOC with the responsibility for considering State reports, it is implicit that the supervision would take place in accordance with the Council's normal rules of procedure. According to ECOSOC Resolution 1296 (XLIV),³⁶⁴ Non-Governmental Organisations are, according to their consultative category, entitled to submit written statements and make oral presentations to the Council.³⁶⁵ It would appear to be open to the Council to allow for the provision of NGO information in the consideration of State reports under the Covenant.

However, at the Committee's first session, the question of NGO participation sparked a heated debate.³⁶⁶ It was argued by those who opposed the provision of NGO material, that the Council decisions governing the work of the Committee provided only for the attendance of NGOs.³⁶⁷ Further, the later, more specific, Council resolutions took legal precedence over the earlier general resolution allowing for the participation of NGOs in the work of the Council.³⁶⁸ On the other hand, it was argued that NGO material was essential to the work of the Committee and that there was nothing in the Council's later resolutions that excluded the possibility of the submission of that material.³⁶⁹ The question was eventually referred to ECOSOC which, in Resolution 1987/5,³⁷⁰ resolved the issue by formally invited NGOs to submit

³⁶⁴ ECOSOC Resn.1296 (XLIV), (1968).

³⁶⁵ *See generally*, Chiang P., Non-Governmental Organisations at the United Nations, (1981).

³⁶⁶ *See*, Alston P. and Simma B., "First Session of the UN Committee on Economic, Social and Cultural Rights", 81 A.J.I.L., 747, at 752 (1987).

³⁶⁷ ECOSOC Resn.1984/9, (May 24 1984), *in* UN Doc.E/C.12/1989/4, at 16 (1988).

³⁶⁸ *See*, Sviridov, E/C.12/1987/SR.24, at 9, para.64; Mratchkov, *ibid*, at 10, para.67.

³⁶⁹ *See e.g.*, Simma, E/C.12/1987/SR.24, at 10, para.66; Rattray, *Ibid*, at 10, para.69.

³⁷⁰ ECOSOC Resn.1987/5 (May 26 1987), *in* UN Doc.E/C.12/1989/4, at 27 (1988).

to it "written statements that might contribute to full and universal recognition and realisation of the rights in the Covenant".³⁷¹

In adopting this policy, the Committee was breaking new ground as far as human rights treaty monitoring bodies were concerned. Oddly enough, even though the Committee has taken its mandate to receive such information from ECOSOC rules of procedure, it has not undertaken to allow NGOs to participate in debates on State reports. One exception to this rule has been that individual NGO representatives may participate in their capacity as experts in the Committee's general discussions.³⁷²

As suggested above, the institutionalisation of a mechanism for the submission of information has a number of benefits over the informal process undertaken by other Committees³⁷³ not least because it should encourage greater involvement by NGOs in the Committee's work.³⁷⁴ However, the experience of the Committee thus far has not been promising.³⁷⁵ The only NGOs to attend consistently have been Habitat International Coalition and Rights and Humanity, and in all the Committees sessions there have been only a handful of written statements received from NGOs.

This poor response has not been due to any lack of enthusiasm on the part of the Committee. Indeed in the one case where the Committee was in receipt of detailed information from an NGO it responded by finding the State concerned (the Dominican Republic) to be in violation of its obligations under the Covenant.³⁷⁶ Similarly, NGO information has been used to good effect in the cases of Iran and Panama. The fact that the Committee

³⁷¹ *Ibid*, para.6.

³⁷² *See below*, text accompanying notes 447-8.

³⁷³ Members of CERD and HRC for example, have access to non-governmental information only in their positions as experts, *see* Del Prado J., "United Nations Conventions on Human Rights: The Practice of the Human Rights Committee and the Committee on the Elimination of Racial Discrimination in Dealing with Reporting Obligations of States Parties", 7 *Hum.Rts.Q.*, 492, at 500 (1985). However, under rules 62(1) and (2) of its Rules of Procedure, CAT may receive NGO material. *See*, Zoller A-C., "UN Committee Against Torture" 7 *N.Q.H.R.*, 210 at 251 (1989).

³⁷⁴ Informal mechanisms also prevent the Committee members from using the information other than in asking questions of representatives. *See*, Buergenthal, *supra*, note 10, at 205.

³⁷⁵ There was a certain amount of disappointment, at the Committee's fourth session, that only two NGOs attended. Alvarez Vita, E/C.12/1990/SR.3, at 11, para.69.

³⁷⁶ *See*, E/1991/23, *supra*, note 98, at 64, para.249.

is prepared to rely upon NGO information is extremely encouraging. It suggests that if developed in a more systematic manner, the receipt of NGO information might at some time in the future become assimilated to a form of informal petition system.

The major obstacles to creative NGO participation with regard to the ICESCR seem to relate to the lack of sufficient publicity, and geographical and structural constraints relating to the nature of the organisations working within the sphere of economic, social and cultural rights. The relevant NGOs can be classified as either international "development" NGOs which direct and promote technical and material aid to "underdeveloped" countries, or national "voluntary organisations" which deal with concerns such as welfare rights and housing and which operate purely in the domestic field. Neither category of organisation naturally draws upon the work of human rights bodies, nor would necessarily have consultative status in ECOSOC. Conversely, the existing human rights NGOs have shown a distinct reluctance to become involved with the promotion of economic, social and cultural rights.³⁷⁷

That there is little homogeneity in the types of organisations that might successfully contribute to the Committee's work suggests that is no single method to encourage greater participation. Outside the ever important question of publicity, the most crucial factor will be the degree to which the Committee "is capable of yeilding satisfactory returns" to the input of time and effort by the NGO concerned.³⁷⁸ It should be noted, however, that if NGO participation is premised upon these grounds, the Committee is forced into the position of taking up a more adversarial stance with respect to States, with an emphasis on finding "violations" of the Covenant.

c) Institutional Mechanisms

In order to institutionalise the receipt of information the Committee has requested the Secretariat to establish a separate file containing "all available information" on each of the States Parties whose reports are "currently pending consideration". The

³⁷⁷ See, Tomasevski K., Development Aid and Human Rights, 113-116 (1989). It has also been suggested that NGOs are uncertain about what information they should collect and how to obtain it, see, Steiner H., Diverse Partners: Non-Governmental Organisations in the Human Rights Movement, (1991).

³⁷⁸ Alston, *supra*, note 30, at 502.

Committee has stipulated in addition, that the following information, at least, should be included in the file:

- a) Information on the country contained in any recent reports of the Commission on Human Rights and its Sub-Commission.
- b) Information taken from the two most recent reports of the HRC, CERD, or CEDAW.
- c) Relevant information on the country concerned in the recent reports of the ILO Committee on the Application of Conventions and Recommendations.
- d) Any relevant information on the situation in the country concerned from the WHO.
- e) The relevant statistical information on the country concerned contained in the statistical tables of the UNDP's "World Development Report" and UNICEF's "State of the World's Children Report".
- f) Any UN or Specialised Agency report referred to by a State Party in its report.
- g) Any other relevant documentation submitted to the Secretariat for inclusion in the file.³⁷⁹

Although the files are to be created for States Parties whose reports are "currently pending consideration", it is stated that the files are to be maintained "on a continuing basis".³⁸⁰ It is clear that relevant information may be submitted to the Secretariat at any time, but that a Secretariat "file" will only be created when that State's report is "pending consideration" by the Committee and thus will only be available to the Committee at that time.

The files will arm the Committee with extensive information with which it may more readily assess the level at which rights are enjoyed in the country concerned. However, at the Committee's sixth session, members complained, of the lack of information in the files.³⁸¹ It was noted, in particular, that the file on Syria was merely four pages long.³⁸² Undoubtedly it will take a few years before the files are built up in the manner requested by the Committee. However, that only a few pages of information have been provided at this stage is indicative of the general lack of support provided to the Committee by the Secretariat.

The high priority placed upon independent sources of information by the Committee is also reflected in its decision to

³⁷⁹ E/1992/23, *supra*, note 166, at 100-1, para.386.

³⁸⁰ *Ibid*, at 101, para.387.

³⁸¹ *See*, Alston, E/C.12/1991/SR.10, at 4, para.23.

³⁸² *See*, Simma, E/C.12/1991/SR.10, at 8, para.39.

appoint "liason-officers" from the Committee to follow any pertinent work of other human rights bodies (in particular CEDAW, CERD, CAT and HRC) and report to the Committee at the beginning of each session.³⁸³ This decision appears to be a response to the increasing regularity in which other Committees are dealing with matters that fall within the scope of economic, social and cultural rights.³⁸⁴

In addition the Committee has persisted in its demand for the creation of a "Human Rights Resource Room" for use by members of all of the human rights committees, equipped with documents and statistical information from the UN bodies, regional human rights organisations and non-governmental organisations.³⁸⁵ Although this proposal has been reiterated by members of the Committee since its third session and endorsed by the Meeting of Chairpersons of the Human Rights Treaty Bodies, the Secretariat has yet to take any action. In fact the Secretariat has merely provided a number of wholly unsatisfactory proposals³⁸⁶ which have done nothing but further deteriorate the relations between the Committee and the Centre for Human Rights. In response, the Committee included the following statement in its annual report:

"The Committee observed that it made little sense for the Secretary-General to be offering various forms of technical assistance to States Parties in relation to the Covenant and other instruments, while failing to take a major step specifically requested by the meeting of persons chairing the human rights treaty bodies in 1988 and reiterated by the Committee in 1989, twice in 1990 and in 1991. It therefore expressed the hope that the matter would finally be treated with the urgency it deserved."³⁸⁷

The lack of action by the Secretariat is probably partially due to the overall level of resources made available by the General

³⁸³ E/1990/23, *supra*, note 184, at 75, para.298. Cf. Alston, E/C.12/1991/SR.24, at 6, para.53.

³⁸⁴ For example, the decisions taken by the HRC under article 26 ICCPR concerning social security.

³⁸⁵ Alston, E/C.12/1989/SR.1, at 10, para.48; Simma, E/C.12/1990/SR.29, at 7, para.28.

³⁸⁶ One proposal was for the use of a reading room in the UN library, *see*, Martensen, E/C.12/1991/SR.1, at 4, para.7.

³⁸⁷ E/1992/23, *supra*, note 166, at 98, para.377.

Assembly. However, members of the Committee have made clear their view that notwithstanding resource scarcity, the Centre for Human Rights has been primarily responsible for the failure to provide a resource room.³⁸⁸ It is difficult to understand, given the negligible level of secretariat back-up to the Committee, that this request should present such problems. It appears that the Committee is faced with the task not only of convincing States that it is a serious monitoring body, but also of persuading the Centre for Human Rights that it deserves more attention.

6) Additional Information

It was decided early on in the Committee's work, that "it would not be fair to reject a report presented by a State party on the grounds that it did not comply with the general guidelines."³⁸⁹ It was therefore considered that States should be given the opportunity to provide additional information at a later stage. Similarly, following the procedure of CEDAW, it has also been established that additional information could also be requested by the Committee on questions that were left unanswered following the consideration of the report.

The question of how to deal with the additional information has been addressed by the Committee at its most recent sessions. The possibility of adopting the procedure of the HRC was discussed. There, State reports are assessed for their adequacy by a working group and the Committee is entitled to postpone consideration of a report which is insufficient. It was pointed out that such a procedure was not suitable for the CESCR which met only once a year, as it could seriously disrupt the scheduling for the consideration of the reports.³⁹⁰ Accordingly the Committee will consider all reports scheduled. If, following that consideration, the Committee is in any way dissatisfied with either the written or oral reports, it will request the submission of additional information.

Although the use of written material was intended to expedite the Committee's working methods, it is becoming clear that this is not the case. It is perhaps a reflection of the poor quality of reports submitted to the Committee, which may be improved with the new general guidelines, but at its fifth session, for example, every State that appeared before the Committee was

³⁸⁸ See, Alston, E/C.12/1991/SR.10, at 4, para.24.

³⁸⁹ E/1988/14, *supra*, note 165, at 62, para.360.

³⁹⁰ See, Simma, E/C.12/1988/SR.22, at 9, para.71.

requested to provide additional information. If this trend continues it will place an even heavier burden on the Committee which is already overloaded with reports.

At its sixth session, the Committee was in receipt of a number of pieces of additional information submitted by France,³⁹¹ the Netherlands,³⁹² Zaire,³⁹³ Colombia³⁹⁴ and Jamaica.³⁹⁵ It had been noted at the Committee's fifth session, that the procedure of the HRC was to consider additional information during the examination of that State Party's following report.³⁹⁶ This was considered to be unsuitable as it might mean an unnecessary delay of some four years before the issue was considered again.³⁹⁷ Accordingly, the Committee decided upon the following arrangement. Additional information will be considered by the pre-sessional working group prior to the Committee's following session.³⁹⁸ The member of the Committee who presented the Committee's concluding comments on the State Party's report will make a preliminary evaluation of the additional information.³⁹⁹ Following that, the pre-sessional working group will assess whether the information supplied provided answers to the questions asked by the Committee, and whether it does so in an adequate fashion.⁴⁰⁰ The Committee will then have 45 minutes designated to consider the additional information in plenary session at which a State representative may be present.⁴⁰¹ If any further questions are raised at this point, depending on when the next report is due, the State concerned will be requested to deal with such issues either before or in its next report.⁴⁰² Finally the

³⁹¹ E/1989/5/Add.1

³⁹² E/1989/5/Add.2

³⁹³ E/1989/5

³⁹⁴ E/1989/5/Add.3.

³⁹⁵ E/1989/5/Add.4.

³⁹⁶ *See*, Texier, E/C.12/1990/SR.46, at 2, para.3.

³⁹⁷ *Ibid.*

³⁹⁸ E/C.12/1990/SR.45, at 12, paras.83-85.

³⁹⁹ *See*, Marchan Romero, E/C.12/1990/SR.46, at 3, para.7.

⁴⁰⁰ *See*, Mratchkov, E/C.12/1990/SR.46, at 2, para.5.

⁴⁰¹ *See*, Kouznetsov, E/C.12/1990/SR.46, at 4, para.15.

⁴⁰² *See*, Alston, E/C.12/1991/SR.15, at 5, para.18, and E/C.12/1991/SR.18, at 2, para.1.

conclusions of the Committee following its consideration of the additional information will be contained in a separate chapter in its final report.⁴⁰³

These procedures were operated at the Committee's sixth sessions where the additional information provided by Zaire and Colombia were considered.⁴⁰⁴ Unfortunately three States, whose additional information was due to be considered, requested that the discussion should be postponed until the next report. This was agreed to by the Committee. It is considered that although it is often preferable that the State representatives appear before the Committee during the consideration of reports, at this stage in proceedings the Committee should not compromise its schedule merely on that basis. It is unlikely that the representative concerned will be able to respond any more directly to the questions posed. In some cases the State will already have had the opportunity to respond three times. Thus, the Committee should place importance upon reviewing the additional information according to its schedule whether or not the State is able to send a representative.

Notwithstanding these considerations, the review of additional information appears to be a useful mechanism for the Committee. The conclusions drafted on the information supplied by Zaire, in particular, are detailed and well considered, take into account the arguments presented by the State and make a useful evaluation of areas of concern to the Committee. It is considered that the Committee should endeavour to continue adopting conclusions of that quality which are a credit to its perseverance.

Much as the additional information process has been a success for the Committee, consideration will have to be given to the non-submission of such information. A number of States such as the United Kingdom and Mexico have been requested to provide the Committee with such information and as yet have failed to do so. The Committee will have to establish a procedure to deal with such a situation. It would be appropriate as a start, if the Secretariat were to provide the Committee with an outline of which States have been requested to provide additional information and which have not yet done so and send the appropriate

⁴⁰³ See, Kouznetsov, E/C.12/1990/SR.46, at 5, para.23. See, E/1992/23, Chapter VI, *supra*, note 166, at 76-80.

⁴⁰⁴ E/1992/23, *supra*, note 166, at 76-80, paras.323-331.

reminders.⁴⁰⁵ The Committee may also consider taking action along the lines of the ILO Committee of Experts. There if a request for additional information is not complied with, the question may become one of "public observation".⁴⁰⁶

Additionally, as an incentive to States parties it could adopt the procedure of the HRC where, if the additional information is submitted promptly and fully, the Committee will, if appropriate, defer the date for the submission of the State party's next report.

An interesting development at the Committee's sixth session, which could have considerable impact upon its future working methods, was its approach to the Dominican Republic. It made the following statement in its report:

"The Committee notes that its request for an additional report... has not yet evoked a response from the Government. It notes that in the meantime it has received additional information from several sources, including that contained in document E/C.12/1991/NGO/1, which, if accurate, would give rise to serious concern on the part of the Committee. The Committee thus requests the State party to suspend any actions which are not clearly in conformity with the provisions of the Covenant, and requests the Government to provide additional information to it as a matter of urgency."

The overt implication of this statement is that the Committee expects additional information to be provided as to the new situation over and above that already requested at its previous session. The statement is somewhat ambiguous, however, and does not clearly indicate the Committee's intention. It might be argued, for example, that the Committee is not in fact requesting information as to the new situation, but merely taking note of it. Additionally, it is possible that the Committee does not consider that its initial consideration of the report is "closed" and therefore the receipt of new information is still appropriate.⁴⁰⁷

⁴⁰⁵ This is a procedure adopted by CAT. UN Doc.CAT/C/SR.38, paras 10-11.

⁴⁰⁶ Valticos, *supra*, note 102, at 370.

⁴⁰⁷ The suggestion was made at the Committee's sixth session that there were two kinds of requests for additional information. First, those which merely required the submission of figures, following the completion of the consideration of the report, that would not give rise to further discussion. Secondly, those which required the submission of substantive information such that the provision of the information had to be considered as another stage in the consideration of

Another possibility, which has considerable import, is that the Committee is asserting its authority to request information or reports *ad hoc*, upon receipt of a "complaint" by an NGO or other interested party. Certainly, in so far as the Committee, through ECOSOC, has authority to establish a system for the submission of reports, it may undertake to create a mechanism of reporting in such situations. If this is the case then the Committee will be in a position to operate what might be seen as an "unofficial petition system".

7) The Concluding Comments.

As from its second session, the Committee has adopted the practice of making "concluding observations" or "comments" on the State reports at the end of the constructive dialogue. The precise nature and purpose of the concluding comments, however, has been the subject of a certain amount of confusion on the part of the Committee members. It would appear that they evolved as part of the "constructive dialogue" and represent a stage in the ongoing process of "consideration". As such they do not represent the "suggestions and recommendations of a general nature" mandated by ECOSOC to assist it in undertaking its responsibilities in articles 21 and 22 of the Covenant.⁴⁰⁸

It was noted at all of the Committee's early sessions that the concluding observations were often inconsistent,⁴⁰⁹ imprecise⁴¹⁰ and an "unsatisfactory reflection of the Committee's proceedings."⁴¹¹ This was partially due to the political climate in which the Committee was working, which made it difficult for the Committee to agree upon a stronger formulation.⁴¹² A decision to delay the formulation of concluding comments for at least a day

the report. Here the Committee's consideration could be said to be incomplete and should be resumed at the Committee's next session. Alston, E/C.12/1991/SR.15, at 4, para.13. Although having considerable merit, these proposals were not acted upon by the Committee.

⁴⁰⁸ ECOSOC Resolution 1985/17 para.(f), *supra*, note 89, at 21.

⁴⁰⁹ *See*, Alston, E/C.12/1988/SR.23, at 6, para.57.

⁴¹⁰ *See*, Neneman, E/C.12/1988/SR.23, at 7, para.58.

⁴¹¹ Alston, E/C.12/1989/SR.24, at 5, para.38.

⁴¹² *See*, Alston, E/C.12/1991/SR.10, at 5, para.27. CEDAW for example, briefly introduced the procedure of adopting concluding comments but discontinued it after failing to come to agreement about the statement. *See*, Byrnes A., "The 'Other' Human Rights Treaty Body: The Work of the Committee on the Elimination of Discrimination Against Women", 14 Yale J.I.L. 1, at 21 (1989).

following the consideration of the report concerned, has only partially tackled the problem. A debate on the role of the "discussion leader" in the presentation of the Committee's concluding observations at its fifth session underlined the fact that no coherent conception of the nature of the observations was apparent.⁴¹³ It became apparent in that debate, that the "discussion leader" was merely to present a detailed and considered opinion on the quality of the report. This in no way impeded other Committee members from disagreeing with the discussion leader or presenting their own views.⁴¹⁴ The "conclusions" of the Committee would be drawn up by the rapporteur who would reflect the nature of support for a particular view in the Committee's final report.

The matter was further discussed at the Committee's sixth session following an initial proposal that outlined the criteria upon which the concluding comments should be made.⁴¹⁵ After some discussion, the Committee adopted the following criteria for formulating concluding observations:

- "(a) The extent to which the written report was satisfactory according to the Committee's guidelines;
- (b) The extent to which the responses to written questions were satisfactory, including an indication of any major issues with respect to which no satisfactory response had been received;
- (c) The extent to which the oral and written reports, taken together, had enabled the Committee to identify the major obstacles to the realisation of the rights under consideration;
- (d) The extent to which the State party concerned had demonstrated progress in the realisation of the rights concerned since the consideration of its earlier reports;
- (e) Identification of specific issues in relation to which:
 - i) The Committee requires more information, perhaps in the form of a further written submission;
 - ii) The Committee considered further action to be required in order to satisfy the obligations contained in the Covenant;

⁴¹³ See generally, E/C.12/1990/SR.31, at 6-13.

⁴¹⁴ See e.g., Rattray, E/C.12/1990/SR.31, at 11, para.50.

⁴¹⁵ See, Alston, E/C.12/1991/SR.14, at 11, para.50.

iii) The Committee considered that follow-up action, in terms of technical co-operation or international assistance, might be appropriate."⁴¹⁶

What is clear from these criteria is that the Committee is prepared to declare whether or not it views the reports as being "satisfactory" or otherwise.⁴¹⁷ This is something of a new departure for the Committee, which had previously rejected proposals that the concluding comments should either indicate whether the reports were satisfactory,⁴¹⁸ or which questions had not been answered satisfactorily.⁴¹⁹ In addition, the Committee appears willing to indicate the degree to which States are acting in conformity with the provisions of the Covenant.⁴²⁰ In adopting the criteria, however, members of the Committee stressed that they should not be applied in an excessively formalistic manner,⁴²¹ and

⁴¹⁶ E/1992/23, *supra*, note 166, at 99-100, para.383.

⁴¹⁷ This differs from Rule 66(3)(A) adopted by CERD in so far as it is the quality of reports, not the degree of compliance that is to be considered "satisfactory" or "unsatisfactory". With regard to the operation of this rule in CERD *see*, Buergenthal, *supra*, note 10, at 198.

⁴¹⁸ A proposal was made to include a provision in the Rules of Procedure which read:
 "The consideration of reports by States parties shall conclude with an opinion (statement) whereby the Committee shall inform the Council whether it deems that they way in which the State party fulfils its obligations under the Covenant is, in the main, satisfactory or unsatisfactory. In the absence of consensus among the members of the Committee on this opinion (statement), the matter shall be put to the vote in accordance with the terms of rules 45, 46, 48 and 49 of these rules."

Wimer Zambrano, E/C.12/1989/SR.22, at 9, para.65.

⁴¹⁹ One member proposed that the Committee's report to ECOSOC should include "those questions which, in the opinion of the experts, have not been adequately dealt with." Alvarez Vita, E/C.12/1989/SR.22, at 5, para.33. It was argued in response to this suggestion that it would require the Committee to arrive at conclusions as to which of its questions had not been adequately dealt with which at that time was not possible. Simma, E/C.12/1989/SR.22, at 6, para.37. In particular, it was felt that the Committee "must not be turned into a tribunal for judging States parties." Simma, E/C.12/1989/SR.22, at 7, para.52.

⁴²⁰ Interesting enough CERD did eventually adopt Rule 66(3)A in its Rules of Procedure entitling it to make suggestions and genral recommendations in cases of non-compliance. It has been commented that this gives it a "quasi-judicial" function when dealing with State reports. Buergenthal, *supra*, note 10, at 198.

⁴²¹ *See*, Alston, E/C.12/1991/SR.14, at 11, para.53.

that bearing in mind the experience of CERD,⁴²² there was a need for subtlety and flexibility.⁴²³ Accordingly, the criteria were not intended to require that reference to compliance should be made in every case, but merely that it should remain an option.⁴²⁴

That the Committee has declared its willingness to make evaluations as to the degree of compliance of States, although reflecting the recent practice of the Committee,⁴²⁵ goes some way to clarify the perceived role of the Committee. For some time the Committee was in the paradoxical situation of seeking to avoid the impression that it is passing judgement on the performance of a given State, whilst evidently being forced to move in that direction by the theoretical and practical considerations of efficacy.⁴²⁶ This point of view had led Committee members to argue, rather curiously, that the Committee's role was to undertake an "assessment" of the State reports which would not mean expressing criticism or making a judgement, but rather "including an observation in the Committee's report."⁴²⁷ It has never been evident that the Committee could have undertaken a proper assessment without making critical comments in certain cases.

The assumption by the Committee of such a "quasi-judicial" role was somewhat inevitable given the fact that the Committee is a body of independent experts with authority to receive communications from NGOs. That it has undertaken to make substantive evaluations of State reports will undoubtedly contribute considerably to its perceived effectiveness.⁴²⁸ As has been noted, the willingness of the Committee to question State parties' compliance "serves only to strengthen the value of the body, as

⁴²² The rule adopted by CERD has been considered "too rigid and applying the same criteria to every report, which would prevent the Committee from taking into account the special circumstances of each country and not leave the Committee the required flexibility." Das, *supra*, note 175, at 314.

⁴²³ See, Simma, E/C.12/1991/SR.25, at 4, para.23.

⁴²⁴ See, Alston, E/C.12/1991/SR.25, at 5, para.29.

⁴²⁵ Witness its concluding comments on the report of the Dominican Republic.

⁴²⁶ For the open contradictions of the previous situation see, Note by the Secretary-General, *supra*, note , at 48-49, paras 123-125.

⁴²⁷ Texier, E/C.12/1989/SR.13, at 14, para.71.

⁴²⁸ Buergenthal correctly notes that the effectiveness of the reporting procedure "depends ultimately upon the willingness of the Committee to... make a formal determination that a State Party has not discharged its obligations under the Convention." Buergenthal, *supra*, note 10, at 201.

well as to convey a clear sense of independence and the desire to carry out its mandate effectively".⁴²⁹ It is important to note, however, that the Committee will have to exercise this power with considerable discretion. Consideration will have to be given, for example, to the nature and quality of the information before it and the desirability of taking an adversarial rather than a co-operative stance.

The main obstacle before the Committee in making substantive assessments of State compliance seems to be the limits on its fact-finding capabilities. As Capotorti notes:

"...a specific recommendation presumes an accurate verification of the circumstances.... Thus, whenever examination of reports is superficial... the only possible outcome consists in general recommendations: and these have the function of means for political pressure, rather than of true instruments for supervising the observance of agreements."⁴³⁰

However the Committee has wisely decided that it is not required to make precise evaluations in every case. It is in a position where it may make either specific or more general observations according to the nature and quality of the material before it. What seems to be required then is a balanced approach that recognises the importance of making concrete assessments yet maintains the co-operative approach already shown by the Committee.

8) General Comments

In response to an invitation addressed to it by ECOSOC in paragraph 9 of resolution 1987/5,⁴³¹ endorsed by GA Resolution 42/102, the Committee decided at its second session⁴³² to begin, as from its third session, to prepare general comments on the various articles and provisions of the Covenant "with a view to assisting the States Parties to fulfil their reporting obligations."⁴³³

Although article 21 of the Covenant refers to the possibility of ECOSOC making recommendations of a general nature to the General Assembly, the Committee's assumed power bears little

⁴²⁹ Leckie S., "The Fifth Session of the Committee on Economic, Social and Cultural Rights", 13 Hum.Rts.Q., 539, at 547 (1991).

⁴³⁰ Capotorti, *supra*, note 15, at 138.

⁴³¹ *Supra*, note 281.

⁴³² E/1988/14, *supra*, note 165, at 63, para.367

⁴³³ E/1992/23, *supra*, note 166, at 12, para.42.

relation to that provision. Rather, the Committee's authority to make such comments derives from its mandate to assist ECOSOC in the consideration of the State reports. Whether or not this could be said to be a power implied by the terms of the Covenant, it is evident that no States have objected to such an interpretation.

As the Committee has stressed, the purpose of the General Comments is to assist the States parties in fulfilling their reporting obligations. More explicitly the Committee aims with its general comments:

"to make the experience gained so far through the examination of these reports available for the benefit of all States parties in order to assist and promote their further implementation of the Covenant; to draw the attention of the States parties to insufficiencies disclosed by a large number of reports; to suggest improvements in the reporting procedures and to stimulate the activities of the States parties, the international organisations and the specialised agencies concerned in achieving progressively and effectively the full realisation of the rights recognised in the Covenant."⁴³⁴

The method by which the Committee adopts its general comments was made clear at its second session. Any member of the Committee may propose, at any time, that a general comment on a specific article or articles should be prepared. That member then submits an informal draft general comment for circulation. The Chairman of the Committee may choose either to call for a consideration of the draft in plenary or for its referral to a pre-session working group which considers all relevant proposals and submits a draft text to the Committee. The text of the general comment, as adopted, is included in the Committee's annual report to ECOSOC and is brought to the attention of the General Assembly. Texts are also transmitted to States parties by the Secretary-General. Any comments from States parties or the specialised agencies are to be brought to the attention of the Committee at its following session.⁴³⁵

As has been evident in the practice of the HRC, the use of General Comments is an important mechanism for developing the jurisprudence of a Committee in a way that is not possible in individual comments on State reports. Not only does it provide a

⁴³⁴ *Ibid.*, at 12, para.44.

⁴³⁵ E/1988/14, *supra*, note 165, at 64, para.370.

means by which jurisprudence may be generated at a faster rate (which is particularly important for a Committee in the early stages of its development), but it is also a means by which members of the Committee may come to an agreement by consensus as to an interpretation of a specific provision without facing the difficult issue of addressing individual States.

Thus far the Committee has adopted four General Comments at its third, fourth, fifth and sixth sessions.⁴³⁶ The first three General Comments were directed primarily at outlining the foundations of the reporting system and laying down an analytical framework for the future generation of right-specific jurisprudence. The first, deals with the nature of the reporting system, the second with international measures of technical assistance, and the third with the general obligations embodied in article 2(1). Each one has contributed to a general understanding of the Committee's work and has been warmly received.⁴³⁷ The most recent, and perhaps most important General Comment thus far, has been on the right to housing in article 11- its first General Comment on a substantive article.

The Committee makes clear that the role of General Comments is to convey a sense of the existing jurisprudence of the Covenant as viewed by the Committee.⁴³⁸ Overtly, the function of the General Comments is merely descriptive. However, in its fourth General Comment, the Committee has taken a more constructive approach. In outlining the essential qualitative elements of the right to housing in article 11, it could hardly be said that the Committee was merely describing its current practice, nor could it be said to be a reflection of the information collected from State reports.⁴³⁹ Instead, the Committee appears to be using the General Comment as a means of developing a common understanding of the norms by establishing a prescriptive

⁴³⁶ General Comment No.1, (E/1989/22, annex III); General Comment No.2, (E/1990/23, annex III); General Comment No.3, (E/1991/23, annex III) and General Comment No.4, (E/1992/23, annex III). The text of each General Comment may be found in the Appendices.

⁴³⁷ *See e.g.*, comments by Martenson on General Comment No.2, E/C.12/1990/SR.36, at 2-3, paras 6-7.

⁴³⁸ E/C.12/190/CRP.4, Chap.III, at 9. It is clear nevertheless that the General Comments will not be confined to the substantive rights in the Covenant, General Comments No.1 and 2 thus reflect the broader terms of the Committee's mandate.

⁴³⁹ General Comment No.4 was produced as the result of extensive co-operation with NGOs, one of which drafted the initial version.

definition. By doing so, the Committee appears to be asserting its authority to exercise an interpretative function *in abstracto*, rather than confining that function to its particular role in the consideration of State reports. Although such interpretations are not binding *per se*, it is undoubtedly true that they have considerable legal weight.

In absence of an authoritative procedure for settling divergencies of opinion over the interpretation of the Covenant, it is for the State parties to construe the Covenant for themselves. Individual States may put forward their own interpretations of the Covenant's provisions but such interpretations are by no means authoritative and may be rejected by other States. In fact States have rarely made direct statements regarding the meaning of Covenant provisions. The only real indication as to an agreement by States of a particular interpretation of the Covenant is to be found where there is a significant degree of concurrence in State practice. The relevant State practice is to be found not merely in how the States undertake to realise the rights, but also in their participation in the supervisory processes of the Covenant. As Meron commented:

"... the Committee may be competent to interpret the Convention insofar as required for the performance of the Committee's functions. Such an interpretation *per se* is not binding on States parties, but it affects their reporting obligations and their internal and external behaviour. It shapes the practice of States in applying the Convention and may establish and reflect the agreement of the parties regarding its interpretation."⁴⁴⁰

Indeed, the endorsement by ECOSOC and the General Assembly (in which significant numbers of States parties participate) of the Committee's annual report gives considerable weight to the Committee's interpretations.⁴⁴¹

Given the fact that the terms of the Covenant are particularly vague and the general absence, on the national or international plane, of an understanding of the content of the

⁴⁴⁰ Meron T., Human Rights Law-Making in the United Nations, at 10 (1986). He was speaking specifically about CERD, but his analysis is still pertinent in the context of the Committee.

⁴⁴¹ Tomuschat similarly argues that the HRC, by the fact of its independence and impartiality, is "the best suited meeting point and clearing centre for diverging interpretations" of the ICCPR put forth by States with different ideological standpoints. Tomuschat C., "National Implementation of International Standards on Human Rights", Can.H.R.Y., 31, at 36 (1984/5).

rights, there is a necessity for the Committee to attempt to fill the void. Until it does so, economic, social and cultural rights will remain, in the minds of many, general aspirations which bind States in only the most general manner. The Committee does not benefit by having a petition system in which general principles may be established, and the "constructive dialogue" is a most unsatisfactory means of developing jurisprudence. Considerable importance must be placed, therefore, upon the use of General Comments to develop a general understanding of the norms within the Covenant. Once it has created a qualitative framework outlining the general scope and content of each of the rights, the Committee will be in a far better position to utilise the reporting procedure effectively.

Unfortunately, despite the urgency with which the Committee needs to develop its jurisprudence, it has, as yet, only succeeded in producing one General Comment each session. Ideally, it would be for the Secretariat to produce draft comments for discussion and adoption by the Committee. In absence of sufficient Secretariat resources or motivation to take on such a role, the Committee should look to other means by which the production of General Comments may be increased. In the near future, consideration could be given to sacrificing the constructive, but less productive, general discussion in favour of adopting additional General Comments.

9) The General Discussion

At the Committee's second session it was felt that a general discussion would be useful to its work. One member commented in presenting the idea to the Committee that:

"the reporting process was designed to encourage States parties to reflect on their general policies with respect to economic, social and cultural rights and on the issues raised by the members of the Committee. However, at no time did the Committee try to synthesize all the information put before it and to understand all the implications of specific rights. It could do so by earmarking one day in each session, perhaps in the third week, for such a discussion. That discussion would be based on the reports of States parties over the previous 10 years and focus on interesting practices and experiences in different countries and economic and social systems with regard to the right under consideration. It would be facilitated by inputs from relevant specialised

agencies, but would not focus upon or criticise specific reports by States parties... No elaborate conclusions need be drafted..."⁴⁴²

It was commented, in addition, that the Committee would establish a "common assessment of the criteria relating to the observance of the Covenant" and would "lay the foundations of its future work" by providing for the "concrete expression of the Covenant on an increasingly uniform basis."⁴⁴³ In addition it would facilitate the exchange of experience among States and to develop a better understanding of the content and implications of different rights.⁴⁴⁴

It has become the practice of the Committee to devote one day at each session to a general discussion of one specific right or a particular aspect of the Covenant "in order to develop in greater depth its understanding of the relevant issues." At the third session the principal emphasis was on the right to adequate food,⁴⁴⁵ at the fourth the right to housing,⁴⁴⁶ and at the sixth, the focus was on the use of economic and statistical indicators pertaining to the work of the Committee.⁴⁴⁷

In the discussion the Committee has sought to draw widely on the available expertise which may assist its work. In particular it has invited special rapporteurs from the Sub-Commission on Prevention of Discrimination and the Protection of Minorities, experts from relevant Non-Governmental Organisations and representatives of the Specialised Agencies (ILO, FAO, WHO, UNESCO) and other UN organs (UNDP, UNRISD and the UN Centre for Human Settlements).

The discussions have highlighted issues of importance, allowed the Committee to address broader issues that are not directly related to its examination of State reports and has served to develop the relationship between the Committee and other interested bodies. It is particularly notable that the participation of NGOs has been considerably greater at such discussions than in other stages of its work.

⁴⁴² Alston, E/C.12/1988/SR.22, at 5, para.30.

⁴⁴³ Rattray, E/C.12/1988/SR.22, at 5, para.31.

⁴⁴⁴ E/1988/14, *supra*, note 165, at 60, para.349.

⁴⁴⁵ UN Docs.E/C.12/1989/SR.20-21.

⁴⁴⁶ UN Docs.E/C.12/1990/SR.22-23.

⁴⁴⁷ UN Docs.E/C.12/1991/SR.20-21.

It was considered by several members at the Committee's third session that the general discussion (on the right to food), might be expected to provide the basis of a draft general comment in future.⁴⁴⁸ However, only in the case of the right to housing has the general discussion actually born fruit. The general criticism may be made that although the general discussions are undoubtedly useful, they are not entirely productive. The Committee has adopted the practice of summarising the outline of the general discussions in its annual report, but such outlines give little indication of any common agreement.

It is considered that given the lack of time available to the Committee, emphasis should be placed upon using its time in a productive manner. In particular it could look to the establishment, at the end of the debate, of a number of general principles that demonstrate common agreement. It would also be appropriate for the Committee to make it a policy that a general comment be drafted following all of its general discussions. If agreement on such a draft is not possible, that might signify the need to discuss the matter further.

10) Technical Assistance

The Covenant specifically envisages the use of technical assistance in the implementation of the rights within the Covenant. Article 22 reads:

"The Economic and Social Council may bring to the attention of other organs of the United Nations, their subsidiary organs and specialized agencies concerned with furnishing technical assistance any matters arising out of the reports referred to in this part of the present Covenant which may assist such bodies in deciding, each within its field of competence, on the advisability of international measures likely to contribute to the effective progressive implementation of the present Covenant."

Moreover, it is clear that under article 23, the possible international measures for the implementation of the rights was not strictly limited to technical assistance, but included "a range of possible international action". The idea behind the inclusion of these articles was that the promotion of economic, social and cultural rights depended to a considerable extent on the extent economic conditions and therefore the provision of technical assistance was of considerable relevance.

Essentially, with the wide definition of technical assistance, these provisions throw open the concern of the Committee through ECOSOC,

⁴⁴⁸ E/1989/22, *supra*, note 170, at 73, para.330.

to all action taken within the United Nations that may affect the economic, social and cultural rights of a given population. The Committee has emphasised this point by identifying a large number of bodies to which it feels itself capable of directing its recommendations including *inter alia* the UNDP, UNICEF, IMF, IBRD, ILO UNESCO, FAO and the WHO.⁴⁴⁹

The Committee has directed itself in two main directions in its recommendations regarding technical assistance. First, it has made certain recommendations to institutions concerned with development activities to the effect that consideration should be given at all times to the impact of economic policies on the economic, social and cultural rights of the population.⁴⁵⁰ The concern of the Committee is primarily upon the need to ensure that assistance programmes do not negatively affect the enjoyment of economic, social and cultural rights. It must be recognised however that by the terms of article 22, this is a somewhat limited goal. Essentially what is required is the specific direction of technical assistance towards the realisation of the rights.

Secondly, the Committee has recommended action to be taken by the Secretariat to assist developing States in complying with their reporting requirements through, for example, the establishment of training courses.⁴⁵¹ As the provision of advisory services is technically outside the competence and capabilities of the Committee itself, the Committee's interest has been to make recommendations to the Secretariat. Accordingly, following the invitation of the Under-Secretary General, the Committee outlined its suggestions for the development of the Advisory Services programme⁴⁵² with regard to the Covenant. In particular it suggested the provision of:

- a) technical assistance in reviewing national legislation, or drafting appropriate legislative or other instruments as necessary as preparation for the possible ratification of the Covenant.
- b) technical assistance in the preparation of an initial report, including monitoring of the situation with respect to the enjoyment of the rights.
- c) assistance to enable a State parties to send an expert to present the

⁴⁴⁹ General Comment No.2 (1990), *supra*, note 360, at 86, para.2.

⁴⁵⁰ *Ibid*, at 86-89.

⁴⁵¹ *See below*, text accompanying note 463.

⁴⁵² The Advisory Services programme was created by GA Resn.926 (X), (1955). It has four basic functions: the provision of advisory services by experts; the awarding of fellowships and sholarships; the holding of international seminars; and the organisation of regional or national training courses.

report to the Committee, where it would otherwise be unable to do so.⁴⁵³

The Committee has also stressed that note should be made of article 23 of the Covenant which provides for the holding of regional meetings and technical meetings for the purpose of consultation and study organised in conjunction with the Governments concerned. It concluded that "every effort should be made to ensure that economic, social and cultural rights are, wherever possible, on the agenda of all regional and other training courses, workshops and seminars."⁴⁵⁴

It is clear that the UN programme of technical assistance compares rather poorly with that undertaken by the ILO.⁴⁵⁵ The principal problem facing the Committee is that it has no authority to provide, or require that technical assistance be provided. All it is capable of doing, is to pass on requests for technical assistance to the Secretariat or other bodies concerned and hope that they might be taken up. It has not been helped in this regard by the failure of States to indicate themselves what assistance they require.

G) THE ROLE OF OTHER BODIES IN THE COMMITTEE'S WORK

1) The Secretariat

Given the range and complexity of issues confronting the Committee the need for strong secretariat assistance is paramount.⁴⁵⁶ In contrast to the rather ambiguous relationship that the HRC has with the Secretariat (as it is not a United Nations Body *per se*) the Committee has no such problems. As an expert group of a UN organ, the Secretariat is automatically responsible for its servicing. The general functions of the Secretariat can be described *inter alia* as:

1) Providing the Committee with summary records of its proceedings "with the necessary staff and facilities for the effective performance of its functions bearing in mind the need to give adequate publicity to its work."⁴⁵⁷

2) Ensuring that the UN press service issues press releases on the

⁴⁵⁴ *Ibid.*

⁴⁵⁵ See, Leary V., "Lessons from the Experience of the International Labour Organisation", in Alston P.(ed), The United Nations and Human Rights: A Critical Assessment, 580, at 589-60 (1992).

⁴⁵⁶ Sohn, *supra*, note 61, at 35.

⁴⁵⁷ ECOSOC Resn.1985/17, para.(g), *supra*, note 89, at 21. For the Working Group see ECOSOC Decision 1979/43, para.15, (11 May 1979), *in*, UN Doc.E/C.12/1989/4, at 8. ECOSOC Resn.1982/33, para.(e), (6 May 1982), *ibid*, at 13.

- 2) Ensuring that the UN press service issues press releases on the Committee's proceedings.⁴⁵⁸
- 3) Bringing the suggestions and recommendations of the Committee to the attention of States Parties.⁴⁵⁹
- 4) Giving publicity to the proceedings of the Committee.⁴⁶⁰
- 5) Sending reminders to States Parties from which reports have not been received.⁴⁶¹
- 6) Bringing the report of the Committee to the attention of the Commission on Human Rights, the Sub-Commission, CERD, CEDAW, HRC and other UN organs, specialised agencies concerned with providing technical assistance and regional commissions.⁴⁶²
- 7) Providing Advisory Services to assist States Parties in discharging their reporting obligations, including holding training courses on the preparation of reports.⁴⁶³
- 8) Providing a compilation from official UN sources of statistics relevant to the Committee's work.⁴⁶⁴
- 9) The establishment and maintenance of files of information on the

⁴⁵⁸ ECOSOC Resn.1983/41, para.8, (27 May 1983), *in*, UN Doc.E/C.12/1989/4, at 15 (1988); ECOSOC Resn.1984/9, para.6, (24 May 1984), *ibid*, at 17.

⁴⁵⁹ ECOSOC Resn.1984/9, *ibid*, para.8.

⁴⁶⁰ ECOSOC Resn.1987/5, *supra*, note 281, at para.12.

⁴⁶¹ ECOSOC Decision 1979/43, para.14, 11 May 1979.

⁴⁶² ECOSOC Resn.1987/5, *supra*, note 281, at para.10.

⁴⁶³ ECOSOC Resn.1987/5, *supra*, note 281, at para.11. Following the invitation of the Under-Secretary General, the Committee outlined its suggestions for the development of the Advisory Services programme with regard to the Covenant. In particular it suggested:

a) technical assistance in reviewing national legislation, or drafting appropriate legislative or other instruments as necessary as preparation for the possible ratification of the Covenant.

b) technical assistance in the preparation of an initial report, including monitoring of the situation with respect to the enjoyment of the rights.

c) assistance to enable a State parties to send an expert to present the report to the Committee, where it would otherwise be unable to do so.

In addition the Committee has stressed that note should be made of article 23 of the Covenant which provides for the holding of regional meetings and technical meetings for the purpose of consultation and study organised in conjunction with the Governments concerned. It concluded that "every effort should be made to ensure that economic, social and cultural rights are, wherever possible, on the agenda of all regional and other training courses, workshops and seminars." E/1989/22, *supra*, note 165, at 76, paras 343-345.

⁴⁶⁴ ECOSOC Resn.1987/5, para.13, 26 May 1987.

States Parties to the Covenant.⁴⁶⁵

10) Providing a table of issues for the Pre-Sessional Working Group identifying those issues that a State Party has not addressed in its report that is required by the reporting guidelines.⁴⁶⁶

11) Providing for the Rapporteur or other member, a dossier of information on the current developments of relevance to the Committee.⁴⁶⁷

The relationship between the Committee and the Secretariat has not been a happy one. Members of the Committee have repeatedly expressed, with due cause, their great dissatisfaction with the general lack of support provided by the Secretariat. The Committee is serviced by a single member of the Centre of Human Rights, who also has duties with respect to other human rights committees. The assistance provided to the Committee on a steady basis includes merely the provision of basic secretarial services and the drafting of routine parts of the report. Thus far, outside the production of a very limited bibliography, virtually no research or other analytical work has been undertaken by the Secretariat on behalf of the Committee. Indeed it has been noted that "once the annual session was finished, members received no more than one or two perfunctory administrative communications until the following session began".⁴⁶⁸

Although the Committee would clearly appreciate the Secretariat playing a greater role in its work, its main cause for complaint has been the almost total lack of cooperation. It is perceived that the problem is not merely one of financial hardship on the part of the Centre for Human Rights but mismanagement and lack of concern. Even the fairly limited requests for assistance, such as the compilation of files of information on States and the creation of a human rights treaty resource room, have not received satisfactory attention.

As has been noted elsewhere, the Committees effectiveness would be greatly enhanced by proper Secretariat support. Ideally, the Secretariat would undertake functions, in addition to those outlined above, such as the production of draft General Comments and other analytical reports, the collection and compilation of information both from official and unofficial sources (such as NGOs) on the situation in each of the State parties, the identification of inadequacies in State reports and issues that deserve further consideration, and the provision of advice and assistance to States parties as to how they might further the

⁴⁶⁵ E/1990/23, *supra*, note 184, at 75, para.298.

⁴⁶⁶ *Ibid.*

⁴⁶⁷ *Ibid.*

⁴⁶⁸ Alston, *supra*, note 30, at 502.

enjoyment of the rights. It is patently unrealistic to expect the Committee, which meets for a limited time each year, to undertake all of these functions itself. If the operation of the Covenant is to have any long-term success, there is a pressing need for the Secretariat to begin undertaking a more active role in the work of the Committee.

2) The Economic and Social Council

On the basis that the Committee is mandated with assisting ECOSOC in the consideration of State reports, it might be assumed that ECOSOC itself would take some part in the evaluation process much like the ILO Conference Committee on the Application of Conventions and Recommendations.⁴⁶⁹ To that end, the Committee is asked to include in the report on its activities, a summary of its consideration of the reports submitted by States parties to the Covenant.⁴⁷⁰

In practice ECOSOC does little more than make note of the Committee's report. Indeed, it was decided after the Committee's third session that in future the reports of the Committee would be discussed not by ECOSOC in plenary, but by its Social Council⁴⁷¹ which has no provision for summary records.⁴⁷² In justifying such action, it was noted that even if ECOSOC did not consider the report in plenary, it was referred to the General Assembly Third Committee where the report was given substantive consideration.⁴⁷³

Although it was noted with disappointment that ECOSOC took little interest in the report of the Committee,⁴⁷⁴ it was stressed that ECOSOC should not be encouraged to pronounce on any substantive matters which were rightly in the exclusive domain of the Committee.⁴⁷⁵ To the extent that the Council should not take over those functions adopted by the Committee this decision is undoubtedly correct. However, it cannot be maintained on the other hand that ECOSOC has no essential

⁴⁶⁹ The report of the ILO Committee of Experts is considered by the Conference Committee on the Application of Conventions and Recommendations. It chooses the most important cases that arise and asks the government for explanations. The replies form the basis of a discussion within the Conference Committee and in particularly serious disputes a procedure for "direct contact" exists whereby a representative of the Director General undertakes a discussion, in the country concerned, with the governmental authorities.

⁴⁷⁰ ECOSOC Resn.1985/17, *supra*, note 89.

⁴⁷¹ *See*, Houshmand, E/C.12/1990/SR.1, at 10, para.70.

⁴⁷² *See*, Badawi El Sheikh, E/C.12/1990/SR.3, at 7, para.45.

⁴⁷³ *See*, Houshmand, E/C.12/1990/SR.3, at 9, para.59.

⁴⁷⁴ *See*, Simma, E/C.12/1990/SR.3, at 9, para.55.

⁴⁷⁵ *See*, Alston, E/C.12/1990/SR.3, at 9, para.56.

role in the implementation process. It is, after all, the Council that is empowered with making general recommendations to be submitted to the General Assembly.

Any conclusions drawn by the Committee following the consideration of State reports become the responsibility of ECOSOC when the report is adopted. This would suggest that the Council has a direct interest in considering the report in some depth. From the point of view of the Committee, it is clearly better if the Council, which has direct control over its resources, is aware of all its issues and concerns.

H) THE FUTURE: AN OPTIONAL PROTOCOL?

Despite the fact that proposals for a petition procedure relating to economic, social and cultural rights were specifically rejected during the drafting of the Covenant, at the Committee's most recent sessions the debate has been revived. The Committee has undertaken several discussions as to the possibility of drafting an Optional Protocol to the Covenant on Economic, Social and Cultural Rights to provide for some form of individual or group complaints mechanism. Whereas in earlier sessions the debate generally ended with the conclusion that it was "too early" to consider realistically the possibility of such a system,⁴⁷⁶ at its sixth session in 1991 it was generally felt that the matter deserved further consideration.

The Committee had before it a useful document produced by Professor Alston outlining a number of arguments in favour of developing an Optional Protocol.⁴⁷⁷ Whilst the majority of the Committee agreed that the institution of an Optional Protocol would be a beneficial development both in terms of increasing the status of the Covenant and the Committee,⁴⁷⁸ and in terms of improving the degree of protection offered, questions were raised as to the form that the Optional Protocol would take. It was generally considered that an inter-state petition system would not be fully effective,⁴⁷⁹ and that individuals and possibly NGOs should have standing to submit complaints,⁴⁸⁰ but it was questioned whether a system like that operated by the HRC in which

⁴⁷⁶ See e.g., Rattray, E/C.12/1990/SR.4, at 5, para.17.

⁴⁷⁷ See, Discussion Note, E/C.12/1991/WP.2.

⁴⁷⁸ See e.g., Konate, E/C.12/1991/SR.13, at 10, para.51; Bonoan-Dandan, E/C.12/1991/SR.14, at 14, para.67.

⁴⁷⁹ See e.g., Simma, E/C.12/1991/SR.14, at 13, para.61.

⁴⁸⁰ See e.g., Mratchkov, E/C.12/1991/SR.13, at 9, para.43.