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ENFORCING INTERNATIONAL HUMAN RIGHTS LAW: THE TREATY SYSTEM IN THE TWENTY-FIRST CENTURY

Anne Bayefsky, Centre for Refugee Studies
York University

June 1997

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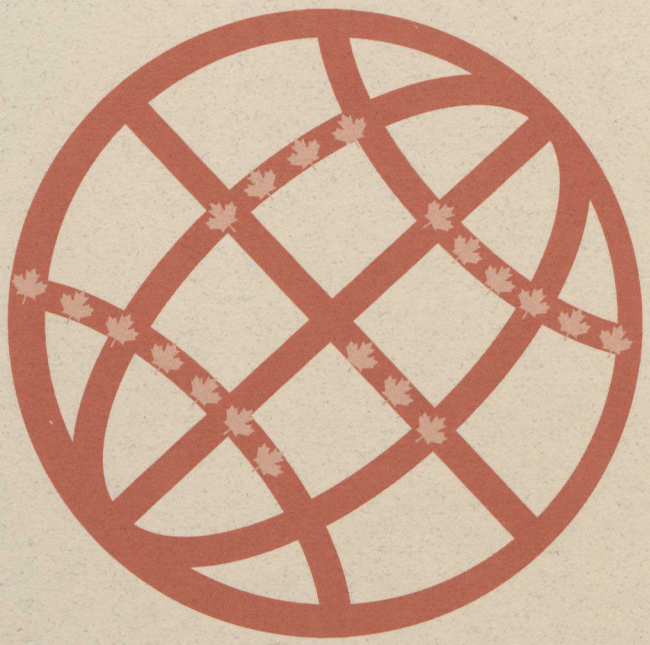

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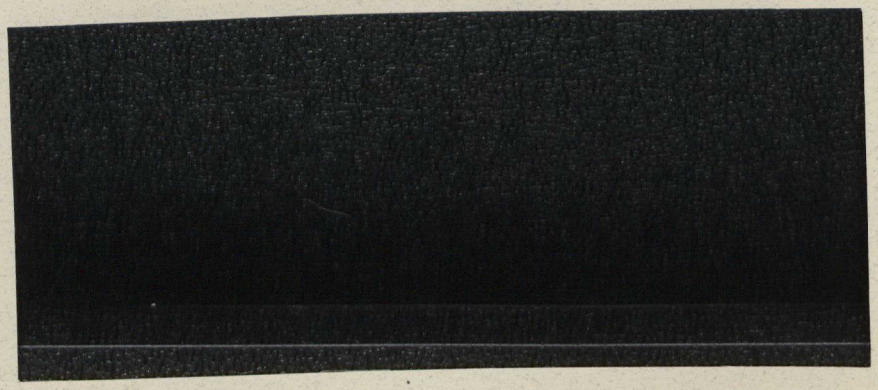

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Enforcing International Human Rights Law: The Treaty System in the Twenty-First Century
June 1997
Professor Anne Bayefsky, Centre for Refugee Studies, York University

In attempting to address the problems of implementation faced by the human rights treaty system, participants of a conference on enforcing international human rights law and the treaty system considered steps to improve the enforcement of international human rights law and developed recommendations for the advancement of the treaty regime. In other words, while the underlying concepts and principles of international human rights law have proliferated, issues about their compliance remain. The participants represented a wide variety of human rights actors (UN specialised agencies, NGOs, states, IGOs, academics). Although there was no consensus among the participants (nor was consensus desirable), discussions focused on the principles of international human rights law (universality of human rights principles; the relationship between protection of human rights, democracy, good governance and the rule of law; vital role played by NGOs in the treaty enforcement system) and on an extensive list of recommendations (over 100) to deal with the problem of implementation and compliance. These recommendations cover a wide range of areas, including ratification, state responsibility, the reporting process, post-reporting follow-up, individual communications, post-individual complaint follow-up, membership and codes of conduct for treaty bodies, and institutional change. It is important to note that the procedural recommendations are specific to those of the UN human rights procedures.

A selection of the recommendations follows:

- states should develop adequate national machinery for the preparation of reports that review national legislation, administrative rules, and procedures and practices in relation to the human rights treaty;
- states should ensure that the treaty system is provided the necessary funding and resources required for the operation of effective enforcement machinery;
- treaty bodies should invite NGOs to attend the pre-sessional working groups and present country-specific information directly related to the treaty on states scheduled to appear at the forthcoming session;
- treaty bodies should require written responses from states to the list of issues in advance of the dialogue;
- treaty bodies should improve the use of country rapporteurs;
- treaty bodies should take steps to ensure public access to state reports;
- NGOs should conduct national, regional and international training with respect to the human rights treaty system;
- NGOs should provide credible and reliable information to treaty bodies to be used in the review of national reports;
- all parties should support rigorously and financially post-reporting follow-up activities;
- UNDP country offices should be encouraged to have an officer specialising in international human rights standards and its governance sectors to consider assistance and the provision of services designed to give effect to recommendations of the treaty bodies.

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Enforcing International Human Rights Law: The Treaty System in the Twenty-First Century

York University, Toronto, Canada
June 22-24, 1997

CONCLUSIONS AND RECOMMENDATIONS

Professor Anne F. Bayefsky
Conference Rapporteur

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Enforcing International Human Rights Law: The Treaty System in the Twenty-First Century

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Enforcing International Human Rights Law: The Treaty System in the Twenty-First Century

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I. INTRODUCTION

This document is the outcome of a conference held at York University, Toronto, Canada on June 22nd-June 24th, 1997, entitled: "Enforcing International Human Rights Law: The Treaty System in the Twenty-First Century".

The conclusions and recommendations are the Rapporteur's impressions of some of the important issues and solutions which ought to occupy the international human rights community now, and into the twenty-first century. This is not a consensus document or a set of recommendations which are endorsed by all members of the group. Rather, it reflects the Rapporteur's summary of many of the ideas for constructive change, both short-term and long-term, which emerged from the background papers produced for the conference and the discussion at the conference itself.

Participants included a wide variety of international human rights actors: members of each of the six treaty bodies, representatives of three UN specialized agencies, UN officials from the UN Center for Human Rights, the Division for the Advancement of Women, and the Division for Political Affairs, individuals from eight major non-governmental organizations, representatives of states parties, representatives of the Council of Europe and the Organization of American States, representatives of special procedures mechanisms of the UN Center for Human Rights and UN human rights field missions, and leading international human rights academics.

The conference was convened in order to address the problems of implementation faced by the human rights treaty system. The aim was to consider steps to improve the enforcement of international human rights law and to develop a vision for the advancement of the treaty regime - a goal consistent with the broader imperative and context of UN reform.

The financial support of the Canadian Department of Foreign Affairs and International Trade, the John Holmes Fund, the Department of Justice, and Heritage Canada, is gratefully acknowledged.

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II. UNDERLYING PRINCIPLES

At the end of the twentieth century, while international human rights standards and their ratification have greatly proliferated, serious problems of compliance remain. The papers and discussions, which focussed on the problem of implementation, evidenced a number of underlying principles and assumptions.

1. Human rights are universal, and their universality is reflected in the principal human rights treaties.

2. Universality is diluted to the extent that the treaties are subject to widespread and radical reservations, and by failures to comply. Ratification is not an end in itself, but must be linked to performance.

3. There is an essential relationship between the adequate protection of human rights and the institution of democracy, good governance and the rule of law.

4. The non-discriminatory application of human rights standards to all UN member states is a fundamental strength of the treaty system, all UN member states having ratified at least one of the six major treaties.

5. International human rights law and institutions are designed to complement national human rights systems and to make them more effective.

6. Access by victims to the process of state reporting and to the potential for individual complaint is a necessary element of successful implementation.

7. The credibility and effectiveness of the treaty regime depends upon the treaty bodies obtaining accurate, current information on compliance.

8. Non-governmental organizations play a vital role in the treaty enforcement system.

III. RECOMMENDATIONS

The treaty system is confronted with a number of specific implementation problems: large numbers of overdue reports, significant backlogs of reports and individual communications, inadequate meeting time for the treaty bodies, inadequate access to procedures for victims of human rights violations, and poor follow-up of the conclusions of the treaty bodies by the political organs of the United Nations. Furthermore, the resources available to institute substantial improvements in implementation are seriously inadequate.

(A) RATIFICATION

While universal ratification of human rights treaties is desirable, ratification is marred by widespread and radical reservations, and by failures to comply.

1. States should refrain from diluting their obligations through reservations incompatible with the object and purpose of the treaties.

(B) STATE RESPONSIBILITY

The human rights treaties embody obligations of, and between, state parties. States parties have the right, and the responsibility, to call violators to account by appropriate means.

2. States parties should exercise their capacity, where available, to lodge complaints that other states parties are not fulfilling their obligations under the treaty.

3. States parties should exercise their capacity to object to reservations which are incompatible with the object and purpose of the treaty.

(C) THE REPORTING PROCESS

The state reporting process is intended to encourage a comprehensive review by a state of its national legislation, administrative rules, and procedures and practices in relation to the treaty. It should result in the integration of international human rights obligations into domestic policy-making.

(ii) States parties should

Preparation of the report:

4. Develop adequate national machinery for the preparation of reports, including coordination mechanisms between governmental departments.

5. Ensure that the preparation of a national report provides the occasion for public discussion and debate of the issues covered by the treaty.

6. Make reports available to the public in local languages.

The dialogue:

7. Ensure that the delegations which appear before the treaty bodies have appropriate seniority and expertise to undertake a dialogue with the treaty body.

8. Publicize the fact of the consideration of the state report by the treaty bodies.

Concluding observations:

9. Disseminate widely, in local languages, the concluding observations of the treaty bodies.

Resources:

10. Ensure that the treaty system is provided the necessary funding and resources required for the operation of effective enforcement machinery.

(iii) Treaty bodies should

Co-operation:

11. Take steps to ensure greater co-operation among the treaty bodies, including the development of joint general comments.

12. Develop modular guidelines which group similar or related articles under the different treaties, and which allow states to repeat information in their reports which is common to these modular groupings.

13. Nominate individual treaty body members to serve a liaison function in respect of other UN entities and treaty bodies.

14. Develop close collaboration with the relevant country specific or thematic rapporteurs or mechanisms.

Adequacy of reports:

15. Adopt general guidelines for reporting.

Information gathering:

16. Develop a data base of NGOs at the national and international level; inform them of submissions of state reports; provide copies of state reports; indicate a willingness to receive written information; inform them of the timetable of consideration of the list of issues to be asked of the state party and the oral dialogue; provide guidelines for NGO reporting.

17. Invite representatives of specialized agencies to attend pre-sessional meetings. Formulate guidelines for their contributions.

18. Produce a schedule for the consideration of reports at least one year in advance.

19. Consider the possibility of identifying specific areas of concern which should be addressed in a report in lieu of comprehensive reports on compliance with the treaty. Apply flexibility in the range and nature of questions to be addressed to states parties.

20. Schedule the pre-sessional working group at the end of the previous session, or sufficiently far in advance of the dialogue to enable the identification of issues on which they require further information.

21. Invite NGOs to attend the pre-sessional working group and present country-specific information directly related to the treaty on states scheduled to appear at the forthcoming session.

22. Require written responses from states parties to the list of issues in advance of the dialogue.

23. Reconsider the practice of requesting exceptional reports, which open the treaty bodies to charges of abuse for political bias or discriminatory and unjustified selection of targeted states, have been applied without clear guidelines on their use, are of questionable value in crisis situations, do not serve a significant preventive function, and are a comparatively poor allocation of treaty body resources in view of the activities and capacities of other UN bodies in these circumstances.

Examination of reports:

24. Improve the use of country rapporteurs. Charge country rapporteurs with the responsibility of: studying a particular report; preparing, with the assistance of the secretariat, a written comprehensive study; identifying inadequacies; summarizing the significant issues.

25. Ensure the best use of time during the dialogue: limit the length of time for introductory remarks of states parties, avoid repetitious questioning by members, and ensure time is allotted to follow-up questions or comments.

26. Focus the dialogue on key issues and themes identified by the country rapporteur, the pre-sessional working group and the state's written responses to the list of issues.

27. Schedule meetings, where appropriate, in the country concerned.

28. Schedule for review all states which have failed to report for considerable lengths of time.

Concluding observations:

29. Disseminate concluding observations immediately after their adoption, including to all relevant UN agencies. Send concluding observations to NGOs which have exhibited an interest in the state report.

30. Adopt concluding observations which clearly identify circumstances which are inconsistent with the requirements of the treaty, and which are sufficiently specific to be useful to domestic legislators, policy-makers and citizens.

(iv) The High Commissioner for Human Rights, the Center for Human Rights and the Division for the Advancement of Women should

Information gathering:

31. Develop a country profile consisting of all country-specific information within the UN system which could be updated and supplied to the treaty bodies. Utilize, where appropriate, the assistance of the UN specialized agencies.

32. To the extent possible, assist in providing NGOs with resources to participate in the treaty monitoring process.

33. Facilitate field missions for treaty body members, where appropriate.

Co-operation:

34. Encourage co-operation between the treaty bodies.

35. Schedule treaty body sessions simultaneously to encourage co-operation.

36. Schedule the meeting of special rapporteurs and other human rights mechanisms, and the meeting of the chairpersons of the treaty bodies at the same time.

Access:

37. Take steps to ensure public access to state reports.

38. Ensure that the deliberations of treaty bodies, and in particular their concluding observations, are disseminated to other parts of the UN system with a human rights mandate or function. Take steps to ensure that the work of the treaty bodies is disseminated at the national level in the country concerned.

39. Ensure that the various websites of the Secretariat are fully integrated and cross-referenced.

40. Encourage the hosting of roundtables between the treaty bodies, members of the UN system and NGOs to identify gaps in information collection and to explore ways of collecting and sharing information and the identification of benchmarks for the enjoyment of human rights.

41. Ensure adequate attention is given to educating, interesting, and informing the media about the work of the treaty bodies.

(iv) The Annual Meeting of the Chairpersons of the treaty bodies should

42. Allocate time for sustained discussion of treaty body working methods.

43. Allocate time for discussion of a common substantive theme arising under several treaties, with a view to developing common guidelines on that theme, so that portions of state reports might satisfy the requirements of more than one treaty body.

44. Create a sub-committee of chairpersons to address and to prepare a public report on the issues of: increased cooperation among the treaty bodies, treaty body working methods, and common substantive themes under the treaties.

(v) NGOs should

Education and access:

45. Conduct national, regional and international training with respect to the human rights treaty system.

46. Develop a data base of national NGOs which should be kept informed of the treaty processes.

47. Encourage, where appropriate, national coalitions of NGOs to cooperate with the treaty bodies and to monitor the implementation of treaty obligations.

48. Facilitate access by national NGOs to the treaty bodies, where necessary, through the experience and assistance of international NGOs.

49. Inform the media about all stages of the treaty body process, and encourage their interest in the dialogue with states parties and the concluding observations of the treaty bodies.

Information gathering and input:

50. Provide credible and reliable information to treaty bodies to be used in the review of national reports.

51. Host expert group meetings to provide input to the development of general comments and recommendations by the treaty bodies.

(vi) Private bodies and foundations should

52. Facilitate the production of educational materials publicizing the work of the treaty bodies.

53. Establish funds to facilitate the attendance by NGOs to the sessions of the treaty bodies.

54. Facilitate national, sub-regional, regional and international meetings between treaty body members.

(D) POST-REPORTING FOLLOW-UP

(i) Treaty bodies should

55. Publicize the concluding observations.

56. Request states parties to translate the concluding observations into local languages, and disseminate them.

57. Request the state party, where the committee has made specific recommendations, to inform the committee within a specified period of time what action has been taken to give effect to the recommendations.

58. Appoint a special rapporteur for follow-up of state reports with a mandate to seek information from the state party or from other sources, such as NGOs and relevant national institutions, to request meetings with representatives of the state, to request visits to states where appropriate, and to report to the committee at regular intervals on the progress of follow-up activities and the extent of state party compliance with the requests of the committee.

59. Publish the results of follow-up procedures and include them in the annual report, giving special prominence to states parties which fail to respond to requests for information.

(ii) The High Commissioner for Human Rights, the Center for Human Rights and the Division for the Advancement of Women should

60. Budget adequately for follow-up activities.

61. Acknowledge that follow-up activities are an integral and important part of treaty body activities and must be serviced accordingly.

62. Create a team of professionals to collect and analyze information on the follow-up of the treaty bodies' recommendations, and to establish a continued dialogue with governments. This team could be a group of specialists on international human rights standards in all regions of the world, available to governments on an on-going basis.

63. Incorporate all the concluding observations produced by all the treaty bodies into a UN system-wide country assessment.

64. Transmit the concluding observations of treaty bodies to UN human rights field missions, and UN agencies, with a view to monitoring the state party's compliance with the treaty body's recommendations.

65. Encourage UNDP country offices to consider having an officer specializing in international human rights standards. Encourage the governance sectors of UNDP country offices to consider assistance and the provision of services designed to give effect to recommendations of the treaty bodies.

66. Provide advisory services and technical assistance to states parties, in co-operation with field offices of UN agencies, which are directed at encouraging implementation of treaties at the national level. Assist in the development of programs of action in states parties for implementing concluding observations.

67. Prepare annual press releases on follow-up activities.

(iii) Other UN bodies should

68. The General Assembly, ECOSOC, the Human Rights Commission, and the Commission on the Status of Women, should take up and reinforce the concluding observations, decisions and recommendations of the treaty bodies.

(iv) NGOs should

69. Encourage the use at the national level, including in domestic litigation, of the results of the treaty body process such as: undertakings in state reports, General Comments and Recommendations.

(v) Private bodies and foundations should

70. Sponsor research into the impact of the work of the treaty bodies at the national level, specifically, documentation and analysis of the impact of the treaties and the operation of the treaty bodies, and collections of case studies on the use of the treaty regime by individuals, and national and international NGOs.

(E) INDIVIDUAL COMMUNICATIONS

Given the limitations, inherent and otherwise, of the state reporting system of implementation, an ability to implement the legal standards through individual complaints and remedies offers an important alternative.

The international complaint process is activated following an exhaustion of domestic remedies. International machinery cannot replace the obligation and capacity of national institutions and courts to implement human rights standards.

The objectives of an individual complaint procedure are to provide individual victims with an effective and timely remedy; to bring about systemic changes to law and practice which will benefit others in a similar position, and to provide guidance to states parties, national institutions and courts on the requirements of the treaty through the elaboration of the meaning of the treaty provisions.

(i) States parties should

71. Translate decisions relating to the state party, and summaries of other decisions, into local languages.

(ii) Treaty bodies should

Quality of decisions:

72. In view of the important educational and preventive potential of individual cases, provide full, reasoned decisions on the merits.

Procedures:

73. Join the admissibility and merits of a case wherever possible.

74. Take provisional measures to protect complainants from irremediable damage.

75. Impose short time limits on state responses.

76. Adopt evidentiary presumptions to facilitate determinations in the absence of submissions or complete information.

77. Sit in chambers in routine cases to make draft determinations, which would be adopted by the plenary, normally without debate.

78. Review the viability of conducting oral hearings where appropriate, in circumstances where legal aid is available to the complainant, and with strictly enforced time limits on oral presentations by the parties.

(iii) The High Commissioner for Human Rights, the Center for Human Rights and the Division for the Advancement of Women should

79. Organize seminars on communications procedures and jurisprudence at both the international and national level.

80. Provide advice to complainants on admissibility problems and procedures.

81. Publicize decision of treaty bodies.

(iv) NGOs should

82. Explore the viability of creating a network of international human rights lawyers to act for complainants.

83. Make use of The Torture Convention's Article 20.

84. International NGOs should consider assisting in those instances where national NGOs are reluctant to be publicly associated with a case.

(F) POST-INDIVIDUAL COMPLAINT FOLLOW-UP

(i) States parties should

85. Ensure that there is recourse to domestic remedies for violation of the human rights treaties. Take the view of the treaty bodies concerning violations, seriously.

(ii) Treaty bodies should

86. Appoint a special rapporteur on follow-up to the views of the committee.

87. Produce regular, detailed progress reports on a state-by-state basis, which should be discussed in public session and published.

88. Identify states which do not cooperate in the follow-up process in the annual report.

89. Undertake follow-up missions to state parties, where appropriate.

90. Formulate a model of enabling legislation, for consideration by states parties, which would permit claims before domestic courts for non-compliance with the view of the committee on an individual communication.

(G) MEMBERSHIP AND CODES OF CONDUCT FOR TREATY BODIES

(i) States parties should

91. Nominate and elect individuals to membership on the treaty bodies who are genuinely independent, impartial and have the necessary international human rights expertise. Ensure that individuals on treaty bodies which deal with individual complaints are well-qualified to handle the procedure.

92. Take into account regional and gender balance in nominating and electing members to the treaty bodies.

93. Respect the codes of conduct for members which are developed by the treaty bodies.

(ii) Treaty bodies should

94. Develop codes of conduct for members which would address such matters as independence and impartiality, the relationship of members with their governments and NGOs, and the involvement of members in any aspect of the consideration of reports or communications relating to their own countries.

(iii) NGOs should

95. Encourage the identification and election of qualified treaty body experts.

(H) INSTITUTIONAL CHANGE

In addition to the preceding shorter term recommendations, some specific suggestions for step-by-step change directed at the longer term were introduced. These have been set out below as a contribution to the field and the shared goal of strengthening the enforcement of international human rights law in the twenty-first century.

96. The treaty bodies should introduce into the state reporting process, joint modular guidelines which group similar or related articles under the different treaties thematically, and which allow states to repeat information in their reports common to these modular groupings.

97. The treaty bodies should ask states parties to produce a single, consolidated report on the six human rights treaties. Compliance should be addressed by grouping articles of the treaties together on a thematic basis.

98. The treaty bodies should engage in joint examinations of reports; the treaty bodies should conduct, where appropriate, examinations in the country concerned.

99. The six treaty bodies should be merged into a single, permanent, full-time body which would consider state reports.

100. The potential for insensitivity or disregard of some rights, should be addressed by paying special attention to those categories of rights which have suffered from past neglect, such as many dimensions of sex discrimination. In particular, the clear demarcation of key thematic issues and the selection of members with insight, understanding and expertise on these subjects, should be ensured.

101. States parties should ensure the identification, development and application of obligatory qualifications for treaty-body membership. The membership qualifications of a consolidated committee charged with the task of considering state reports should give rise to an interdisciplinary body oriented towards engendering a culture of human rights in states parties.

102. Provision for individual complaint mechanisms should be extended to all six human rights treaties, through the elaboration of additional optional protocols.

103. A single, permanent, full-time body should be created which would consider individual complaints under all six human rights treaties. Such a committee would be of a quasi-judicial nature. The membership qualifications of a consolidated committee charged with the task of considering individual complaints should include legal experience.

104. A permanent international court of human rights should be created that could handle individual complaints arising from all six, or portions of all six, of the human rights treaties.

105. The court should be given only advisory jurisdiction to render non-binding decisions at the behest of states parties or treaty bodies, but not individuals.

106. Significant rules and processes should be developed which when instituted, would warrant making the court accessible to individuals, and potentially groups, and rendering determinations of the court legally binding.

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Department of Justice, Canada

Mr. Doug Williams
Senior Policy Advisor, Human Rights and Democracy
Canadian International Development Agency

Mr. Maxwell Yalden
Member, Human Rights Committee

Dr. Leo Zwaak
Lecturer, Utrecht University
Researcher, Netherlands Institute of Human Rights (SIM)

Centre for Refugee Studies
1997 Summer Course on Refugee Issues
Financial Statement for the
Canadian Centre for Foreign Policy Development, John Holmes Fund

	EXPENSES	Budget	Actual
(1)	Travel	$ 69,250	$ 6,002
(2)	Accommodation	$ 14,400	$
(3)	Meals	$ 12,000	$ 350
(4)	Local Arrangements	$ 2,000	$ 55
(5)	Conference Coordination	$ 18,000	$ 2,028
(6)	Translation	$ 12,000	$
(7)	Pre-Conference Office Expense	$ 3,950	$ 1,420
(8)	Post-Conference Report	$ 8,000	$ 144
(9)	University Overhead	$ 1,500	$
(10)	Contingency	$ 4,000	$
	TOTAL	**$ 145,100**	**$ 9,998**