

## OVERVIEW OF INTERNATIONAL HUMAN RIGHTS PROTECTION BY THE UN

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International human rights law has only recently come to be accepted as part of international law in general. Before the establishment of UNO, international law afforded protection only to certain groups of persons or to individuals only in very limited circumstances. One of the reason for this lies in the nature of international law itself, which has traditionally been defined as the body of law governing the behaviour of states in their relations with each other and excluded individuals from the purview of international legal norm. Traditional notion of sovereignty which provided state exclusive jurisdiction over all persons in its territory, precluded development of international law of human rights until twentieth century as welfare of individuals were treated as sole concern of the state and any external intervention in the domestic affairs could hardly be tolerated. It was for the state itself which would determine the legality of its activities in respect of persons within its jurisdiction.

Early instruments regarding international obligations for the protection of individuals referred to the treatment of sick and wounded soldiers and prisoners. This protection was comprehensively regulated in the two Hague Conferences of 1899 and 1907 which aimed at the humanization of war.

Earlier the slave trade was prohibited in the British Colonies in 1807. The institution of slavery was also abolished in France and by the Treaty of Paris of 1814 the British and French governments agreed to cooperate in the suppression of the traffic in slaves. The undertakings was generalised and accompanied by a solemn condemnation of the practice by the major European states at the Congress of Vienna in 1815. More than fifty bilateral treaties on the subject was concluded between 1815 and 1880 and the Conference of Berlin and central Africa of 1885 was able to state in its General Act that "treaties in slaves is forbidden in conformity with the principles of international law. Matters were taken a step further at the Brussels Conference in 1890. An anti-slavery Act was signed, and later

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ratified by 18 states. It not only condemned slavery and the slave trade, but also drew up a list of agreed measures for their suppression both in Africa and the high seas, including the right to visit and search, the confiscation of ships engaged in the trade and the punishment of their masters and crew. The mandate system established by Art. 22 of the League Covenant declared that the well-being and development of the people in the mandated territories should form a 'sacred trust of civilisation' and that the mandatory powers should administer the territories under conditions 'which will guarantee freedom of conscience and religion and the prohibition of abuses such as the slave trade.' The International Convention of the Abolition of Slavery and the Slave trade under the auspices of the League of Nations in 1926, proclaimed as their object the complete suppression of slavery in all its forms and of the slave trade by land and sea.

The rights of minorities living in certain geographical areas, or under certain political systems, were protected by international treaties, the rights of consular and diplomatic consular and diplomatic personnel were recognised by customary international law, and slavery and analogous practices were outlawed. Although there were no clauses on protection of minorities in the Covenant of the League of Nations, the opportunity was taken to associate the general peace settlement and the machinery of the League with regard to treatment of minorities. Treaty protecting minorities were in three groups. The first were minorities treaties between the principal Allied and associated powers, on the one hand, and Poland, Czechoslovakia, Greece, and others, on the other hand. The second group took the form of special chapters in the peace treaties with Bulgaria, Austria, Hungary, and Turkey. Thirdly, special conventions relating to the Memel Territory and Upper Silesia had minority clauses. The treaties provided as follows: protection of life and liberty and the free exercise of religion without discrimination on grounds of language, race, or religion; for nationals of the treaty parties there was to be equality before the law and with respect to civil and political rights; further, there was to be freedom of organisation for religious and educational purposes and provision by the state for the elementary instruction of children in their own language in districts where minority formed a considerable proportion of the population. The clause were placed under the guarantee of the League and could not be modified without the consent of the Council.<sup>1</sup>

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<sup>1</sup> Brownlie, I. Principle of Public International Law, Oxford, 1979, at pp. 564-65.

After the first world war, however, the beginning of universality, though still restricted in content and scope, began to emerge. This was, in great measure, due to the founding of the League of Nations and the imposition of certain safeguards in peace treaties in the treatment of minorities.

The development of a comprehensive body of international human rights law had to await the twentieth century and in particular the foundation of the UN and its family organisations.

The appalling atrocities of the Nazis against the Jews and against other races during the second World war led to a strong movement for the protection of fundamental human rights and convinced the international community for the real and pressing need to protect and promote human rights. The problem and protection of human rights were seen as an integral and essential element for the preservation of world peace and co-operation, not only within the confines of particular states but universally. Thus when the United Nations Charter was adopted, provisions for human rights became central to the whole philosophy of this organisation. The establishment of UN has achieved two main successes: first, unlike in the past, when there was no permanent institutional machinery for the regular discussion of matters of human rights, the creation of the UN system after the second world war provided a permanent structure for systematic work in the fulfillment of its mandate. Secondly, the promotion and the protection of human rights were seen as an inseparable part of the principal objectives which states set for themselves. The Preamble of the U. N. Charter reaffirms "faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women." Among the purposes of the United Nations according to its Charter is the achievement of international co-operation "in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion" (Article 1(3)). Thus Article 1 puts the promotion of respect for human rights on the same level as the maintenance of international peace and security as a purpose of the U. N. All of the principal and many of the subsidiary organs of the United Nations have the task of acting on human rights matters. Since the signing of the charter, the UN has played a dominant role in the field of human rights. Thomas Buergenthal mentioned that the human rights provisions of the UN Charter have the following important consequences:

First, the UN Charter 'internationalised' human rights. That is to say, by adhering to the Charter, which is a multilateral treaty, the states parties recognized that the 'human rights' referred to in it are a subject of international concern and to that extent, no longer within their exclusive domestic jurisdiction.

Second, the obligation of the Member States of the UN to cooperate with the organization in the promotion of human rights and fundamental freedoms provided the UN with the requisite legal authority to undertake a massive effort to define and codify these rights. That effort is reflected in the adoption of the International Bill of Human Rights and the numerous other human rights instruments in existence today.

Third, the organization has over the years succeeded in clarifying the scope of the Member States' obligation to 'promote' human rights, expanding it and creating UN Charter-based institutions designed to ensure compliance by governments.<sup>2</sup> A human rights scholar distinguished between three stages of UN activities in the field of human rights<sup>3</sup>. The stage of standard-setting (1945-55). The main achievement of the standard-setting stage was the elaboration of an International Bill of Rights which was accomplished by the adoption of the Universal Declaration of Human rights and two legally binding covenants. The second stage (1955-65): The UN focused mainly on the promotion of respect for human rights. It included the studies, advice, and measures in the field of education and information which might provide a strong basis for enhancing the cause of human rights. This new approach led to the institution of a system of periodic reports on human rights, the launching of a programme of advisory services (seminars, training courses, fellowships), and the appointment of special rapporteurs to carry out studies, particularly in the field of non-discrimination. The third stage (1965-present) emphasised on international protection of human rights which began with the development of a more effective communications (i.e. complaints) procedure, efforts to deal with specific situations involving gross violation of human rights and the undertaking of a series of operational fact-finding activities. For example, the Economic and Social Council adopted Resolution 1235 to "make a thorough study of situations which reveal a consistent pattern of violations of human rights, as exemplified by the policy of apartheid as practiced in the Republic of South Africa..... and report, with recommendations thereon, to the Economic and Social Council." Its special concern was the racial and colonial situation in South Africa. In 1970, Resolution 1503, a procedure was devised for the handling of communications from individuals and non-governmental organizations

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<sup>2</sup> Thomas Buergenthal, International Human Rights, Minnesota, 1988, at pp. 21-23.

<sup>3</sup> Jean-Bernard Marie, La Commission des Droits de l'Homme de l'O. N.U., Paris, 1975 quoted in Theo C. van Boven, The United Nations and Human Rights: A Critical Appraisal in Human Rights and U.S. Foreign Policy Colorado, 1979, at p. 19.

relating to violation of human rights and fundamental freedoms. Since 1977, fourth stage has also emerged, which emphasised the structural and economic aspects of human rights issues.

The activities of UN in the field of human rights can broadly be classified into following heading:

### **Normative foundation**

UN has laid the normative foundation of human rights through adopting treaties, declaration and resolution. These have set standard, norms and basic principles of human rights. The UN charter and the constitutions of the specialised agencies have themselves attempted to enunciate the standards of human rights. However, these neither impose binding obligations on member states to observe rights, nor concretely define rights. Pledges for human rights are expressed in the most general language. But the most significant achievement in the history of UNO was the adoption of Universal Declaration of Human Rights, 1948. Although the Declaration did not purport to have legally binding authority, it appeared as a 'pathfinding instrument.' Its most important contribution lies in the pioneering formulation of the principal human rights and fundamental freedoms that ought to be recognised. UDHR possesses high moral and political authority. To reproach the Declaration for the absence of provision of enforcement machinery or for the fact that it is not a legally binding instrument, is to misconstrue its original limited purpose- to provide a generally acceptable catalogue of man's inalienable rights. It has had a remarkable influence on further developments, at both the international and domestic levels, as is reflected in the number of instances of conventions and other instruments referring to, or invoking its provisions. In addition, it: has become an international standard by which the conduct of the governments is judged both within and outside of the UN; has inspired the great number of international and regional treaties; is cited as the basis and justification for many important decisions taken by UN bodies; is reflected in many national constitutions, in national legislation and the in the decisions of both national and international courts; and has been claimed by many scholars to have acquired the force of law as part of the customary law of nations.

### **Some features of the Universal Declaration of human rights:**

The difference between human rights and citizen rights is blurred, all these rights being placed together in the category of human rights. Secondly, the Declaration does not, in the final analysis, possess a definite political character; it does not occupy a clearly-defined position on the scale of

political values. Thirdly, with the exception of a short paragraph 1 in Article 29, there is no reference in the Declaration to the counterpart of the rights of man, namely, the duties of man. The Declaration was followed by impressive number of international human rights instruments of which many have binding authority on the states who are parties to them. Although treaties create legal obligations for only those states which are parties to them, they have, of course, a persuasive influence on non-parties, and may be used by the courts and individuals to persuade his government to act for respect for obligation under treaties. It can be argued that the existence of a body of international legal rules which create obligations for a number of states is in itself a powerful moral force in the international community providing a yardstick to other states to measure their human rights record.

The UN Charter has authorized its main organs to establish institution or bodies, many of which are directly related to the promotion and protection of human rights. To carry out mandate of the charter, General Assembly and Economic and Social Council have established many subsidiary bodies to deal with human rights. Again many of such subsidiary bodies have been entrusted to create subordinate bodies to achieve their objectives.

The UN has devised so many procedures, undertaken actions, policies and strategy to deal with gross violation of human rights of individual through communication/petition, fact-finding bodies, special rapporteurs etc. It has also undertaken programmes, study, advices in the field of human rights in terms of educating the people all over the world, exchanging information and dealing with structural issues.

In the following pages, we shall attempt to discuss the functions and objectives of the main and subsidiary organs of the UNO. These may be also termed as Charter-based organs which derive their legitimacy and mandate, in the broadest sense from human rights related provisions of the charter. It consists of the General Assembly and ECOSOC as principal organs and underneath them as 'functional commissions', the Commission of Human Rights and the Commission on Status of Women.

### ***General Assembly***

Under Article 13(1)(b) of the Charter, the General Assembly has two principal obligations in matters of human rights: to initiate studies; and to make recommendations for the purpose of assisting in the realisation of human rights and fundamental freedoms for all. In the initiation of studies the Assembly has requested studies from: the Economic and Social

Council and its subsidiary organs; the Secretary General; the specialised agencies; other bodies including its own subsidiary organs; several bodies jointly; and the member States. The Assembly also receives and considers reports from the Security Council and from other organs of the UN. In particular, the annual report of the Economic and Social Council is the important source for the Assembly's initiation of additional investigations and studies, and for taking action of various kinds. In the related area of treaty implementation and supervision, the Assembly receives reports from the different treaty bodies like Human Rights Committee, the Committee on Economic, Social and Cultural Rights, the Committee on the Elimination of Racial Discrimination etc. Thus, the Assembly ensures accountability in the performance of obligations under treaties and coordination of the reporting procedures.

The recommendations which the General Assembly makes on matters of human rights are technically not legally binding on states. However, in evaluating the authority of recommendations of the Assembly one has to bear in mind that, in Articles 55 and 56 of the Charter, all Members have pledged themselves to take joint and separate action in co-operation with the organisation, to promote universal respect for, and observance of, human rights and fundamental freedoms.

The other significant functions of the General Assembly are: to draft international convention on human rights (Art. 62(3)), to establish such subsidiary organs for the performance of its functions, to coordinate and stimulate the action of the other UN organs as well as of the specialized agencies. (Art. 58 & 66). Over the years, the assembly has, both on its own initiative and on the recommendation of the council and other organs of the council and other organs, adopted and opened for signature and ratification an impressive number of international treaties dealing with human rights questions. These include both instruments of comprehensive character, such as the International Covenants on Human Rights, and instruments limited to specific problems, such as genocide, various questions of the status of women, the elimination of racial discrimination, and other.<sup>4</sup> This has created an international legislative framework which regulates the most important aspects of human rights and fundamental freedoms. It has also led to emergence of certain important customary rules: for example racial discrimination, or denial right to self-

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<sup>4</sup> See Egon Schwelb and Philip Alston, The Principal Institution and Other Bodies Founded under the Charter in The International Dimensions of Human Rights, UNESCO, Paris, 1982, at p. 234.

determination, genocide, which have assumed the character of jus cogens binding on all states regardless of their adherence to relevant treaty.

The General Assembly has established many subsidiary organs many of which are largely or exclusively concerned with human rights issues. They vary in type and importance. Some are of an ad hoc character, others are more permanent. By way of example, mention may briefly be made of some of these organs are: the third Committee, the International Children's Emergency Fund (UNICEF) in 1947, the Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) in 1949, and the Office of the High Commissioner for Refugee which in 1951, the Special Committee Against Apartheid in 1962, the special Committee on the situation with regard to the implementation of the declaration on the granting of independence to colonial countries and peoples was established in 1961.

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

The Economic and Social Council is the principal organ of the UN with responsibility in matters of international economic and social cooperation, and the promotion of universal respect for, and observance of, human rights. Article 55 and 56, UN Charter impose upon the United Nations and its member's legal obligations to "promote" respect for and observance of human rights. United Nation action under Article 55 is centered largely on the UN Commission on Human Rights, which was established by ECOSOC under Article 68, UN Charter. The Charter (Article 62(2)) empowers the ECOSOC to make recommendations for the purpose of promoting respect for, and observance, of human rights and fundamental freedoms for all. The Council may prepare draft conventions for submissions to the General Assembly, with respect to matters falling within its competence and it may call international conferences on such matters. ECOSOC is the organ which is responsible for agreements with the specialised agencies, a matter which is of great importance for human rights questions, particularly in regard to those agencies (ILO, UNESCO, FAO and WHO) which engage in essential activities in the field of human rights. ECOSOC may coordinate the activities through consultation and recommendation (Art. 63).

ECOSOC is also called upon to make suitable arrangements for consultation with non-governmental organisations which are concerned with matters within its competence. (Art. 71) In establishing consultative relations with organisations, ECOSOC distinguishes between organisations in general consultative status (category 1), organisations in special consultative status (category II) and organisation which can make



occasional and useful contributions and are included in a list known as the Roster. Many human rights NGOs have given consultative status (category II) and they send representatives to public meetings of the council and its sub-sidiary bodies.

Article 68 of the Charter entrusts the Council to set up commissions in economic and social fields and for the promotion of human rights and such other commissions.

In the human rights field two commissions have been established: the Commission on Human Rights and the Commissions on the Status of Women.

### **Commission on Human Rights**

The Commission on Human Rights, a subsidiary organ of the Economic and Social Council, is one of six functional commissions which the Council established in 1946. The Commission established two sub-commissions: Sub-commission on Prevention of Discrimination and Protection of Minorities and Sub-Commission on Freedom of Information and of the Press. Commission consists of 53 members-one representatives from each of 53 states members of the United Nations selected by the Council on the basis of an equitable geographical distribution.

Term of reference: ECOSOC resolved in 1946 that the work of the Commission on Human Rights shall be directed towards submitting proposals, recommendations and reports to the Council regarding: an international bill of rights; International declarations or conventions on civil liberties, the status of women, freedom of information and similar matters; The protection of minorities; The Prevention of discrimination on grounds of race, sex, language or religion; Any other matter concerning human rights not covered by items (a), (b) and (c).

In 1979 the Council (res. E/1979/36) added the following provision to these terms of reference: "The Commission shall assist the Economic and Social Council in the co-ordination of activities concerning human rights in the United Nations system."

At its second session in 1947 the Commission decided to realize an international bill of rights into three stages: (i) a Declaration defining the various human rights which ought to be respected, (ii) a series of binding covenants on the part of states to respect such rights as defined; (iii) measures and machinery for implementation.

The Commission adopted Universal Declaration of Human Rights in 1948, which represented the first of three stages of a programme designed to achieve an International Bill of Rights, based upon universally binding obligations of states, and reinforced by effective administrative machinery.

Then it drafted two covenants- Covenant on Economic, Social and Cultural Rights, and Covenant on Civil and Political Rights adopted by the United Nations General Assembly on 16<sup>th</sup> December 1966 and came into force in 1976 and optional protocol to the International Covenant on Civil and Political Rights - represented an attempt to complete the second and third stage, referred to above.

The Commission on Human Rights has an extremely broad mandate. It can undertake studies, draft international instrument, review the implementation of existing standards and, since the late 1970s, publicly scrutinise the human rights situation in individual countries and study the global phenomena of particular violations. The Commission also plays a key coordinating role in terms of human rights activities and programme throughout the UN system. According to Philip Alston, the Commission can be seen to function in two main ways: it provides a forum in which various activities can be undertaken and it is itself an actor playing the role of a catalyst, a generator of norms and a protector of human rights. The Commission as a forum has three different types of activities: a. consultation within and among the different geopolitical and other groupings. B. cooperative solution to human rights problems, c. canvassing of the new issue of human rights such as environmental degradation, child labour, diseases etc. As an actor in its own right, the Commission has acted as an important catalyst to the preparation and dissemination of information on human rights issues by individual and groups all over the world.

The Commission has played the role of generator of norm. For example, the Commission has played a significant role in the drafting of following instruments:

- Declaration of the rights of the child, 1959,
- Declaration on the Elimination of All Forms of Racial Discrimination, 1963;
- Declaration on the Elimination of Religious Intolerance, 1963;
- Declaration on Territorial Asylum, 1967;
- Declaration on the Protection of All Persons from being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1975;
- Convention on the International Right of Correction, 1952;
- International Convention on the Elimination of All Forms of Racial Discrimination, 1965;
- Convention on the Non- Applicability of Statutory Limitation to War Crimes and Crimes Against Humanity, 1968;

Convention on the Suppression and Punishment of the Crime of Apartheid, 1973,  
Declaration on the Granting of Independence to Colonial Countries and Peoples, 1960;  
Declaration on Social Progress and Development, 1969;  
Declaration on the Rights of Mentally Retarded Persons, 1971;  
Standard Minimum Rules for the Treatment of Prisoners, 1957;  
Declaration on the Rights of Disabled Persons, 1975;  
Universal Declaration on the Eradication of Hunger and Malnutrition, 1974.  
Declaration on the Protection of Women and Children in Emergency and Armed Conflict, 1974.

*Sub-Commission on Prevention of Discrimination and Protection of Minorities*

Sub-commission was established in 1979 to consider the ways and means of encouraging the governments to ratify or adhere to the major international human rights instrument and thus influenced states to undertake formal legal obligations in the field of human rights.

The sub-commission consists of 6 independent experts acting in their individual capacities. They are elected for three years by the Commission from among individuals nominated by their governments. Its terms of reference include: to undertake studies and to make recommendations to the Commissions on Human Rights concerning the prevention of discrimination of any kind relating to human rights and fundamental freedoms and the protection of racial, national, religious and linguistic minorities; and to perform any other functions which may be entrusted to it by the Economic and Social Council or the Commission on Human Rights.

During its first session, in 1947, the Sub-Commission defined “prevention of discrimination” as the prevention of action which denied individuals or groups equality of treatment which they might wish and interpreted the ‘protection of minorities’ as the protection of non-dominant group which generally wanted equality of treatment, while acknowledging or permitting a measure of differential treatment in order for the minorities to preserve their traditional characteristics, if they so desired.<sup>5</sup>

The sub-commission has contributed to the drafting of a number of international standards and played an important role in promoting studies

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<sup>5</sup> Report of the Sub-Commission in 1947, E/CN.4/5 1947, sec. V, 13.

and other activities to be undertaken by specialised agencies such as UNESCO and ILO.

At present, four working groups are working under the sub-commission to carry out its mandate:

- Working Group of Communication established under 1503 Procedure;
- Working Group on Contemporary Forms of Slavery;
- Working group on the Rights of Indigenous Population;
- Working Group on the Encouragement of Universal Acceptance of Human Rights Instruments,

### **Commission on the Status of Women**

It was established in 1946 having same constitutional and legal status and rules of procedure to that of the Commission of Human Rights. The Commission is one of six functional commissions established by the ECOSOC pursuant to Art. 68 of the UN charter.<sup>6</sup> Its present members are 45. Members are appointed by their governments in consultation with the Secretary- General. It is intended to be the main policy-making body of the United Nations on all questions relating to women. The functions of the Commission are a. to prepare recommendations and reports to the Economic and Social Council, General Assembly and other UN bodies on promoting women's rights in political, economic, civil, social and educational fields, and b. to stimulate governments, private organizations and mould public opinion in favour of implementing the sex equality provision of the charter. The other functions of the Commission include study, elaboration of international standards, review of reports submitted by states, stimulating action in favour of women by the specialized agencies including provision for technical assistance to benefit women, the creation of specialized machinery etc. The Commission have initiated following principal international instrument on the status of women:

Declaration and Convention on the Elimination of All Forms of Discrimination against Women;

Convention on the Political Rights of Women;

Recommendation and Convention on Consent to Marriage, Minimum Age for Marriage, and Registration of Marriages,

Declaration on the protection of Women and Children in Emergency and Armed Conflict.

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<sup>6</sup> The other functional commissions are: the Commission on Human rights, the Commission on Social Development, the Population Commission, the Statistical Commission, and the Commission on Narcotics Drugs.

According to one scholar<sup>7</sup>, the activities of the commission can be distinguished into three broad phases: the first phase (1947-70) to achieve recognition of the principle of equal rights for women through standard setting, legal studies and promotional activities. The second phase (1970-85), the commission concentrated on social and economic development and participation of women in their societies, with particular emphasis on the creation of specialized machinery at the national and international level to meet women's basic needs. The third phase (1985 to present) to empower women in political process of states and to integrate women into mainstream of the state.

### ***Security Council***

The Security Council's primary responsibility is to maintain peace and security on the world. The Security Council, when dealing with disputes or situations likely to endanger the maintenance of international peace and security (Chapter VI), and when taking action under Chapter VII of the Charter, has repeatedly made pronouncement on the questions of human rights.

### **Trusteeship Council**

The arrangements for giving a certain status to the inhabitants of certain territories under the system of mandates of the League of Nations and the concept of trusteeship in the United Nations Charter are substantially the same. About the mandate, the International Court said: "The mandate was created, in the interest of the inhabitants the territory, of the humanity in general, as an international institution with an international object—a sacred trust of civilization." The trusteeship system, presented in Chapter 76 emphasizes the duties of administering authority to promote self-government or independence and to encourage respect for human rights and fundamental freedoms.

The objective of Trust is to promote of the political, economic, social and educational advancement of the inhabitants which include their human rights and the progressive development of the Trust Territories towards self-governance or independence. (Art. 76).

The Mandates Commission and now the trusteeship council were given the power to receive and consider petitions from the inhabitants of the

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<sup>7</sup> Laura Reanda, "The Commission on the Status of Women", in Philip Alston (ed) The United Nations and Human Rights, Oxford, 1996, pp. 264-303.

territories." However, at present, the purpose of the trust system have been almost completed.<sup>8</sup>

Chapter XI of the United Nations Charter relating to 'Declaration regarding non-self-governing territories,' also 'recognise the principle that the interest of the inhabitants of these territories are paramount, and accepts as a sacred trust of civilization the obligation to promote to the utmost . . .the well-being of the inhabitants of these territories, and to this end . . .to develop self-government...".

### **Secretariat**

The Secretariat is one of the principal organs of the UN and comprises the Secretary-General and such staffs, as the Organisation requires. The Secretary-General is the UN's chief administrative officer and acts in that capacity in meetings of all UN organs. He is also required to perform whatever other functions are entrusted to him by those organs (Articles 97-101 of the Charter). The primary organisational unit in this field within the Secretariat is the Division of Human Rights. The Division provides secretarial services to such bodies as the Third Committee of the General Assembly, the Economic and Social Council and its Social Committee, the Commission on Human Rights and its Sub-Commission, the Committee on the Elimination of Racial Discrimination, the Human Rights Committee, and a variety of subsidiary bodies. It also: carries out research at the request of these organs; handles materials and prepares reports under procedures for monitoring the implementation of human rights established by various UN organs or included in international instruments; collects and disseminates information and prepares publications on human rights; and administers the programme of advisory services. In 1980, the division of human rights was redesignated as "Centre for Human Rights". Other important activities include annual reports review developments in the various fields of UN activities.

### **International Court of Justice**

The ICJ is the principal judicial organ of the UN and its Statute forms an integral part of the UN Charter. Many human rights conventions confer ICJ jurisdiction of settlement of dispute relating to their interpretation or application when these cannot be settled by other means. The court has frequently been called upon to examine human rights questions, both in contentious and in advisory proceedings. In some cases the court has had

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<sup>8</sup> Ian Brownlie, *supra* note 1, at p. 567.

to address itself directly to the interpretation of a human rights treaty. In other cases human rights questions have arisen indirectly. For example, the court rendered some advisory opinions having implications on human rights: the Colombian-Peruvian Asylum case (1951) in which the court had to decide a dispute concerning diplomatic asylum and to interpret the Convention on the Right of Asylum signed at Havana in 1928, relating international status of South-West Africa (Namibia) in 1962 and 1966), on the Interpretation of Peace Treaties concerning human rights observance in Bulgaria, Hungary and Romania in 1950, on admissibility of reservations to the Genocide Convention, 1951.

### **High Commissioner for the Human Rights**

In 1993, the post of the High Commissioner for the Human Rights was created by the General Assembly Resolution 48/141 (1993). The functions of HCHR are: to promote universal enjoyment of all human rights by giving practical effect to the will and resolve of the world community as expressed by the UN; to play a leading role in the promotion of human rights within the UN system; to promote cooperation on human rights concerns within the international community; to stimulate and co-ordinate U. N. human rights activities; to promote universal ratification and implementation of human rights standards; to assist in the development of new norms; to respond to serious violation of human rights; to undertake preventive human rights infrastructures; to undertake human rights field activities and operation; and to provide education, information, advisory services and technical assistance in the field of human rights.<sup>9</sup>

### *Procedures of UN*

The UN activities in response to violation of human rights is relatively recent of origin. It devised 'communication' as a mechanism to redress the violation of human rights in view of the fact that existing measures are inadequate to cope the growing number allegations regarding human rights violations. The initial effort was limited to struggle against racism and colonialism. Later, it extended for general form of human rights violations. For analytical purpose, a distinction may be drawn between "petition-recourse" and "petition-information" procedures.<sup>10</sup> Petition recourse

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<sup>9</sup> See G. A. res. 141, 48<sup>th</sup> Session; U. N. Doc. A/RES/48/141 (1993).

<sup>10</sup> See Egon Schwelb and Philip Alston, "The Principal Institutions and Other Bodies Founded Under the Charter", in Karel Vasak, (ed), The International Dimension of Human Rights, UNESCO, Paris, 1982, at p. 269.

procedures are those which require the consideration and disposal of complaints on a case by case basis. The primary objective of petition-information procedures is to facilitate the accumulation of information relating to a general situation concerning a class of persons such as "missing" persons or those living under the system of apartheid.

### **1235 Procedure**

It authorised the Commission to "examine information relevant to gross violation of human rights" and "to make a thorough study of situations which reveal a consistent pattern of violation of human rights by apartheid in South Africa and racial discrimination in Southern Rhodesia." It is important to note that Resolution 1235 did not intend to take action by the commission for human rights violation. The main functions of the Commission under the procedure are: a. to hold annual public debate; b. to study and investigate situations by whatever means the commission may deem appropriate. The Commission appoints a Working group or Special Rapporteur to examine the allegations made against a state and to report on the situation and discuss it at public meetings. Thus, under the procedure, working group were appointed to conduct investigation into human rights violation by Israel in Occupied Arab Territories; apartheid in South Africa; the control of opposition in Chile.

### **1503 Procedure**

Ever since the establishment of UNO, the UN Secretariat had been receiving thousands of communications annually from private sources alleging violation of human rights. But the UN human right bodies did not have any power to take any action with respect to such communications. Against this background, in 1970, the ECOSOC approved in Resolution 1503 (XLVIII) a procedure whereby a right was given to individual, groups or nongovernmental organizations to submit a petition to the UN in order to seek redress of human rights violations. Under the resolution, a complex machinery was set up for the screening of communications and the further examinations of those communications which "appear to reveal a consistent pattern of gross and reliably attested violations of human rights and fundamental freedoms." This procedure constitutes an innovation in at least two respects: it admits communications not only from victims of violations but also any persons, groups, or nongovernmental organizations who have direct and reliable knowledge of violations are recognized as valid sources of communications. Secondly, the procedure goes beyond resolution 1235 in the development of protective machinery. This stemmed from the fact that, while initiatives under 1235 lie entirely in the hands of



member states, 1503 gave the power of initiative for the first time to individuals and non-governmental organisations.<sup>11</sup>

The procedure established by UN ECOSOC resolution 1503 is designed for considerations of systematic, massive violations of human rights, and it provides multi stage procedure, in which a working group of the Sub-Commission on Prevention of Discrimination, the Sub-Commission itself, the Commission on Human rights, the General Assembly and ECOSOC serve successively as organs of implementation.

There is no requirement that the complainant be a national of the state complained against, in other words, any country, even if it is not a member of the United Nations, might be subject of a complaint/communication under the 1503 procedure.

The scope of 1503 Procedure subject matter is not precisely defined in the resolution, which refers to "gross and reliably attested violations of human rights and fundamental freedoms, including policies of racial discrimination and segregation and of apartheid."

Thus, the content of the rights covered by the procedure is broad and includes those contained in the International Bill of Human Rights. In submitting a complaint, one should relate the violations alleged to specific consideration of the communication by the Sub-Commission's working group. Communications may be addressed to any organ or body of the United Nations, though it is recommended that they be addressed to the Secretary-General of the United Nations.

In broad terms the procedure currently consists of the following four steps: firstly, the five-member Communication working group reviews communications that have been received in the preceding year. In this stage, a communication will be rejected if abusive or insulting language is used; constitutes an abuse of right of petition; is manifestly political in violation of the UN Charter; seeks to impinge upon the rights and freedom of others; it is anonymous; is based exclusively on reports disseminated by mass media; viable domestic remedies have not been exhausted by the petitioner; violation of rights is not "gross" or "consistent pattern".

In the second stage, the communications that are initially deemed acceptable, are then reviewed by the full-sub-commission, a body of independent experts who serve in their individual capacities. The sub-commission decides whether to refer such situation to the Human Rights Commission. The Sub-Commission's working group makes a

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<sup>11</sup> Tom J. Farer, "The UN and Human Rights: More Than a Whimper, Less than a Roar", in Adam Roberts and Benedict Kingsbury (eds) United Nations, Divided World, Oxford, New York, 1990, at p. 129.

determination, based upon the content of the communication and the reply (if any) of the state complained against, whether there are "reasonable ground to believe that the communication reveals a consistent pattern of gross and reliably attested violation of human rights and fundamental freedoms." The decision is reached by majority vote of the working group, which meets in closed session. If the Sub-Commission does forward a situation to the Human Rights Commission and if the Commission decides to consider a situation under 1503 Procedure, the state concerned is invited to participate in the debate and to answer Commission's questions. Once again, the author of the communication is neither invited to participate nor informed of the status of the communication. At the third stage, the Commission also establishes a 'Communication Working Group'. At this stage, Resolution offers alternative courses of action. First, the Commission may terminate consideration, either through finding that no gross violation has occurred or that other circumstances require discontinuance of the procedure. Second, the Commission may continue consideration of a case until a later session. Third, it may decide to initiate a "thorough study" of the situation, with or without the consent of the government involved. Finally, with the consent of the government concerned, the Commission may make an investigation through an ad hoc committee. Such a committee would have power to receive communications and hear witnesses, although its procedure would be confidential and its meetings private. The Committee can conduct a confidential investigation with the approval of the state concerned for reaching at 'friendly solution.'

#### **Reference to ECOSOC and the General Assembly**

At the fourth stage, in the light of the report of any such ad hoc committee, the Commission may submit a "report and recommendations to" ECOSOC. All actions under resolution 1503 procedure remain confidential until the Commission decides to make recommendations to ECOSOC. At this point all confidentiality regarding the proposals is removed. ECOSOC may accept the recommendations of the Commission, adopt its own proposals, or draft recommendations for adoption by the General Assembly.

The procedure appeared very promising, but due to many procedural technicalities, its time consuming character, and above all the inability or

unwillingness of the Commission on Human Rights to act effectively, high expectations made way for strong disappointment."<sup>12</sup>

The criticism of the procedure has tended to focus on two of its prominent features: its confidential nature and its apparent lack of effectiveness. Moreover, with respect to the range of rights that the procedure responded only to violations of civil and political rights and economic, social and cultural rights have never been examined. Three advantages of dealing with human rights complaints through this procedure may be identified:

First, it provides a way of bringing abuses of human rights to the attention of international bodies in circumstances where this might not otherwise occur. Governments are often reluctant to take up human rights cases and the procedure under the optional protocol to the Covenant on Civil and Political Rights, which allows individuals to initiate proceedings, is binding on only a limited number of states.

The second advantage is that once a human rights issue situation is on the international agenda, the government concerning may be persuaded to do something about it.

The third advantage is that dealing with the human rights situation in a country through the confidential procedure may make it easier for the Commission to take the next step and deal with it through its public procedure. In this regard, the comment of David Weissbrodt is worth mentioned. He concedes that "the 1503 procedure is painfully slow, complex, secret, and vulnerable to political influence at many junctures but none the less supports it as an incremental technique of placing gradually increasing pressure on offending governments."<sup>13</sup>

### *Problems of UN enforcement mechanism*

It is one thing to draw up international standards, but quite another to have those standards implemented. . . Distrust and tensions between nations and peoples, extreme disparities in economic and social conditions between and within nations, religious and ideological antagonism, persistent patterns of racial discrimination and class domination and numerous other factors, including selfishness of individual human beings, affect the realisation of human rights within societies."<sup>14</sup> "The trajectory of political and social

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<sup>12</sup> Theo C. van Boven, "The United Nations and Human Rights: A Critical Appraisal", in Barry M. Rubin and Elizabeth P. Spiro (eds), Human Rights and Foreign Policy, Boulder, 1979, at p. 23.

<sup>13</sup> Newman and Weissbrodt, International Human Rights, 1990, at p. 123.

<sup>14</sup> *Ibid*, p. 24.

developments within and among nations will determine the form and vigour of UN sponsored activity. Predicting that trajectory is work more for the seer than the analyst. One thing can be said with confidence: human rights enforcement will remain highly politicized, intensely controversial. "<sup>15</sup>

There are several difficulties with enforcement mechanism. First, UN agencies have to justify a violation of human rights as a threat to peace because the major function of the UN is maintenance of peace. Second, because such matters are always highly political as well as cultural, interpretation of just what right is protected is variable. Third, UN agencies cannot interfere in essentially domestic jurisdiction. Fourth, giving individuals the right to address themselves directly to an international agency would make them subjects of international law-a quality all states are most reluctant to grant. Fifth, these agencies have no real sanction to enforce their verdicts. Sixth, several sovereign states legislate specific rights based on universal, generally stated, but abstract human rights; international documents can not override national laws.<sup>16</sup>

Nevertheless, it is hardly deniable that the manner in which international society deals with human rights has had some effect upon the internal and external behavior of states. Many convention, declarations and recommendations have served as a guide for many states and have had political and possibly some moral impact.

### *ILO enforcement mechanism*

The ILO was established in 1919 by the Treaty of Versailles. The ILO is the oldest of the specialised agencies of the United Nations system and in many ways it has the most effective intergovernmental system for the protection of fundamental human rights. The ILO's Constitution has a tripartite character, and there is separate representation of employers and workers, as well as governments, in the governing body and therein the General Conference. The tripartite structure of the ILO (government, employers, and workers) is unique among intergovernmental organisations. Some important aspects of ILO regarding human rights provisions are: ILO human rights work has a long history dating from the founding of the Organisation in 1919, but terminology 'human rights' was not used by the ILO in relation to its own work until after the second world war. The term 'human rights' does not appear anywhere in the ILO Constitution. The

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<sup>15</sup> Farer, *supra* note 11, at p. 134.

<sup>16</sup> Werner Levi, *Contemporary International Law*, Boulder, 1979, at p. 184.

phrase 'social justice' was used rather than 'human rights' in early ILO history. Nevertheless, the ILO is working for human rights from the very inception of its existence. The ILO has avoided dichotomy between civil and political rights and social and economic rights and adopted a broader conception of human rights establishing essentially the same supervisory system for all rights within its area of concern, including economic and social rights. Worker and employer representatives participate fully in ILO activities, including the drafting and supervision of conventions. Another aspect of ILO Conventions is that unlike those adopted by the United Nations and others, may not be ratified with reservations. Instead, flexibility is incorporated into these Conventions, allowing ratifying States to make certain declarations or exemptions on ratification, but only within the bounds specified in the instrument itself. On this basis, the ILO supervisory bodies pursue their policy of applying all Conventions in the same way to all countries.

The adoption of international labour conventions and recommendations is the primary means chosen to carry out the aims of the ILO. Since its founding, the ILO has given central importance to the adoption of international conventions and supervision of government compliance with such standards. The ILO's work focuses on the human rights that are perhaps more immediately important to more people: to form trade union, to protection from child labour and compulsory labour, to safe and healthful working conditions, and to social security. The ILO has adopted conventions which deal with, among other subjects, freedom of association, the right to organise, collective bargaining, the abolition of forced labour, discrimination in employment, indigenous peoples, minimum ages for child labour, vocational guidance and training, protection of wages, occupational safety and health, social security, employment of women, migrants workers, and labour administration. In recent years the ILO has increasingly emphasized technical cooperation, research and diplomatic contacts as means of promoting and protecting human rights. The ILO has following principal means of action:

### **Standard Setting**

Human rights standard setting plays a major role within the ILO. By January 1991, 171 conventions and 178 recommendations on freedom of association, discrimination in employment, hours of work, occupational safety and health, maritime employment, social security and other labour matters had been adopted by annual International labour conferences. ILO standards consist of two kinds of international instruments. Conventions are international treaties, which are intended to be ratified and to form

binding obligations on states. Only ten of the 171 conventions adopted by International Labour Conferences (as at Jan. 1991) have been officially classified by the ILO as basic human rights conventions.

Conventions are supplemented by 'Recommendations' which are intended as guidelines for national legislation and policies at the national level. All these form what is known as the International Labour Code, covering all aspects of the social and economic life of nations related to the working life of their citizens.

The ILO set out standards on three major subjects in the six fundamental human rights Conventions of the ILO:

Freedom of Association: Freedom of Association and Protection of the Right to organise Convention, 1948; Protection of the Right to Organise and Collective Bargaining Convention, 1949.

Forced Labour: Forced Labour Convention, 1930; Abolition of Forced Labour Convention, 1957.

Discrimination: Equal Remuneration Convention, 1951; Discrimination (Employment and Occupation) Convention, 1958.

Each of these Conventions has been ratified by many country and they thus form part of the national law for the large majority of nations of the world, covering most of the world's inhabitants. Apart from these conventions, there is a number of other ILO Convention which cover aspects of each of these subjects or which incorporate their concepts into different frameworks. It should also be mentioned that these Conventions all fit into the wider framework of international human rights law defined by the United Nations itself. They focus on one aspect of this international law-that related to economic life. In fact, they parts of the International Covenants on Civil and political Rights and on Economic, Social and Cultural Rights are closely based on these ILO standards, all of which were in force before the Covenants were adopted in 1966.

### **Technical Cooperation and Assistance**

The ILO provides technical assistance to developing countries in the area of its competence, particularly assistance in vocational training, labour legislation, and employment promotion, and especially in developing countries, assistance in overcoming difficulties in implementing labour standards.

### ***Integrated Approach to Human Rights***

The ILO has made a major contribution to theory and practice by its 'holistic' or integrated approach to human rights. The original ILO

emphasis on the concept of 'social justice' as well as its consistent emphasis on the intrinsic links between the material advancement of peoples and their civil and political rights have provided a broader philosophical approach to human rights. ILO conventions on hours of work, minimum working age, social security, occupational safety and health, employment policy relate to economic and social rights but conventions have also been adopted on freedom from forced labour, discrimination and equal remuneration, which are generally classified as civil and political rights. Freedom of association for trade union purposes is considered both a civil right and an economic right. Protecting basic economic rights such as fair working conditions requires giving an effective voice and influence to those most directly concerned. Different measures of implementation have been adopted for various ILO conventions, but the distinction is not based on a classification of the rights concerned as economic and social or civil or political.

### **Implementation of human rights in ILO**

The methods and procedures for the protection of human rights which exist in the ILO may be grouped under following headings:

#### *Reporting Systems*

It is the main method used by the states on their compliance with ILO standards. It is also referred as the 'regular system of supervision', consists of two tier examination of reports on ILO conventions: first by a small (twenty member) committee of experts, and secondly, by a much larger Committee at the annual Conference, composed of representatives of governments, employers, and workers. The supervisory system is based on Article 22 of the ILO Constitution. Ratifying States are required to send in reports to the ILO at regular intervals- between one and five years, depending on various factors. Report on ratified conventions: In order to comply with the constitutional requirement that states report annually on the measures taken to give effect to ratified conventions, governments are required to supply a general report each year on those conventions. At the same time, they are required to send copies of these reports to workers and employers organisations inside the country. This supervision is carried out mainly by two bodies, the Committee of Experts and the Conference Committee on the Applications of Conventions and Recommendations.

The Committee of Experts on the Application of Conventions and Recommendations is composed of twenty independent experts on labour law and social problems, from all the major social and economic systems and all parts of the world. The Committee of Experts undertakes a

technical examination of report submitted on ratified conventions and addresses 'direct request' or 'observation' to governments, requesting further information, or pointing out discrepancies between state law and practice and the relevant convention. The 'observations' are published in annual Committee reports. The 'direct requests' are sent to the governments but are not published. Thus the committee does not condemn states for violations of human rights. Rather, it makes comments, asks questions about application of convention or indicating that the national law and practice are not in conformity and requesting changes.

*The Conference Committee on the Application of Convention and Recommendations*

It is the next level of supervision. Established each year by the International Labour Conference, it reflects the ILO's tripartite structure of governments and of workers and employers representatives. On the basis of the report of the Committee of experts, the Conference Committee selects a number of especially important or persistent cases and requests the government concerned to appear before it and explain the reasons for the situations commented on by the Committee of Experts. The sessions are open to public. At the end of each session, it reports to the full conference on the problems governments are encountering in fulfilling their obligations regarding labour standards or in complying with conventions they have ratified.

*Information on the submission of conventions and recommendations to the competent authorities*

The ILO Constitution also requires members to inform the Director General of the ILO Office of the measures they have taken to bring conventions and recommendations before the competent authorities, with particulars of such authorities and of the action those authorities have taken.

*Report on un-ratified conventions and recommendations*

According to article 19(5)(e), the ILO also employs "direct contacts" as an important method of supervising the application of ratified Conventions. 'Direct contacts' are personal visits by ILO officials or an independent person to ILO member states in order to assist them in overcoming difficulties in application of ratified conventions or to fulfill their other responsibilities of an ILO member.



### **Complaint Procedure**

There are two basic procedures under the ILO constitution for applying adequately the conventions or principles.

Articles 24-6 of the ILO Constitution provide procedure for the filing of complaints against States for failing to implement ratified conventions and for the establishment of Commission of inquiry in particular cases. Under article 24 of the ILO Constitution, a representation may be filed by industrial associations of employers or workers that a member state has failed to secure the effective observance within its jurisdiction of any Convention to which it is a party. A representation thus may be filed only against a state that has ratified the convention concerned. If the complaint is acceptable and a special committee of the governing body decides that a *prima facie* case is made out, it asks government to comment on the allegations and to make suitable comment in this regard.

Under article 26 of the ILO Constitution, any member state of the ILO that has ratified a convention may make a complaint alleging that the convention is being violated by another state party to the convention. The article provides that the Governing Body may appoint a Commission of Inquiry to investigate a receivable complaint. Commission of Inquiry hear representatives of the parties and witnesses presented by them and summon witnesses themselves. Once the accumulation of evidence is complete, a Commission arrives at conclusions and may make recommendations to the parties (article 28 of the Constitution). A recommendation may, for example, suggest changes in national legislation or practical measures to give effect to a convention's provisions. Article 33 of the ILO Constitution provides that if a government does not implement the recommendations of a Commission of Inquiry within the time specified, "the Governing Body may recommend to the Conference such action as it may deem wise and expedient to secure compliance therewith."

#### *Procedure for Complaints concerning Freedom of Association*

The most widely used ILO petition is the special procedure that has been established for complaints concerning violations of freedom of association. All members states of the ILO are subject to the supervisory procedures for freedom of association whether or not they have ratified the freedom of association conventions. There are two bodies that may consider complaints in this area. The Governing Body's Committee on Freedom of Association (CFA) receives complaints directly from workers and employers organisations. The Fact Finding and Conciliation Commission on Freedom of Association (FFCC) may deal with complaints that are referred to it by the Governing Body on the recommendation of the CFA

or by the state concerned. The FFCC may also examine complaints against non-members states of the ILO which are referred to it by ECOSOC. It is an ad hoc body of independent experts appointed by the Governing Body to examine allegations of infringement of freedom of association.

**CFA:** The special complaint procedures were created for the protection of trade union rights, which have been codified by the IL Conferences in conventions dealing with freedom of association. These include the Freedom of Association and Protection of the Rights to Organise Convention, 1948 and Right to Organise Collective Bargaining Convention, 1949.

**UNESCO:** In addition to being the main organisation within the UN system for the promotion of teaching and research on human rights, UNESCO is also concerned with alleged violations of human rights under several procedures. Implementation of the twenty-six recommendations, twenty-six conventions, and five declaration that have been adopted by UNESCO, most of which concern human rights, is primarily carried out through a reporting system which does not include individual petitions or complaints. It has competence on human rights relating four fields: education, science, culture and communication.

In conclusion, it can be said that since 1945 it has come to be accepted that states may not use the argument of domestic jurisdiction to mask violations of human rights. Consequently, prior to World War II while "human rights was not a subject of international concern and was treated as being exclusively within the domestic jurisdiction of individual states"<sup>17</sup> and this has now changed, though

. . . the formulation and due implementation of binding general rules of international law for the protection of human rights and fundamental freedoms by adequate machinery for their enforcement still remain more a promise than an achievement.<sup>18</sup>

It needs to be recognized the inspite of the large number of international conventions, there has been limited concrete progress in the direction of establishing effective international machinery to protect individual rights. Nevertheless, evolving definition, discussions, conventions and declarations, along with periodic reports and

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<sup>17</sup> Supra note, 2, at p. 19

<sup>18</sup> J. G. Starke, Introduction to International Law, New Delhi, 1994, p. 362.

establishment of new procedures and organs are bringing pressure to bear on governments to adhere to the ideals to be realised.