The Universality of Rights

Carlos Koch

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Chapter 1

Introduction

Human Rights and Culture Of Democratic Society

Rights are often considered fundamental to civilization, being regarded as established pillars of society and culture, and the history of social conflicts can be found in the history of each right and its development. The connection between rights and struggle cannot be overstated—rights are not as much granted or endowed as they are fought for and claimed, and the essence of struggles past and ancient are encoded in the spirit of current concepts of rights and their modern formulations.) and freedoms to which all humans are entitled."Proponents of the concept usually assert that everyone is endowed with certain entitlements merely by reason of being human.

Human rights are thus conceived in a universalist and egalitarian fashion. Such entitlements can exist as shared norms of actual human moralities, as justified moral norms or natural rights (Natural and legal rights are two types of rights theoretically distinct according to philosophers and political scientists. Natural rights, also called inalienable rights, are considered to be self—evident and universal. They are not contingent upon the laws, customs, or beliefs of any particular culture or government. Legal rights, also called statutory rights, are bestowed by a

particular government to the governed people and are relative to specific cultures and governments. They are enumerated or codified into legal statutes by a legislative body.) supported by strong reasons, or as legal rights either at a national level or within international law International law is the term commonly used for referring to laws that govern the conduct of independent nations in their relationships with one another. It differs from other legal systems in that it primarily concerns provinces rather than private citizens.

In other words it is that body of law which is composed for its greater part of the principles and rules of conduct which States feel themselves bound to observe,

- The rules of law relating to the function of international institutions or organizations, their relations with each other and their relations with States and individuals; and
- Certain rules of law relating to individuals and non-state entities so far as the rights and duties of such individuals and non-state entities are the concern of the international community. However, the term "international law" can refer to three distinct legal disciplines
- Public international law, which governs the relationship between provinces and international entities, either as an individual or as a group. It includes the following specific legal field such as the treaty law, law of sea, international criminal law and the international humanitarian law.

- Private international law, or conflict of laws, which addresses the questions of
- In which legal jurisdiction may a case be heard;
- The law concerning which jurisdiction
- Apply to the issues in the case
- Supranational law or the law of supranational organizations, which concerns at present regional agreements where the special distinguishing quality is that laws of nation states are held inapplicable when conflicting with a supranational legal system)

However, there is no consensus as to the precise nature of what in particular should or should not be regarded as a human right in any of the preceding senses, and the abstract concept of human rights has been a subject of intense philosophical debate and criticism.

The human rights movement emerged in the 1970s, especially from former socialists in eastern and western Europe, with major contributions also from the United States and Latin America. The movement quickly gelled as social activism and political rhetoric in many nations put it high on the world agenda. By the 21st century, Moyn has argued, the human rights movement expanded beyond its original anti-totalitarianism to include numerous causes involving humanitarianism and social and economic development in the Third World.

Many of the basic ideas that animated the movement developed in the aftermath of the Second World War, culminating in its adoption by the Universal Declaration of Human Rights (The

Universal Declaration of Human Rights (UDHR) is a declaration adopted by the United Nations General Assembly.

The Declaration arose directly from the experience of the Second World War and represents the first global expression of rights to which all human beings are inherently entitled. It consists of 30 articles which have been elaborated in subsequent international treaties, regional human rights instruments, national constitutions and laws.

The International Bill of Human Rights consists of the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights and its two Optional Protocols. In 1966 the General Assembly adopted the two detailed Covenants, which complete the International Bill of Human Rights; and in 1976, after the Covenants had been ratified by a sufficient number of individual nations, the Bill took on the force of international law.) in Paris by the United Nations General Assembly The United Nations General Assembly (UNGA/GA) is one of the five principal organs of the United Nations and the only one in which all member nations have equal representation. Its powers are to oversee the budget of the United Nations, appoint the non-permanent members to the Security Council, receive reports from other parts of the United Nations and make recommendations in the form of General Assembly Resolutions. It has also established a wide number of subsidiary organs.

The General Assembly meets under its president or secretary general in regular yearly sessions the main part of which lasts

from September to December and resumed part from January until all issues are addressed (which often is just before the next session's start). It can also reconvene for special and emergency special sessions. Its composition, functions, powers, voting, and procedures are set out in Chapter IV of the United Nations Charter.

The first session was convened on 10 January 1946 in the Westminster Central Hall in London and included representatives of 51 nations. Voting in the General Assembly on important questions–recommendations on peace and security; election of members to organs; admission, suspension, and expulsion of members; budgetary matters–is by a two-thirds majority of those present and voting.

Other questions are decided by majority vote. Each member country has one vote. Apart from approval of budgetary matters, including adoption of a scale of assessment, Assembly resolutions are not binding on the members. The Assembly may make recommendations on any matters within the scope of the UN, except matters of peace and security under Security Council consideration. The one state, one vote power structure theoretically allows states comprising just eight per cent of the world population to pass a resolution by a two-thirds vote.

During the 1980s, the Assembly became a forum for the North-South dialogue–the discussion of issues between industrialized nations and developing countries. These issues came to the fore because of the phenomenal growth and changing makeup of the UN membership. In 1945, the UN had 51 members. It now has

192, of which more than two-thirds are developing countries. Because of their numbers, developing countries are often able to determine the agenda of the Assembly (using coordinating groups like the G77), the character of its debates, and the nature of its decisions. For many developing countries, the UN is the source of much of their diplomatic influence and the principal outlet for their foreign relations initiatives) in 1948. While the phrase "human rights" is relatively modern the intellectual foundations of the modern concept can be traced through the history of philosophy and the concepts of natural law rights and liberties as far back as the city states of Classical Greece and the development of Roman Law.

The true forerunner of human rights discourse was the concept of natural rights which appeared as part of the medieval Natural law tradition, became prominent during the Enlightenment with such philosophers as John Locke, Francis Hutcheson, and Jean-Jacques Burlamaqui, and featured prominently in the political discourse of the American Revolution The American Revolution was the political upheaval during the last half of the 18th century in which thirteen colonies in North America joined together to break free from the British Empire, combining to become the United States of America. They first rejected the authority of the Parliament of Great Britain to govern them from overseas without representation, and then expelled all royal officials. By 1774 each colony had established a Provincial Congress, or an equivalent governmental institution, to form individual self-governing states. The British responded by sending combat troops to re-impose direct rule. Through representatives sent in 1775 to the Second Continental Congress,

the new states joined together at first to defend their respective self-governance and manage the armed conflict against the British known as the American Revolutionary War (1775–83, also American War of Independence). Ultimately, the states collectively determined that the British monarchy, by acts of tyranny, could no longer legitimately claim their allegiance.

They then severed ties with the British Empire in July 1776, when the Congress issued the United States Declaration of Independence, rejecting the monarchy on behalf of the new sovereign nation. The war ended with effective American victory in October 1781, followed by formal British abandonment of any claims to the United States with the Treaty of Paris in 1783. The American Revolution was the result of a series of social, political, and intellectual transformations in early American society and government, collectively referred to as the American Enlightenment.

Americans rejected the oligarchies common in aristocratic Europe at the time, championing instead the development of republicanism based on the Enlightenment understanding of liberalism. Among the significant results of the revolution was the creation of a democratically-elected representative government responsible to the will of the people. However, sharp political debates erupted over the appropriate level of democracy desirable in the new government, with a number of Founders fearing mob rule.

Many fundamental issues of national governance were settled with the ratification of the United States Constitution in 1788,

which replaced the relatively weaker first attempt at a national government adopted in 1781, the Articles of Confederation and Perpetual Union. In contrast to the loose confederation, the Constitution established a strong federated government. The United States Bill of Rights (1791), comprising the first 10 constitutional amendments, quickly followed. It guaranteed many "natural rights" that were influential in justifying the revolution, and attempted to balance a strong national government with relatively broad personal liberties.

The American shift to liberal republicanism, and the gradually increasing democracy, caused an upheaval of traditional social hierarchy and gave birth to the ethic that has formed a core of political values in the United States and the French Revolution The French Revolution (French: Revolution française; 1789–99) was a period of radical social and political upheaval in French and European history. The absolute monarchy that had ruled France for centuries collapsed in three years. French society underwent an epic transformation as feudal, aristocratic and religious privileges evaporated under a sustained assault from liberal political groups and the masses on the streets. Old ideas about hierarchy and tradition succumbed to new Enlightenment principles of citizenship and inalienable rights.

The French Revolution began in 1789 with the convocation of the Estates-General in May. The first year of the Revolution witnessed members of the Third Estate proclaiming the Tennis Court Oath in June, the assault on the Bastille in July, the passage of the Declaration of the Rights of Man and of the Citizen

in August, and an epic march on Versailles that forced the royal court back to Paris in October.

The next few years were dominated by tensions between various liberal assemblies and a conservative monarchy intent on thwarting major reforms. A republic was proclaimed in September 1792 and King Louis XVI was executed the next year. External threats also played a dominant role in the development of the Revolution.

The French Revolutionary Wars started in 1792 and ultimately featured spectacular French victories that facilitated the conquest of the Italian peninsula, the Low Countries and most territories west of the Rhine—achievements that had defied previous French governments for centuries.

Internally, popular sentiments radicalized the Revolution significantly, culminating in the rise of Maximilien Robespierre and the Jacobins and virtual dictatorship by the Committee of Public Safety during the Reign of Terror from 1793 until 1794 during which between 16,000 and 40,000 people were killed. After the fall of the Jacobins and the execution of Robespierre, the Directory assumed control of the French state in 1795 and held power until 1799, when it was replaced by the Consulate under Napoleon Bonaparte.

The modern era has unfolded in the shadow of the French Revolution. The growth of republics and liberal democracies, the spread of secularism, the development of modern ideologies and the invention of total war all mark their birth during the

Revolution. Subsequent events that can be traced to the Revolution include the Napoleonic Wars, two separate restorations of the monarchy and two additional revolutions as modern France took shape. In the following century, France would be governed at one point or another as a republic, constitutional monarchy and two different empires (the First and Second) All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

International concern over human rights aims at influencing the government that engages in human rights violations to change its attitude towards its own citizens. This concern ranges from friendly influences to political and economic pressures, and in some cases involves direct military intervention to pressure the government to take human rights seriously. The success of international pressure depends on the level of pressure exerted on the target country, the level and kind of linkages (political, economic, defence) between the centres of external pressure and the target state, and the self-confidence of the government to hold social dissatisfaction at home (efficiency of the police state to control dissenting voices). These elements determine the decision of domestic governments as to whether they should co-operate with international pressure centres.

In some cases, when confronting brutal dictators, diplomatic, political and economic leverage seems to be ineffective at stopping massive and consistent violation of basic human rights. Thus, the concern that there should be moral limits to territorial sovereignty leads to a quest for an exception to the non-

intervention principle that is believed to guide international relations. Intervention is commonly defined as "dictatorial or coercive interference by an outside party or parties, in the sphere of jurisdiction of a sovereign state". The elements of "dictatorial or coercive interference" include not only direct military interference but also non-military measures, especially economic ones. If a government takes a stand against foreign governments to promote their human rights practice and links its relations to some economic and political bilateral relations, this may be regarded from a conventional perspective as an interventionary policy—as a move against the very essence of the sovereign states system.

The foreign policy of sovereign states has traditionally been conducted within the paradigm of the 'morality of states' that attaches a moral priority and autonomy to the state, whereas the conception of universal human rights presupposes a notion of cosmopolitan human existence on which world politics should be based. Since the moral autonomy of the state is, in practice, formulated in terms of national sovereignty, a cosmopolitan conception of human rights tends to conflict with this idea of sovereign statehood that has constituted pillar of the modern international system since the Westphalian peace. The claims of the state for domestic jurisdiction over its people and resources are in conflict with any kind of external-universal authoritative moral design for national politics, simply because it would be seen as a breach of the state's sovereign rights.

Thus from a conventional viewpoint, human rights and foreign policy form an uneasy partnership as each refers to and arranges

different political domains. Whereas the former essentially refers to the domestic political structure in which the individual-state relationship is constitutionally determined and practically carried out, the latter conventionally deals with interstate relations without concerning itself with the internal affairs of the other states, *i.e.* the state of human rights. Therefore relations between states, according to the state-centric view of international relations, are conducted on the basis of mutual respect for sovereignty; that is from where the principle of non-intervention is derived, "if sovereignty then non-intervention". Here the question is not the rights of individuals and groups, but states.

As autonomous moral entities, states enjoy internationally recognised rights; the most basic of which is territorial sovereignty. If the state is a moral entity, like the individual, then any external intervention will be a violation of the moral autonomy of the state that is granted by its very existence. Interstate relations thus should be based on mutual agreement on the respect for territorial sovereignty that is derived from the autonomy of states; just like individuals, states have autonomous rights and should be left alone to seek their own ends. Furthermore, in an essentially anarchical international system, there is no supreme moral authority (a sovereign) existing above states to impose a higher morality.

The proposition that states are morally autonomous entities has been criticised within the tradition of natural rights theory claiming that the rights of states are derived from individual rights and therefore have no autonomous moral standing. If the ultimate justification for the existence of states is the protection

of the natural rights of citizens, "a government that engages in substantial violation of human rights betrays the very purpose for which it exists". As a result, the government loses not only domestic but also international legitimacy. The liberal argument therefore concludes that the "right of autonomy for states is derived from the respect of the state for the individual's right of autonomy".

What emerges from this picture is that there is an "inescapable tension" between human rights and foreign policy. The tension is actually between a liberal-universal understanding of human rights and an absolutist notion of territorial sovereignty that gives birth to a realist conception of international relations. When a state makes human rights an issue of inter-state relations, it implies that an essentially national issue is extended to the international arena where states are no longer absolutely sovereign and there is no supreme moral authority to set values for the whole community.

If we take the sovereignty of the state as the absolute right to control and govern resources and citizens, then from this we can derive the principle of non-interference as an absolute rule to govern inter-state relations. But in such an extreme conceptualisation, any expression of displeasure by foreign states about the way in which a state treats its own citizens would constitute an intervention in the sovereign rights of the state. This is so because nobody except the state is morally entitled to decide to organise its political regime as it sees fit. In this context, therefore, the inter nationalization of human rights necessarily involves a clash with the concept and practice of

sovereign statehood with its internal and external implications. Yet, as the former Secretary-General of the UN, Boutros Boutros Ghali, put forward in his Agenda for Peace, "the time of absolute and exclusive sovereignty has passed".

From an international law perspective, it can be furthermore argued that the non-intervention principle is not an absolute norm in the contemporary international normative system. The UN forbids intervention in matters that are within the domestic jurisdiction of another state. But, first it should be decided which matters fall within the domestic jurisdiction of the state before applying the principle to any case. As a demarcation, Henkin and Buergenthal suggested, "To the extent a matter has been internationalised, the traditional prohibition against intervention in the domestic jurisdiction of a state is inapplicable". Many international lawyers are convinced that since the Second World War international undertakings have transformed the human rights issue from domestic jurisdiction to international jurisdiction. Therefore, any concern over human rights cannot be refuted as unwarranted intervention.

Within the international normative order, one can argue that human rights now constitute the basis on which the international legitimacy of a state is determined. To link international legitimacy to respect of the state for human rights is to link it to domestic legitimacy. That means that international legitimacy is derived from domestic legitimacy and thus states do not have an autonomous moral standing divorced from their domestic political institutions and processes, respected by the international community.

In sum, elements of contemporary international society entail a loosening of the absolutist conception of state sovereignty so that human rights are included in the discourse of international relations without endangering the very existence of the society of states. Development of a normative order of international relations, economic interdependencies and the increasing levels and importance of transnational relations have transformed an atomic view of states in world politics and, to some extent, have weakened both the autonomy and sovereignty of the contemporary state.

Shifting power centres in the contemporary world, alongside national, regional and international agencies have spread sovereign power to these different levels of governance. Additionally, contemporary states cannot ignore demands from domestic society for the inclusion of the human rights issue into foreign-policy making in democratic societies, but at the same time they cannot adopt a liberal-cosmopolitan stand either, for their domestic responsibilities override international moral commitments. This tension, in practice, results in a moderate inclusion of human rights in foreign policy agendas.

Relativity of Human Rights

The inclusion of human rights in foreign policy is, however, not free from theoretical and practical difficulties. There are strong arguments both for and against such an undertaking in foreign policy. Despite his rather discursive recognition of the place of morality in politics, Hans Morgenthau, a classic proponent of the

realist school, dismisses the inclusion of human rights in foreign policy as morally misconstrued and practically impossible. He bases his idea of morality in politics on the view that places 'prudence' as the "supreme virtue in politics" without which "there can be no political morality".

He denies then the universality of human rights by invoking the concept of cultural relativism and arguing that our understanding of human rights is shaped by historical and social settings that differ from culture to culture. Therefore, to pursue a human rights policy abroad means imposing one's moral values on others, that is moral imperialism and will make things worse. In recent years, the idea of a 'clash of civilization' as put forward by Mr Huntington reflects the relativist argument from a Western point of view. Mr Huntington argues that the West, with its values and institutions, is not universal but unique.

Thus, the attempt to impose Western values and institutions on the rest is politically imprudent and practically impossible. The uniqueness of civilizations should not only be respected but also have to be put into account in policy planning and implementation. In sum, for Mr Huntington the West can not and should not try to export 'Western' values of democracy and human rights. The political elite of many non-Western countries embrace both the idea of cultural relativism and the inviolability of the state's sovereign rights over its domestic jurisdiction. They are resistant to any idea or move that may seem to compromise the sovereign rights of the state and that may warrant any kind of interference. Many repressive regimes may incline to invoke the particularities of their history and culture, and attempt to

justify policies that violate civil and political rights as understood in the West and expressed by the UN Universal Declaration and the covenants.

Once cultural relativism is accepted as to confine moral considerations at national borders, state sovereignty and the principle of non-intervention will set political and practical limits for an international politics of human rights in the face of neo-imperialist charges. However, to object to human rights concerns in foreign policy on the grounds of cultural relativism seems a weak argument.

From a political and legal perspective, not an anthropological one, it can be argued that the UN member states' acceptance of international human rights documents refutes any argument for cultural relativism. Despite different understandings about the content of these documents among international actors, there still exists an almost universal consensus that genocide, arbitrary arrest and execution, systemic torture and racial discrimination are violations of basic human rights. No governments that violate human rights can or would defend their abuses on the basis that their particular culture justifies torture, mass killings, arbitrary arrest, etc.

Thus, authoritarian governments are likely to uphold cultural relativism to justify their oppressive regimes by referring to indigenous cultural and moral values and thereby attempt to secure the silence of the international community. But, at least as far as the physical integrity rights are concerned, there could

be no moral, economic or political grounds that would justify the absence of their provision in any human community.

Primacy of International Order and Security

Another group of arguments against the inclusion of human rights in foreign policy is based on the idea of the primacy of international order. Once the maintenance of international order is set as a priority in international relations, international promotion of human rights is believed to lead to some consequences that are not compatible with this priority. International order is defined as "a pattern of activity that sustains the elementary or primary goals of the international society". The two elementary or primary goals of international society are to preserve both the society of states itself and the external sovereignty of its constituent units. Here human rights emerge as a challenge to international society with its emphasis on the rights of individuals, not that of the state, and its prescription for a recognition and protection of the rights of man on a transnational base.

If human rights assume not only a moral but also a legal form that justifies interference in the domestic jurisdiction of a sovereign state to protect the human rights of its citizens, "the basic rules of the society may be undermined". Thus, the priority of order in the international system overrides demands for universal human rights. Order and justice, like foreign policy and

universal human rights are taken as contending paradigms. Referring to the formative years of the modern international system, Bull asserts, "In an international society of this sort, which treats the maintenance of order among states as the highest value, the very idea of human or natural rights…is potentially disruptive."

Against the argument for the international order, it may simply be asserted that a concern for human rights in foreign policy does not necessarily lead to an interventionist policy and endanger peace and stability. The order of interstate relations depends on many other variables. There is a chain of interdependence with regard to political, economic and defence issues that can not be broken easily because of resentment caused by an expressed concern for human rights from another country. There has also developed an understanding among states that the human rights issue has become an international concern. Therefore, many states are increasingly getting prepared for compromise on their human rights policies at home in the face of external criticism or pressure.

Furthermore, international peace and order are sustained better in an international system that consists of countries respectful of human rights. Therefore, it is not convincing that in the long run all cases of humanitarian concern via foreign policy are likely to create international instability and unlikely to result in positive domestic changes. One can also argue that the universal acceptance of the legitimacy of intervention, within a UN mandate for example, may deter states from engaging in consistent

massive violation of human rights and raise standards of observation of human rights world wide.

There is also a correlative relationship between peace at home and peace in the world. Global stability and peace cannot be separated from stability and peace within the states that comprise the international system. In other words, there is an undeniable connection between domestic political structure and the attitudes of the state vis-a-vis the external world. The behaviour of a state in the international arena cannot be separated from the way in which it treats its own citizens at home. This is to say that the kind of political regime prevalent domestically strongly influences its policy towards the outside world.

A government that does not respect its own people's basic human rights may well also be a source of tension and conflict in world politics. Therefore, threats to world order do not come from the internationalisation of human rights, but in the long term, from tyrannical sovereign states. As a result, the inclusion of human rights issues in foreign-policy making would not necessarily increase tension in world politics, on the contrary it may stabilise and standardise the behaviour of states at home and abroad.

Furthermore, an international human rights regime with mechanisms to uphold human rights globally and a genuine interest in the fate of human rights in interstate relations may also contribute to international peace and stability through the formation of a politically homogeneous international system

composed of states respectful to human rights. As Aron puts it, a homogeneous international system based on the society of states sharing common principles, *i.e.* democratic international society, is more conducive to security, peace and order. From a Kantian standpoint, it has also been argued that "perpetual peace" can only be achieved in an international system consisted of "republics". Such a moral proposition can be supported by empirical data confirming that "democracies are unlikely to go to war against each other". Lastly, violations of human rights do not only harm individuals, groups or the people in the country concerned but may well endanger others, particularly regional countries, for repercussions of human rights violations cannot be confined within national borders. For instance, the flow of refugees that is one of the most tragic outcomes of human rights violations may reach a massive scale in some cases, with grave security implications for the sending and receiving countries, damaging both regional and international security. In fact, in recent years, the Security Council of the United Nations in its resolutions has come to make a linkage between international peace and security and humanitarian crises.

Therefore, the search for global peace and security starts with improving human rights conditions at a domestic level since there exists a clear-cut linkage between national and international security. Therefore, while the respect for human rights enhances national security the state that is involved in systematic violations of human rights endangers not only national but also international peace and security. There is no doubt that the state-centric view of international politics has not faded away completely, but it is also obvious that this view is

unsustainable in its traditional form. The traditional view of state sovereignty and the principle of non-intervention have been challenged by economic interdependencies, transnational organisations and movements, and legal obligations undertaken by states that raise the individual as a subject of international politics and law.

In the face of emerging awareness for transnational protection of the rights of individuals in global politics, the rights of states are not as central to international politics and law as they used to be. While liberal-democratic states respond and contribute to the internationalisation of human rights through their foreign policy, the illiberal states try to resist to the activities of transnational civil society and liberal states by invoking an absolutist notion of national sovereignty and the principle of non-intervention. Yet, the process of globalisation in the realms of politics, economics and communication technology weakens the ability of both liberal and illiberal states to control the national space, thus eroding the conventional sovereign power of the state. The sovereign realm of the state has come to be shared both by global actors and regional-local centres of power at national level. Along these lines, demands for human rights, with their cross-national characteristics, forces the conventional notion of sovereignty to transform itself so as to allow some degree of economic and political intervention. Growing global awareness for protecting the rights of individuals through transnational norms, institutions and processes, limits the sovereign rights of states at national and international levels.

State Responsibility for Human Rights

The obligation to protect, promote and ensure the enjoyment of human rights is the prime responsibility of States, thereby conferring on States responsibility for the human rights of individuals. Many human rights are owed by States to all people within their territories, while certain human rights are owed by a State to particular groups of people: for example, the right to vote in elections is only owed to citizens of a State. State responsibilities include the obligation to take pro-active measures to ensure that human rights are protected by providing effective remedies for persons whose rights are violated, as well as measures against violating the rights of persons within its territory.

Under international law, the enjoyment of certain rights can be restricted in specific circumstances. For example, if an individual is found guilty of a crime after a fair trial, the State may lawfully restrict a person's freedom of movement by imprisonment. Restrictions on civil and political rights may only be imposed if the limitation is determined by law but only for the purposes of securing due recognition of the rights of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

Economic, social and cultural rights may be limited by law, but only insofar as the limitation is compatible with the nature of the rights and solely to promote the general welfare in a democratic society. In a legitimate and declared state of emergency, States can take measures which limit or suspend (or. derogate. from)

the enjoyment of certain rights. Such derogations are permitted only to the extent necessary for the situation and may never involve discrimination based on race, colour, sex, language, religion or social origin. Any derogation must be reported to the Secretary- General of the United Nations.

However, in accordance with article 4, of the International Covenant on Civil and Political Rights (ICCPR), certain human rights. non-derogable rights. may never be suspended or restricted even in situations of war and armed conflict. These include the right to life, freedom from torture, freedom from enslavement or servitude and freedom of thought, conscience and religion. In addition, in times of armed conflict where humanitarian law applies, human rights law continues to afford protection.

Humanitarian law

International humanitarian law (sometimes referred to as "the law of armed Conflict" and "the law of war") is a body of principles and norms intended to limit human suffering in times of armed conflict and to prevent atrocities. It can be defined as that part of international law—comprising international treaty and customary law—which seeks to protect persons who are not, or are no longer, taking part in the hostilities (*i.e.* sick, wounded or shipwrecked combatants, prisoners of war and civilians), and to restrict the method and means of warfare between parties to a conflict. The 1864 Geneva Convention for the Amelioration of the Condition of the Wounded in Armies in the Field laid the foundations for contemporary humanitarian law.

The 1874 Diplomatic Conference and the Hague Peace Conferences of 1899 and 1907 constitute important milestones. Modern international humanitarian law is mainly embodied in the four Geneva Conventions of 1949 (188 States Parties) and the two 1977 Protocols Additional to those Conventions (152 and 144 States Parties respectively), namely:

- Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in the Armed Forces in the Field;
- Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked members of the Armed Forces at Sea;
- Geneva Convention relative to the Treatment of Prisoners of War;
- Geneva Convention relative to the Protection of Civilian Persons in Time of War;
- Additional Protocol I relative to the Protection of victims of international armed conflicts;
- Additional Protocol II relative to the Protection of victims of non international armed conflicts.

Significantly, common to all Geneva Conventions is article 3 which establishes minimum rules to be observed by each party to an internal armed conflict. This article provides that persons taking no active part in the hostilities shall in all circumstances be treated humanely, without adverse distinction. and the wounded and sick shall be collected and cared for Other humanitarian law instruments deal with topics as diverse as the protection of cultural property in the event of armed conflict, the

prohibition of biological and chemical weapons and of certain conventional weapons which may be deemed to be excessively injurious or to have indiscriminate effects. Recent examples of humanitarian law are the 1995 Protocol on Blinding Laser Weapons and the 1997 Convention on the Prohibition of Anti-Personnel Mines, Ottawa Treaty, which entered into force on 1 March 1999.

Link Between Humanitarian and Human Rights Law

Humanitarian law and human rights law were traditionally regarded as separate areas of international law. human rights law setting standards for State conduct in guaranteeing the rights and freedoms of individuals and humanitarian law providing standards for the protection of war victims and the manner in which hostilities are conducted. In other words, it was thought that human rights law was less applicable in situations of humanitarian emergency and armed conflict. Those holding this view pointed to the provisions in the ICCPR which permit States to derogate temporarily from some civil and political rights in times of public emergency which threaten the life of the nation.

However, the provisions of most international human rights instruments apply even in times of armed conflict. The need to safeguard human rights during armed conflict has been given priority. as human rights are recognized as integral to peace and security. In 1966, the then Secretary-General investigated the extent to which international human rights instruments protected human rights in times of armed conflict. It was found

that the major international instruments, for example the International Bill of Human Rights, provided for a broader spectrum of human rights protection than the Geneva Conventions.

This acknowledgement guided the adoption by the Teheran World Conference on Human Rights in 1968 and the General Assembly in 1970 of a number of resolutions recognizing that fundamental human rights in international instruments continue to apply in situations of armed conflict. Similarly, the Vienna Declaration and Programme of Action called on all States and all parties to armed conflicts to pay strict observance to international humanitarian law as well as to the minimum standards required for protecting human rights.

In 1996, the Commission on Human Rights recognized the need to identify the fundamental principles applicable to situations of internal violence. It is now acknowledged that human rights law and humanitarian law should be viewed in an integrated and holistic manner, where the individual has protection under human rights law at all times, as well as that provided under humanitarian law during periods of armed conflict.

Treaties are the major mechanism for international cooperation in international relations, and the main source of international law today. The starting point for determining what a treaty is, is to be found in a treaty itself, a treaty on treaty law, namely the Vienna Convention on the Law of Treaties, which was concluded in1969, and entered into force in 1980. (Herein after referred to as the 1969 Vienna Convention). Many provisions of the 1969

Vienna Convention are considered to be binding on all States. Vienna Convention 1969 defines a treaty as: "an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation." Accordingly, "whatever its particular designation", the designation employed in a document does not determine whether it is a treaty or not.

Irrespective of the designation, an international agreement falling under the above definition is considered to be a treaty. The term 'treaty' is the generic name, and there are very many terms used to indicate the same. The term 'treaty' encompasses, among others, the terms convention, agreement, pact, protocol, charter, statute, covenant, engagement, accord, exchange of notes, modus vivendi, and memorandum of understanding. As long as they fall under the above definition, they refer to international instruments that are binding under international law. International organizations are also recognized as capable of possessing the power to conclude treaties. Sometimes some of these terms may be employed by drafters and negotiators to suggest other meanings; that is, they can also be used to mean something other than treaties, which, on occasion, makes the terminology confusing. The various terms may be employed to indicate differing degrees of political or practical significance. For example, a simple bilateral agreement on technical or administrative cooperation will rarely be designed 'Covenant' or 'Charter', where as an agreement establishing an international organization will usually not be given such labels as 'Agreed Minutes' or 'Memorandum of Understanding'.

So, the nature of the labelling used to describe an international agreement may say something about its content, although this is not always the case. The two principal categories are the bilateral and the multilateral agreements, the former having only two parties and the latter at least two, and often up to global participation.

- *Treaty:* The term 'treaty' can be used as a common generic term or as a particular term which indicates an instrument with certain characteristics. There are no consistent rules to determine when State practice employs the terms 'treaty' as a title for an international instrument. Although in the practice of certain countries, the term treaty indicates an agreement of a more solemn nature. Usually the term 'treaty' is reserved for matters of some gravity. In the case of bilateral agreements, signatures affixed are usually sealed. Typical examples of international instruments designated as 'treaties' are Peace Treaties, Border Treaties, Delimitation Treaties, Extradition Treaties and Treaties of Friendship, Commerce and Cooperation. The designation 'convention' and 'agreement' appear to be more widely used today in the case of multilateral environmental instruments.
- *Agreement:* The term 'agreement' can also have a generic and a specific meaning. The term 'international agreement' in its generic sense consequently embraces the widest range of international instruments. In the practice of certain countries, the term 'agreement' invariably signifies a treaty. 'Agreement' as a particular

term usually signifies an instrument less formal than a 'treaty' and deals with a narrower range of subject-matter. There is a general tendency to apply the term 'agreement' to bilateral or restricted multilateral treaties. It is employed especially for instruments of a technical or administrative character, which are signed by the representatives of government departments, and are not subject to ratification. Typical agreements deal with matters of economic, cultural, scientific and technical cooperation, and financial matters, such as avoidance of double taxation. Especially in international economic law, the term 'agreement' is also used to describe broad multilateral agreements (*e.g.* the commodity agreements). Nowadays the majority of international instruments, and international environmental instruments, are designated as agreements.

- *Convention:* The term 'convention' can also have both a generic and a specific meaning. The generic term 'convention' is synonymous with the generic term 'treaty'. With regard to 'convention' as a specific term, in the last century it was regularly employed for bilateral agreements, but now it is generally used for formal multilateral treaties with a wide range of parties. Conventions are normally open for participation by the international community as a whole, or by a large number of States. Usually the instruments negotiated under the auspices of the United Nations are entitled conventions (*e.g.* the 1992 Convention on Biological Diversity, the 1982 United

Nations Convention on the Law of the Sea). The same holds true for instruments adopted by an organ of an international organization (*e.g.* the 1989 Convention on the Rights of the Child, adopted by the General Assembly of the UN). Because so many international instruments in the field of environment and sustainable development are negotiated under the auspices of the United Nations, many instruments in those areas are called 'conventions' such as the Desertification Convention, Convention on Biological Diversity, the Convention on Persistent Organic Pollutants, among others.

- *Charter:* The term 'charter' is used for particularly formal and solemn instruments, such as the constituent treaty of an international organization. The term itself has an emotive content that goes back to the Magna Carta of 1215. Well-known more recent examples are the 1945 Charter of the United Nations, the 1963 Charter of the Organization of African Unity and the 1981 Banjul Charter on Human and Peoples 'Rights. The 1982 World Charter for Nature is a resolution adopted by the General Assembly of the United Nations and not a treaty.

- *Protocol:* The term 'protocol' is used for agreements less formal than those entitled 'treaty' or 'convention'. A protocol signifies an instrument that creates legally binding obligations at international law. In most cases this term encompasses an instrument which is subsidiary to a treaty. The term is used to cover, among others, the following kinds of instruments

- A Protocol of Signature is an instrument subsidiary to a treaty, and drawn up by the same parties. Such a protocol deals with additional matters such as the interpretation of particular clauses of the treaty. Ratification of the treaty will normally also involve ratification of such a protocol.

- An Optional Protocol to a treaty is an instrument that establishes additional rights and obligations with regard to a treaty. It is sometimes adopted on the same day, but is of independent character and subject to independent ratification. Such protocols enable certain parties of the treaty to establish among themselves a framework of obligations which reach further than the general treaty and to which not all parties of the general treaty consent, creating a 'two-tier system'. An example is formed by the Optional Protocols to the 1966 International Covenant on Civil and Political Rights, which first Optional Protocol deals with direct access for individuals to international courts and tribunals.

- A Protocol can be a supplementary treaty, it is in this case an instrument which contains supplementary provisions to a previous treaty, *e.g.* the 1967 Protocol relating to the Status of Refugees to the 1951 Convention relating to the Status of Refugees.

- A Protocol can be based on and further elaborate a framework convention. This framework 'umbrella convention', which sets general objectives, contains the most fundamental rules of a more general character, both procedural as well as substantive. These

objectives are subsequently elaborated and incorporated by a Protocol, with specific substantive obligations, according to rules agreed upon in the basic treaty. This structure is known as the so-called 'framework-protocol approach '.Examples are the 1985 Vienna Convention on the Ozone Layer and its 1987Montreal Protocol with its subsequent amendments; the 1992 United Nations Framework Convention on Climate Change with its 1997 Kyoto Protocol; and the1992 Convention on the Protection and Use of Transboundary Watercourses and International Lakes with its 1999 Protocol on Water and Health and its 2003 Protocol on Civil Liability and Compensation for Damage Caused by the Transboundary Effects of Industrial Accidents on Transboundary Waters.

- *Declaration:* The term 'declaration' is used to describe various international instruments. However, in most cases declarations are not legally binding. The term is often deliberately chosen to indicate that the parties do not intend to create binding obligations but merely want to declare certain aspirations. Examples are the 1992Rio Declaration on Environment and Development, the 2000 United Nations Millennium Declaration and the 2002 Johannesburg Declaration on Sustainable Development. Declarations can sometimes also be treaties in the generic sense intended to be binding at international law. An example is the 1984 Joint Declaration between the United Kingdom and China on the Question of Hong Kong, which was registered as a

treaty by both parties with the UN Secretariat. It is therefore necessary to establish in each individual case whether the parties intended to create binding obligations, which can often be a difficult task. Some instruments entitled 'declarations' were not originally intended to have binding force, but their provisions may have reflected customary international law or may have gained binding character as customary law at a later stage, as is the case with the 1948 Universal Declaration of Human Rights.

Once the text of a treaty is agreed upon, States indicate their intention to undertake measures to express their consent to be bound by the treaty. Signing the treaty usually achieves this purpose, and a State that signs a treaty is a signatory to the treaty. Signature is a voluntary act. Often major treaties are opened for signature amidst much pomp and ceremony. Once a treaty is signed, customary law, as well as the 1969 Vienna Convention, state that a State must not act contrary to the object and purpose of the particular treaty, even if it has not entered into force yet.

The next step is the ratification of the treaty. Bilateral treaties, often dealing with more routine and less politicized matters, do not normally require ratification, and are brought into force by definitive signature, without recourse to the procedure of ratification. The signatory State will have to comply with its constitutional and other domestic legal requirements in order to ratify the treaty. This act of ratification, depending on domestic legal provisions, may have to be approved by the legislature,

parliament, the head of State, or similar entity. It is important to distinguish between the act of domestic ratification and the act of international ratification.

Once the domestic requirements are satisfied, in order to undertake the international act of ratification the State concerned must formally inform the other parties to the treaty of its commitment to undertake the obligations under the treaty. In the case of a multilateral treaty, this constitutes submitting a formal instrument signed by the Head of State or Government or the Foreign Minister to the depositary who then informs the other parties. With ratification a signatory State expresses its consent to be bound by the treaty. Instead of ratification, it can also use the mechanism of acceptance or approval, depending on its national preference. A non-signatory State, which wishes to join the treaty at a later stage, usually does so by lodging an instrument of accession.

Accordingly, the adoption of the treaty text does not, by itself, create any international obligations. A State usually signs a treaty stipulating that it is subject to ratification, acceptance or approval. A treaty does not enter into force and create binding rights and obligations until the required number of States, as indicated by the treaty, express their consent to be bound by the treaty. The expression of such consent to be bound usually occurs with ratification, approval, acceptance or accession. Sometimes, depending on the treaty provisions, it is possible for treaty parties to agree to apply a treaty provisionally until its entry into force. One of the mechanisms used in treaty law to facilitate agreement on the text is to leave the possibility open for

a State to make a reservation on becoming party. A reservation modifies or excludes the application of a treaty provision. A reservation must be lodged at the time of signature or ratification (or acceptance, or approval, or accession). The 1969 Vienna Convention includes a section (arts. 19-23) on reservations.

In general, reservations are permissible except when:

- They are prohibited by the treaty,
- They are not included among expressly authorized reservations, and
- They are otherwise incompatible with the object and purpose of the treaty.

Recently, it has become more common for treaties, including most of the recently concluded environmental treaties, to include a provision that prohibits reservation to the treaty. Examples are the 1985 Vienna Convention for the Protection of the Ozone Layer (Art. 18) and its 1987 Montreal Protocol on Substances that Deplete the Ozone Layer (Art. 18), the 1992 Convention on Biological Diversity (Art. 37)and its 2000 Cartagena Protocol on Bio safety (Art. 38)

International Custom

The second most important source of international law, and thus of international environmental law, is international custom. International law can also be created through the customary practice of States. Before treaties became as important as they are today, customary international law was the leading source of

international law: the way things have always been done becomes the way things must be done. Once a rule of customary law is recognised, it is binding on all States, because it is then assumed to be a binding rule of conduct.

There are two criteria for determining if a rule of international customary law exists:

- The State practice should be consistent with the so-called 'rule of constant and uniform usage', and
- This State practice exists because of the belief that such practice is required by law (opinion juris)

Both elements are complementary and compulsory for the creation of customary international law. Since customary law requires this rather heavy burden of proof, and its existence is often surrounded by uncertainties, treaties have become increasingly important to regulate international diplomatic relat ons among States.

The provisions of the 1948 Universal Declaration on Human Rights, although not specifically intended to be a legally-binding instrument, are now generally accepted, as constituting customary international law. Customary international law is as legally binding as treaty law. On occasion, it is not possible to distinguish clearly between treaty law and customary law. For example, the UN Convention on the Law of the Sea comprises new international legal norms as well as codification of existing customary law. Between the date of its adoption in 1982, and the date it entered into force in 1994, non-parties to the treaty

followed in practice many of the obligations incorporated in 1982 UNCLOS. It can therefore now be said that UNCLOS largely represents customary law, binding on all States, even if it has at this time only 145 parties. Two specific terms related to the concept of customary international law require further attention. The first one is 'soft law'. This term does not have a fixed legal meaning, but it usually refers to any international instrument other than a treaty containing principles, norms, standards or other statements of expected behaviour.

Often, the term soft law is used as having the same meaning as a non-legally binding instrument, but this is not correct. An agreement is legally binding or is not-legally binding. A treaty that is legally binding can be considered as hard law; however, a non-legally binding instrument does not necessarily constitute soft law. The consequences of such a non-legally binding instrument are not clear. Sometimes it is said that they contain political or moral obligations, but this is not the same as soft law.

Non-legally binding agreements emerge when States agree on a specific issue, but they do not, or do not yet, wish to bind themselves legally; nevertheless they wish to adopt certain non-binding rules and principles before they become law. This approach often facilitates consensus, which is more difficult to achieve on binding instruments.

There could also be an expectation that a rule or principle adopted by consensus, although not legally binding, will nevertheless be complied with. Often such will often fuel civil

society activism to compel compliance. The second term is 'peremptory norm' (jus cogens).

This concept refers to norms in international law that cannot be overruled: they are of the highest order. Jus cogens has even precedence above treaty law. Exactly which norms can be so designated as jus cogens is still subject to some controversy. Examples are the ban on slavery, the prohibition of genocide or torture, or the prohibition on the use of force.

General Principles of Law

The third sources of international law are general principles of law. There is no agreed selection of principles that are to be considered as universally agreed upon. They usually include both principles of the international legal system as well as those common to the major national legal systems of the world. Some treaties reflect, codify or create general principles of law. Also decisions of the Conference of the Parties to a MEA, and conference declarations or statements, may contribute to the development of international law.

Chapter 2

International Human Rights Standards and their Development

The International Bill Of Human Rights

Article 1(3) of the UN Charter provides for the pursuit of international cooperation by resolving international problems of an economic, social, cultural or humanitarian character, promoting and encouraging respect for human rights and fundamental freedoms for all without distinction as to race, sex, language or religion. To this end, the United Naztions has embarked on the continuous process of articulating human rights in order to translate them from morality and principles into binding international law. These standards are the result of a gradual evolution over several decades with the participation of United Nations bodies, many nations, non-governmental organizations and individuals.

The adoption of the Universal Declaration of Human Rights (Universal Declaration), in 1948, was the first step towards the progressive codification of international human rights. In the 50 years that have elapsed since then, the extraordinary visions

enshrined in the principles of the Declaration have proved timeless and enduring. The principles have inspired more than 100 human rights instruments which, taken together, constitute international human rights standards. Outlined below are some significant international human rights instruments and developments.

The International Bill Of Human Rights

At its first meeting in 1946, the General Assembly transmitted a draft Declaration of Fundamental Human Rights and Freedoms to the Commission on Human Rights, through the Economic and Social Council, relative to the preparation of an international bill of human rights. In 1947, the Commission authorized its officers to formulate a draft bill of human rights which was later taken over by a formal Drafting Committee consisting of 8 members of the Commission. The Drafting Committee decided to prepare two documents: one in the form of a declaration which would set forth general principles or standards of human rights; and the other in the form of a convention which would define specific rights and their limitations.

Accordingly, the Committee transmitted to the Commission draft articles of an international declaration and an international convention on human rights. The Commission decided to apply the term. International Bill of Human Rights. to the entire series of documents in late 1947. In 1948, the draft declaration was revised and submitted through the Economic and Social Council to the General Assembly. On 10 December 1948, the Universal Declaration of Human Rights was adopted. a day celebrated each

year as -Human Rights Day.. The Commission on Human Rights then continued working on a draft covenant on human rights.

By 1950, the General Assembly passed a resolution declaring that the "enjoyment of civil and political freedoms and of economic, social and cultural rights are interconnected and interdependent" After lengthy debate, the General Assembly requested that the Commission draft two covenants on human rights; one to set forth civil and political rights and the other embodying economic, social and cultural rights. Before finalizing the draft covenants, the General Assembly decided to give the drafts the widest possible publicity in order that Governments might study them thoroughly and public opinion might express itself freely.

In 1966, two International Covenants on Human Rights were completed (instead of the one originally envisaged): the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR), which effectively translated the principles of the Universal Declaration into treaty law. In conjunction with the Universal Declaration of Human Rights, the two Covenants are referred to as the. International Bill of Human Rights.

The Universal Declaration of Human Rights

The Universal Declaration of Human Rights consists of a Preamble and 30 articles, setting out the human rights and fundamental freedoms to which all men and women are entitled, without distinction of any kind. The Universal Declaration

recognizes that the inherent dignity of all members of the human family is the foundation of freedom, justice and peace in the world. It recognizes fundamental rights which are the inherent rights of every human being including, inter alia, the right to life, liberty and security of person; the right to an adequate standard of living; the right to seek and enjoy asylum from persecution in other countries; the right to freedom of opinion and expression; the right to education, freedom of thought, conscience and religion; and the right to freedom from torture and degrading treatment.

These inherent rights are to be enjoyed by every man, woman and child throughout the world, as well as by all groups in society. Today, the Universal Declaration of Human Rights is widely regarded as forming part of customary international law.

1998 -the Fiftieth Anniversary of the Universal Declaration of Human Rights

1998 highlighted the global commitment to these fundamental and inalienable human rights as the world commemorated the fiftieth anniversary of the Universal Declaration of Human Rights. The Universal Declaration was one of the first major achievements of the United Nations and after 50 years remains a powerful instrument affecting people's lives throughout the world. Since 1948, the Universal Declaration has been translated into more than 250 languages and remains one of the best known and most cited human rights documents in the world. The commemoration of the fiftieth anniversary provided the opportunity to reflect on the achievements of the past fifty years

and chart a course for the next century. Under the theme All Human Rights for All, the fiftieth anniversary highlighted the universality, indivisibility and interrelationship of all human rights. It reinforced the idea that human rights. civil, cultural, economic, political and social. should be taken in their totality and not dissociated.

The International Covenant on Economic, Social and Cultural Rights

After 20 years of drafting debates, the ICESCR was adopted by the General Assembly in 1966 and entered into force in January 1976. In many respects, greater international attention has been given to the promotion and protection of civil and political rights rather than to social, economic and cultural rights, leading to the erroneous presumption that violations of economic, social and cultural rights were not subject to the same degree of legal scrutiny and measures of redress. This view neglected the underlying principles of human rights- that rights are indivisible and interdependent and therefore the violation of one right may well lead to the violation of another.

Economic, social and cultural rights are fully recognized by the international community and in international law and are progressively gaining attention. These rights are designed to ensure the protection of people, based on the expectation that people can enjoy rights, freedoms and social justice simultaneously. The Covenant embodies some of the most significant international legal provisions establishing economic, social and cultural rights, including, inter alia, rights relating to

work in just and favourable conditions; to social protection; to an adequate standard of living including clothing, food and housing; to the highest attainable standards of physical and mental health; to education and to the enjoyment of the benefits of cultural freedom and scientific progress.

Significantly, article 2 outlines the legal obligations which are incumbent upon States parties under the Covenant. States are required to take positive steps to implement these rights, to the maximum of their resources, in order to achieve the progressive realization of the rights recognized in the Covenant, particularly through the adoption of domestic legislation. Monitoring the implementation of the Covenant by States parties was the responsibility of the Economic and Social Council, which delegated this responsibility to a committee of independent experts established for this purpose, namely the Committee on Economic, Social and Cultural Rights. As at March 2000, 142 States were parties to the Covenant.

The International Covenant on Civil and Political Rights

The International Covenant on Civil and Political Rights addresses the State's traditional responsibilities for administering justice and maintaining the rule of law. Many of the provisions in the Covenant address the relationship between the individual and the State. In discharging these responsibilities, States must ensure that human rights are respected, not only those of the victim but also those of the accused. The civil and political rights defined in the Covenant

include, inter alia, the right to self-determination; the right to life, liberty and security; freedom of movement, including freedom to choose a place of residence and the right to leave the country; freedom of thought, conscience, religion, peaceful assembly and association; freedom from torture and other cruel and degrading treatment or punishment; freedom from slavery, forced labour, and arbitrary arrest or detention; the right to a fair and prompt trial; and the right to privacy.

There are also other provisions which protect members of ethnic, religious or linguistic minorities. Under Article 2, all States Parties undertake to respect and take the necessary steps to ensure the rights recognized in the Covenant without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. The Covenant has two Optional Protocols. The first establishes the procedure for dealing with communications (or complaints) from individuals claiming to be victims of violations of any of the rights set out in the Covenant. The second envisages the abolition of the death penalty.

Unlike the Universal Declaration and the Covenant on Economic, Social and Cultural Rights, the Covenant on Civil and Political Rights authorizes a State to derogate from, or in other words restrict, the enjoyment of certain rights in times of an official public emergency which threatens the life of a nation. Such limitations are permitted only to the extent strictly required under the circumstances and must be reported to the United Nations. Even so, some provisions such as the right to life and freedom from torture and slavery may never e suspended.

The Covenant provides for the establishment of a Human Rights Committee to monitor implementation of the Covenant's provisions by States parties. As at March 2000, 144 States were parties to the Covenant, 95 States were parties to the Optional Protocol and 39 States were parties to the Second Optional Protocol.

International Convention on the Elimination of all Forms of Racial Discrimination

The phenomenon of racial discrimination was one of the concerns behind the establishment of the United Nations and has therefore been one of its major areas of attention. The International Convention on the Elimination of All Forms of Racial Discrimination was adopted by the General Assembly in 1965 and entered into force in 1969. Article 1 of the Convention defines the terms. racial discrimination. as: any distinction, exclusion, restriction or preference based on race, colour, descent, national or ethnic origin with the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights in any field of public life, including political, economic, social or cultural life"

It is notable that this definition encompasses a much wider range of grounds on which discrimination can take place than that commonly referred to as "race". It is also significant that the definition includes the language "purpose or effect.. As a consequence, the definition covers not only intentional discrimination, but also laws, norms and practices which appear neutral, but result in discrimination in their impact Parties to

the Convention agree to eliminate discrimination in the enjoyment of civil, political, economic, social and cultural rights and to provide effective remedies against any acts of racial discrimination through national tribunals and State institutions. States parties undertake not to engage in acts or practices of racial discrimination against individuals, groups of persons or institutions and to ensure that public authorities and institutions do likewise; not to sponsor, defend or support racial discrimination by persons or organizations; to review government, national and local policies and to amend or repeal laws and regulations which create or perpetuate racial discrimination; to prohibit and put a stop to racial discrimination by persons, groups and organizations; and to encourage integration or multiracial organizations, movements and other means of eliminating barriers between races, as well as to discourage anything which tends to strengthen racial divisiveness. The Committee on the Elimination of Racial Discrimination was established by the Convention to ensure that States parties ful fil their obligations. As at March 2000, 155 States were parties to the Convention.

Convention on the Elimination of all Forms of Discrimination against Women

The Convention on the Elimination of All Forms of Discrimination against Women was adopted by the General Assembly in 1979 and entered into force in 1981. Despite the existence of international instruments which affirm the rights of women within the framework of all human rights, a separate treaty was considered necessary to combat the continuing evident

discrimination against women in all parts of the world. In addition to addressing the major issues, the Convention also identifies a number of specific areas where discrimination against women has been flagrant, specifically with regard to participation in public life, marriage, family life and sexual exploitation.

The objective of the Convention is to advance the status of women by utilizing a dual approach. It requires States parties to grant freedoms and rights to women on the same basis as men, no longer imposing on women the traditional restrictive roles. It calls upon States parties to remove social and cultural patterns, primarily through education, which perpetuate gender-role stereotypes in homes, schools and places of work. It is based on the premise that States must take active steps to promote the advancement of women as a means of ensuring the full enjoyment of human rights. It encourages States parties to make use of positive measures, including preferential treatment, to advance the status of women and their ability to participate in decision making in all spheres of national life. economic, social, cultural, civil and political.

States parties to the Convention agree, inter alia, to integrate the principle of the equality of men and women into national legislation; to adopt legislative and other measures, including sanctions where appropriate, prohibiting discrimination again women; to ensure through national tribunals and other public institutions the effective protection of women against discrimination; and to refrain from engaging in any discriminatory act or practice against women in the private sphere. Article 17 of the Convention establishes the Committee

on the Elimination of Discrimination against Women to oversee the implementation of its provisions. When the 1999 Optional Protocol enters into force, the Committee's functions will be expanded. As at March 2000, 165 States were parties to the Convention. Over the years, the United Nations has developed universally applicable standards against torture which were ultimately embodied in international declarations and conventions. The adoption, on 10 December 1984 by the General Assembly, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, was the culmination of the codification process to combat the practice of torture. The Convention entered into force on 26 June 1987. Article 1 defines "torture" as: "any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity."

The overall objectives of the Convention are to prevent acts of torture and other acts prohibited under the Convention and to ensure that effective remedies are available to victims when such acts occur. More specifically, the Convention requires States parties to take preventive action against torture such as the criminalization of acts of torture and the establishment of laws

and regulations to promote respect for human rights among its public servants for both the alleged victim and the accused.

Despite these measures, there may be incidents where individuals are, or claim to have been, tortured. Governments that are committed to eliminating torture must also be committed to providing an effective remedy to alleged victims. This can be seen from the manner in which Governments address complaints of torture.

The Convention requires that complaints of torture be promptly and impartially investigated wherever there are reasonable grounds to believe that an act of torture may have been committed. In many cases, the most important evidence is physical marks on the body, which can fade or disappear, often within days. The existence of a functional system for the administration of justice is thus critically important for victims of torture. The implementation of the Convention established a monitoring body, the Committee against Torture. As at March 2000, 118 States were parties to the Convention.

Convention on the Rights of the Child

Both the League of Nations and the United Nations had previously adopted declarations on the rights of the child and specific provisions concerning children were incorporated into a number of human rights and humanitarian treaties. In recent years, reports of the grave afflictions suffered by children such as infant mortality, deficient health care and limited opportunities for basic education, as well as alarming accounts of child

exploitation, prostitution, child labour and victims of armed conflict, led many worldwide to call on the United Nations to codify children's rights in a comprehensive and binding treaty. The Convention entered into force on 2 September 1990, within a year of its unanimous adoption by the General Assembly.

The Convention embodies four general principles for guiding implementation of the rights of the child: non-discrimination ensuring equality of opportunity; when the authorities of a State take decisions which affect children they must give prime consideration to the best interests of the child; the right to life, survival and development which includes physical, mental, emotional, cognitive, social and cultural development; and children should be free to express their opinions, and such views should be given due weight taking the age and maturity of the child into consideration.

Among other provisions of the Convention, States parties agree that children' s rights include: free and compulsory primary education; protection from economic exploitation, sexual abuse and protection from physical and mental harm and neglect; the right of the disabled child to special treatment and education; protection of children affected by armed conflict; child prostitution; and child pornography. Under article 43 of the Convention, the Committee on the Rights of the Child was established to monitor the implementation of the Convention by States parties. As at March 2000, an unprecedented 191 States were parties to the Convention: the largest number of ratifications of all international instruments.

Throughout history, people have moved across borders for a variety of reasons, including armed conflict, persecution or poverty. Regardless of their motivation, millions of people are living as migrant workers, as strangers in the States in which they reside. Unfortunately, as aliens, they may be targets of suspicion or hostility and this inability to integrate into society often places them among the most disadvantaged groups in the host State. A vast number of migrant workers are uninformed and ill-prepared to cope with life and work in a foreign country.

Concern for the rights and welfare of migrant workers led to the adoption of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. The Convention was adopted by the General Assembly on 18 December 1990 and will enter into force following ratification or accession by 20 States. As at March 2000, only 12 States had ratified the Convention. The Convention stipulates that persons who are considered as migrant workers under its provisions are entitled to enjoy their human rights throughout the migration process, including preparation for migration, transit, stay and return to their State of origin or habitual residence.

With regard to working conditions, migrant workers are entitled to conditions equivalent to those extended to nationals of the host States, including the right to join trade unions, the right to social security and the right to emergency health care. State parties are obliged to establish policies on migration, exchange information. with employers and provide assistance to migrant workers and their families. Similarly, the Convention stipulates that migrant workers and their families are obliged to comply

with the law of the host State. The Convention distinguishes between legal and illegal migrant workers. It does not require that equal treatment be extended to illegal workers but rather aims to eliminate illegal or clandestine movements and employment of migrant workers in an irregular situation.

The Declaration on the Right to Development

In 1986, the Declaration on the Right to Development was adopted by the General Assembly, recognizing that development is a comprehensive economic, social, cultural and political process which aims at continuously improving the well-being of the entire population and of each individual. The Declaration on the Right to Development states that the right to development is an inalienable human right, which means that everyone has the right to participate in, contribute to, and enjoy economic, social, cultural and political development. This right includes permanent sovereignty over natural resources; self-determination; popular participation; equality of opportunity; and the advancement of adequate conditions for the enjoyment of other civil, cultural, economic, political and social rights. For the purposes of development, there are three human rights standards that are particularly relevant to the full enjoyment of the right to development: the right to self-determination, sovereignty over natural resources and popular participation.

Self-determination

The right to self-determination is a fundamental principle of international law. It is found not only in the Charter of the

United Nations but in both the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. Its importance to the respect for all human rights is reinforced by the Human Rights Committee's reference to it in General Comment 12 as being "of particular importance because its realization is an essential condition for the effective guarantee and observance of individual human rights and for the promotion and strengthening of those rights."It is generally recognized that the right to self determination has two aspects, the internal and the external.

The external aspect is defined in General Comment 21 of the Human Rights Committee which states that it: "implies that all peoples have the right to determine freely their political status and their place in the international community based on the principle of equal rights and exemplified by the liberation of peoples from colonialism and by the prohibition to subject peoples to alien subjugation, domination and exploitation" The external consideration of self-determination is fundamental as it relates to development. It is necessary for a State to be free from the above-mentioned conditions to be able to determine its own policies fully in all realms of governance, and more particularly in the area of development policy. The internal aspect of the right to self-determination is best illustrated by the Human Rights Committee which defines it as: "the rights of all peoples to pursue freely their economic, social and cultural development without outside interference" [General Comment 21] The Committee goes on to link this internal aspect with a Government's duty to "represent the whole population without

distinction as to race, colour, descent or national or ethnic origin"

Sovereignty over natural resources

Article 1 of the Declaration on the Right to Development makes it clear that the full realization of the right to self-determination, which has been shown to be an integral part of development, includes the exercise of the "inalienable right to full sovereignty over all their natural wealth and resources".

The ability of peoples to enjoy and utilize their resources and the impact of this ability on the well-being of the people of the State is given fuller expression in General Assembly Resolution 1803(XVII) which declares that."The right of peoples and nations to permanent sovereignty over their wealth and natural resources must be exercised in the interest of their national development and of the well-being of the people of the State concerned".

Popular participation

The principle of popular participation has been vital to the evolution of human rights standards. It is a basic element of social progress and seeks to ensure the dignity, value and freedom of the human person. Reference to popular participation is found in both International Covenants and has a prominent role in the Declaration on the Right to Development. Its significance is underscored by the General Assembly, it stresses "the importance of the adoption of measures to ensure the effective participation, as appropriate, of all the elements of

society in the preparation and implementation of national economic and social development policies and of the mobilization of public opinion and the dissemination of relevant information in the support of the principles and objectives of social progress and development."

Beneficiaries

As with all human rights, the human person is the subject and the beneficiary of the right. The right to development is claimable both individually and collectively. Significantly, this right is binding both on individual States (in ensuring equal and adequate access to essential resources) and the international community (in its duty to promote fair development policies and effective international cooperation). International attention focused more closely on the right to development during consultations in Geneva, in early 1990, which reaffirmed that the right of individuals, groups and peoples to take decisions collectively, to choose their own representative organizations and to have freedom of democratic action free from interference was fundamental to democratic participation.

The concept of participation was of central importance in the realization of the right to development. The consultation also considered that development strategies oriented only towards economic growth and financial considerations had failed, to a large extent, to achieve social justice and that there was no single model for development applicable to all cultures and peoples. Development is a subjective matter, and development strategies should be determined by the peoples concerned

themselves and should be adapted to their particular conditions and needs. Taking the lead in the implementation of the Declaration on the Right to Development, the United Nations set up mechanisms for ensuring the compatibility of all United Nations activities and programmes with the Declaration.

The relationship between development and human rights was affirmed at the World Conference on Human Rights in the 1993 Vienna Declaration and Programme of Action which gave new impetus to the Declaration on the Right to Development. The Vienna Declaration confirmed that democracy, development, respect for human rights and fundamental freedoms are interdependent and mutually reinforcing. It was acknowledged that the full enjoyment of human right requires durable economic and social progress, and vice versa: in other words, there cannot be full attainment of human rights without development, nor can there be development without respect for human rights. Declarations and proclamations adopted during world conferences on human rights are also a significant contribution to international human rights standards. Instruments adopted by such conferences are drafted with the participation of international agencies and non-governmental organizations, reflecting common agreement within the international community and are adopted by State consensus. The Teheran and Vienna World Conferences on human rights were particularly significant for strengthening human rights standards. Both involved an unprecedented number of participants from States, agencies and nongovernmental organizations who contributed to the adoption of the Proclamation of Teheran and the Vienna Declaration and Programme of Action respectively. The International Conference

on Human Rights held in Teheran from April 22 to May 13 1968 was the first world meeting on human rights to review the progress made in the twenty years that had elapsed since the adoption of the UDHR. Significantly, the Conference reaffirmed world commitment to the rights and fundamental freedoms enshrined in the UDHR and urged members of the international community to. fulfil their solemn obligations to promote and encourage respect. for those rights.

The Conference adopted the Proclamation of Teheran which, inter alia, encouraged respect for human rights and fundamental freedoms for all without distinctions of any kind; reaffirmed that the UDHR is a common standard of achievement for all people and that it constitutes an obligation for the members of the international community; invited States to conform to new standards and obligations set up in international instruments; condemned apartheid and racial discrimination; invited States to take measures to implement the Declaration on the Granting of Independence to Colonial Countries; invited the international community to co-operate in eradicating massive denials of human rights; invited States to make an effort to bridge the gap between the economically developed and developing countries; recognized the indivisibility of civil, political, economic, social and cultural rights; invited States to increase efforts to eradicate illiteracy, to eliminate discrimination against women, and to protect and guarantee children's rights.

By reaffirming the principles set out in the International Bill of Human Rights, the Proclamation of Teheran paved the way for the creation of a number of international human rights instruments.

Vienna World Conference on Human Rights–1993

On 14 June 1993, representatives of the international community gathered in unprecedented numbers for two weeks in Vienna to discuss human rights. The World Conference reviewed the development of human rights standards, the structure of human rights frameworks and examined ways to further advance respect for human rights. Members from 171 States, with the participation of some 7,000 delegates including academics, treaty bodies, national institutions and representatives of more than 800 non-governmental organizations, adopted by consensus the Vienna Declaration and Programme of Action. In light of the high degree of support for and consensus from the Conference, the Vienna Declaration and Programme of Action can be perceived as a forceful common plan for strengthening human rights work throughout the world. The contents of the Declaration

The Vienna Declaration and Programme of Action marked the culmination of a long process of review of and debate on the status of the human rights machinery worldwide. It also marked the beginning of a renewed effort to strengthen and further implement the body of human rights instruments that had been painstakingly constructed on the foundation of the Universal Declaration of Human Rights since 1948.

Significantly, the Vienna Declaration and Programme of Action:

- Reaffirmed the human rights principles that had evolved over the past 45 years and called for the

> further strengthening of the foundation for ensuring continued progress in the area of human rights;

- Reaffirmed the universality of human rights and the international commitment to the implementation of human rights;
- Proclaimed that democracy, development and respect for human rights and fundamental freedoms as interdependent and mutually reinforcing.

The Conference agenda also included examination of the link between development, democracy and economic, social, cultural, civil and political rights, and an evaluation of the effectiveness of United Nations methods and mechanisms for protecting human rights as a means of recommending actions likely to ensure adequate financial and other resources for United Nations human rights activities. The final document agreed to in Vienna was endorsed by the forty-eighth session of the General Assembly (resolution 48/121, of 1993). 1998: Five-Year Review of the Vienna Declaration and

Programme of Action

The 1993 World Conference on Human Rights requested through its final document, the Vienna Declaration and Programme of Action (VDPA), that the Secretary-General of the United Nations invite on the occasion of the fiftieth anniversary of the Universal Declaration of Human Rights all States, all organs and agencies of the United Nations system related to human rights, to report to him on the progress made in the implementation of the present Declaration and to submit a report to the General Assembly at its

fifty-third session, through the Commission on Human Rights and the Economic and Social Council. (VDPA, Part II, paragraph 100). Regional bodies, national human rights institutions, as well as non-governmental organizations, were also invited to present their views to the Secretary-General on the progress made in the implementation of the VDPA five years later.

In 1998, the General Assembly concluded the review process which had begun in the Commission on Human Rights and the Economic and Social Council earlier in the year. A number of positive developments in the five years since the World Conference were noted, such as progress achieved in human rights on national and international agendas; human rights-oriented changes in national legislation; enhancement of national human rights capacities, including the establishment or strengthening of national human rights institutions and special protection extended to women, children, and vulnerable groups among others and further strengthening of the human rights movement worldwide. The General Assembly reiterated its commitment to the fulfilment of the VDPA and reaffirmed its value as a guide for national and international human rights efforts and its central role as an international policy document in the field of human rights.

Chapter 3

United Nations Strategies and Action to Promote Human Rights Universality

Integrating Human Rights Into The Work Of The United Nations

The task of promoting and protecting human rights, and thereby preventing human rights violations, is one of the most formidable challenges ahead. Evidence of gross violations of human rights today is a disturbing reminder of the work to be done. The collective efforts of the largest and most representative number of people must be harnessed in order to develop creative strategies to prevent all forms of human rights violations, both deliberate and inadvertent. Over time, the United Nations has employed various tools to protect and promote human rights. As the protection of human rights is primarily the responsibility of States, many strategies have been targeted towards strengthening the ability of States to protect persons within their territory, such as technical cooperation activities.

Other strategies have been devised to nurture an understanding of human rights in areas such as education and development of publications.

Overall, the main strategies may be defined as follows:

- Integrating human rights into early warning, humanitarian operations, peacekeeping and development
- Technical cooperation activities
- Human rights education and campaigns
- Human rights monitoring
- Working with civil society
- Publication of information.

Since the Secretary-General launched the Programme of Reform in July 1997, there have been on-going efforts to promote and protect human rights by integrating human rights into all activities and programmes of the United Nations. This strategy reflects the holistic approach to human rights. It recognizes that human rights are inextricably linked to the work of all United Nations agencies and bodies, including programmes and activities relating to housing, food, education, health, trade, development, security, labour, women, children, indigenous people, refugees, migration, the environment, science and humanitarian aid.

The objectives of the process of integrating human rights are to:

- Increase cooperation and collaboration across the entire United Nations system for human rights programmes;
- Ensure that human rights issues are incorporated into untapped sectors of the United Nations work;

- Ensure that United Nations activities make respect for human rights a routine, rather than a separate, component of United Nations activities and programmes.

The issue of human rights was, therefore, designated by the Secretary-General as cutting across the four substantive areas of the Secretariat.s work programme (peace and security; economic and social affairs; development cooperation and humanitarian affairs).

Mainstreaming human rights primarily takes the following forms:

- Adoption of a.human rights-based approach. to activities carried out in terms of the respective mandates of components of the United Nations system;
- Development of programmes or projects addressing specific human rights issues;
- Reorientation of existing programmes as a means of focusing adequate attention on human rights concerns;
- Inclusion of human rights components in field operations of the United Nations;
- The presence of human rights programmes in all structural units of the Secretariat responsible for policy development and coordination. The Office of the High Commissioner for Human Rights plays a lead role in the integration of human rights throughout the United Nations system.

Preventive action and early warning

Violations of human rights are very often the root cause of humanitarian disasters, mass exoduses or refugee flows. Therefore, at the first signs of conflict, it is vital to deter the parties involved from committing human rights violations thus defusing situations which may lead to humanitarian disasters. The United Nations has already developed early warning systems to detect potential conflicts. Incorporating human rights into this system by addressing the root causes of potential conflict will contribute to prevention of humanitarian and human rights tragedies and the search for comprehensive solutions.

United Nations human rights procedures and mechanisms such as the special rapporteurs and special representatives, treaty-based bodies, working groups of the Commission on Human Rights and its Sub-Commission and United Nations human rights field officers (experts, including special rapporteurs, special representatives, treaty-body experts and United Nations human rights field offices) constitute a valuable contribution to the early warning mechanisms for impending humanitarian and human rights crises.

When information gathered is shared with other branches of the United Nations, such as the Office of the Coordinator for Humanitarian Affairs (OCHA), the Executive Committee on Peace and Security and Humanitarian Affairs, the Department of Political Affairs (DPA), the Department of Peace-keeping Operations (DPKO)and other conflict assessments are better informed. Based on the results from situation analysis, measures

are considered to prevent the occurrence of crises. A human rights analysis contributes to more effective plans for tailoring prevention to the needs of imminent disasters. The integration of human rights into preventive action and early warning systems is designed to bolster the accuracy of the early warning capacity of the United Nations in the humanitarian field by integrating human rights concerns before crises arise. This prepares the ground for effective cooperation before, during and after crises.

Human rights and humanitarian operations

The link between humanitarian law and human rights law was discussed in the introduction. There is increasing consensus that humanitarian operations must integrate human rights into conflict situations. Humanitarian operations are established in conflict or complex emergency situations where priorities have traditionally focused on addressing the most immediate needs– the delivery of humanitarian assistance. It is now understood that needs-based operations should also incorporate a human rights-based approach which serves to address both immediate needs and longer-term security.

In conflict and complex emergency situations, identification of human rights violations and efforts to protect those rights are essential, particularly as States may be unwilling or unable to protect human rights. Human rights issues are being integrated into humanitarian operations in various ways. The Executive Committee on Humanitarian Affairs brings together relevant departments of the United Nations thus ensuring a co-ordinated and integrated approach to humanitarian issues. The Office of

the High Commissioner for Human Rights is involved in the work of the Committee: this ensures the incorporation of a human rights dimension into the work and policy development in this field.

Steps are being taken to guarantee that humanitarian field staff are trained in methods of basic human rights intervention, standards and procedures; to secure close field cooperation between human rights and humanitarian bodies; to ensure that a human rights dimension is included when developing strategies for major humanitarian efforts; and to encourage human rights monitoring in humanitarian operations.

Human rights and peace-keeping

The maintenance of international peace and security is one of the prime functions of the United Nations Organization. The importance of human rights in sustainable conflict resolution and prevention is gaining ground. Armed civilian conflicts are characterized by large-scale human rights violations which can often be traced to structural inequalities and the resulting imbalances in the accessibility of power and resources. The need for peacekeeping efforts to address human rights issues is apparent.

The guarantee of a comprehensive approach to United Nations strategies for peace and security is conditional on the integration of human rights issues into all peace-keeping operations at the planning and preparatory stage of needs assessments. To date, human rights mandates have been incorporated into the duties of

several peace-keeping operations and predictably, in the years to come, the cooperation between DPA, DPKO and OHCHR will increase. Co-operation has in large part taken the shape of human rights training for peace-keeping personnel, including the military, civilian police and civilian affairs officers.

In some cases, OHCHR has been called upon to ensure the continuation of peace-keeping operations by establishing a human rights presence on conclusion of the peace-keepers' mandate. With recent developments, cooperation has extended to the creation of joint DPKO/OHCHR human rights components in peace-keeping operations. Under the authority of the Representative/Special Representative of the Secretary-General in charge of the operation, the peace-keeping operation receives substantive human rights guidance from OHCHR.

Integration of human rights into development

As early as 1957, the General Assembly expressed the view that a balanced and integrated economic and social development programme would contribute towards the promotion and maintenance of peace and security, social progress, better standards of living and the observance of and respect for human rights and fundamental freedoms. This approach was given increased prominence by the Teheran World Conference on Human Rights and later recognized as a paramount concern by the second World Conference on Human Rights held in Vienna in June 1993. that genuine and sustainable development requires the protection and promotion of human rights. Development is not restricted to meeting basic human needs; it is, indeed, a

right. With a rights-based approach, effective action for development moves from the optional realm of charity, into the mandatory realm of law, with identifiable rights, obligations, claim-holders, and duty-holders.

When development is conceived as a right, the implication is that someone holds a claim, or legal entitlement and a corresponding duty or legal obligation. The obligation which devolves upon Governments (individually by States vis-a-vis their own people, and collectively by the international community of States) is, in some cases, a positive obligation (to do, or provide something) and, in others, a negative obligation (to refrain from taking action).What is more, embracing the rights framework opens the door to the use of a growing pool of information, analysis and jurisprudence developed in recent years by treaty bodies and other human rights specialists on the requirements of adequate housing, health, food, childhood development, the rule of law, and virtually all other elements of sustainable human development.

The obligation to respond to the inalienable human rights of individuals, and not only in terms of fulfilling human needs, empowers the people to demand justice as a right, and it gives the community a sound moral basis on which to claim international assistance and a world economic order respectful of human rights. The adoption of a rights-based approach enables United Nations organs to draw up their policies and programmes in accordance with internationally recognized human rights norms and standards. The United Nations Development Assistance Framework (UNDAF) was established as part of the

Secretary-General;s Programme of Reform. UNDAF is a common programme and resources framework for all members of the United Nations Development Groups (UNDG) and, wherever possible, for the United Nations system as a whole. The objective of the programme is to maximize the collective and individual development impact of participating entities and programmes of assistance; intensify collaboration in response to national development priorities; and ensure coherence and mutual reinforcement among individual programmes of assistance. The ad hoc Working Group of the Executive Committee of the UNDG is mandated to develop a common UNDG approach for enhancing the human rights dimension in development activities.

In order to facilitate the process of integrating human rights into development, the Administrator of the United Nations Development Programme and OHCHR have signed a memorandum of understanding seeking to increase the efficiency and effectiveness of the activities carried out within their respective mandates through cooperation and coordination. OHCHR will facilitate close cooperation between UNDP and the United Nations human rights organs, bodies and procedures, and will examine, with UNDP, the possibilities of joint initiatives aimed at implementing the human right to development, placing particular emphasis on defining indicators in the area of economic and social rights and devising other relevant methods and tools for their implementation.

Technical cooperation in the field of human rights

The United Nations human rights technical cooperation programme assists countries, at their request, in building and strengthening national capacities and infrastructure which have a direct impact on the overall promotion and protection of human rights, democracy and the rule of law. This is done through technical advice and assistance to Governments and civil society. The objective is to assist in promoting and protecting all human rights at national and regional level, through the incorporation of international human rights standards into domestic legislation, policies and practices.

In addition, it facilitates the building of sustainable national infrastructure for implementing these standards and ensuring respect for human rights.

While these activities are carried out throughout the United Nations Organization, OHCHR is the focal point for the technical cooperation programme in the field of human rights. Technical cooperation activities can be a complement to, but never a substitute for the monitoring and investigation activities of the United Nations human rights programme. In order to benefit from the United Nations Programme of Technical Cooperation in the field of human rights, a Government must submit a request for assistance to the Secretariat.

In response, the Secretariat will conduct an assessment of that country.s particular human rights needs, taking into consideration,

Among other factors, the following:

- Specific recommendations made by the United Nations human rights treaty bodies;
- Recommendations by the Commission on Human Rights and its mechanisms, including the representatives of the Secretary-General, the Special Rapporteurs on thematic or country situations and the various working groups;
- The recommendations adopted by the Board of Trustees of the Voluntary Fund for Technical Cooperation in the Field of Human Rights; and
- The views and concerns expressed by a wide range of national and international actors including government officials, civil society, national human rights institutions, and national and international NGOs.

The assessment is normally conducted through an international mission to the State concerned. Based on that assessment, an assistance programme is developed to address the needs identified in a comprehensive and coordinated manner. Periodic evaluations of the country programme during its implementation are normally followed by a post- implementation evaluation, with a view to measuring the effect of the assistance provided and developing follow-up plans. Countries or regions in transition to democracy are the primary target of the Technical Cooperation Programme. Priority is also given to technical cooperation projects responding to the needs of less developed countries. The programme offers a wide range of human rights assistance projects, some of which are summarized below. It must be

stressed, however, that the types of interventions described are merely indicative and not exhaustive. The results of needs assessments determine the type of technical cooperation project to be implemented.

- *National Human Rights Institutions (The Paris Principles)*: A central objective of the Technical Cooperation Programme is to consolidate and strengthen the role which national human rights institutions can play in the promotion and protection of human rights. In this context, the term national human rights institutions refers to bodies whose functions are specifically defined in terms of the promotion and protection of human rights, namely national human rights commissions and ombudsman offices, in accordance with the Paris Principles. OHCHR offers its services to Governments that are considering or in the process of establishing a national human rights institution. The activities relating to national human rights institutions under the programme are aimed at promoting the concept of national human rights institutions and encouraging their development.

To this end, information material and a practical manual have been developed for those involved in the establishment and administration of national institutions. In addition, a number of seminars and workshops have been conducted to provide government officials, politicians, NGOs and others with information and expertise in the structure and functioning of such bodies. These events have also served as useful forums for

the exchange of information and experience concerning the establishment and operation of national human rights institutions. With respect to human rights in the administration of justice, the Technical Cooperation Programme provides training courses for judges, lawyers, prosecutors and penal institutions, as well as law enforcement officers. Such courses are intended to familiarize participants with international standards for human rights in the administration of justice; to facilitate examination of humane and effective techniques for the performance of penal and judicial functions in a democratic society; and to teach trainer participants to include this information in their own training activities.

Topics offered in courses for judges, lawyers, magistrates and prosecutors include: international sources, systems and standards for human rights in the administration of justice; human rights during criminal investigations, arrest and pre-trial detention; the independence of judges and lawyers; elements of a fair trial; juvenile justice; protection of the rights of women in the administration of justice; and human rights in a declared state of emergency. Similarly, the training courses for law enforcement officials cover a broad range of topics, including the following: international sources, systems and standards for human rights in the administration of criminal justice; the duties and guiding principles of ethical police conduct in democracies; the use of force and firearms in law enforcement; the crime of torture; effective methods of legal and ethical interviewing; human rights during arrest and pretrial detention; and the legal status and rights of the accused.

A Manual on Human Rights and Law Enforcement is available. Course topics for prison officials include: minimum standards for facilities for prisoners and detainees; prison health issues, including AIDS and the HIV virus; and special categories of prisoners and detainees, including juveniles and women. A Handbook on Human Rights and Pre-trial Detention is available. This approach to professional training for human rights in the administration of justice is subject to in-field testing by OHCHR in its technical cooperation activities in a number of countries, and has undergone a series of revisions on the basis of such experience. Other forms of assistance in the area of the administration of justice include assistance in the development of guidelines, procedures and regulations consistent with international standards.

Assistance in Drafting Legislation

The United Nations makes the services of international experts and specialized staff available to assist Governments in the reform of their domestic legislation which has a clear impact on the situation of human rights and fundamental freedoms. The goal is to bring such laws into conformity with international standards, as identified in United Nations and regional human rights instruments. Drafts provided by a Government requesting such assistance are reviewed and recommendations are subsequently made.

This programme component also includes assistance with respect to penal codes, codes of criminal procedure, prison regulations, laws regarding minority protection, laws affecting freedom of

expression, association and assembly, immigration and nationality laws, laws on the judiciary and legal practice, security legislation, and, in general, any law which might have an impact directly, or indirectly, on the realization of internationally protected human rights. Constitutional assistance Under this programme component, OHCHR provides assistance for the incorporation of international human rights norms into national constitutions.

In this regard, the Office can play a facilitating role in encouraging national consensus on those elements to be incorporated into the constitutional reform process utilizing the services of legal exerts. OHCHR assistance may also extend to the provision of human rights information and documentation, or support for public information campaigns to ensure the involvement of all sectors of society. Their task includes legislative drafting as well as the drafting of bills of rights; the provision of justiciable remedies under the law; options for the allocation and separation of governmental powers; the independence of the judiciary; and the role of the judiciary in overseeing the police and prison systems.

National Parliaments

Under the Technical Cooperation Programme, national parliaments may receive direct training and other support to assist them in undertaking their human rights function. This programme component addresses a variety of crucial issues, including the provision of information on national human rights legislation, parliamentary human rights committees, ratifications

of and accessions to international human rights instruments, and, in general, the role of parliament in promoting and protecting human rights. The armed forces It is essential for the good functioning of the rule of law that the armed forces be bound by the Constitution and other laws of the land, that they answer to democratic Government and that they are trained in and committed to the principles of human rights and humanitarian law. The United Nations has carried out a number of training activities for armed forces.

Electoral Assistance

The Technical Cooperation Programme has been providing electoral assistance for more than five years. Specific activities which the OHCHR has undertaken in this regard include the preparation of guidelines for analysis of electoral laws and procedures, publication of a handbook on human rights and elections, development of draft guidelines for human rights assessment of requests for electoral assistance and various public information activities relating to human rights and elections.

Treaty Reporting and Training of Government Officials

The OHCHR organizes training courses at regular intervals to enable government officials to draft reports in keeping with the guidelines establishing the various international human rights treaties to which their State is a party. Courses on reporting obligations may be provided at national or at regional level.

Alternatively, training courses may be organized under the human rights fellowship programme: participants take part in workshops with experts from the various treaty-monitoring committees, as well as with staff from the Office. They are provided with a copy of OHCHR.s Manual on Human Rights Reporting and, whenever possible, are given the opportunity to observe meetings of treaty bodies. Civil society constitutes an increasingly important factor in the international community. In recent years, the United Nations has found that much of its work, particularly at national level, calls for the involvement of various nongovernmental organizations and groups -whether in economic and social development, humanitarian affairs, public health, or the promotion of human rights.

National and international non-governmental human rights organizations are key actors in the Technical Cooperation Programme, both in the delivery of assistance and as recipients of that assistance. In relation to the programme's aims to strengthen civil society, the United Nations is increasingly being called upon by Governments and others to provide assistance to national NGOs, in the context of its country activities, by soliciting their input, utilizing their services in seminars and training courses, and supporting appropriate projects which have been developed. The Technical Cooperation Programme also provides human rights information and documentation and contributes to building capacity for the effective utilization and management of such material. Activities in this area include direct provision of documentation, translated where necessary into local languages; training in human rights information; and

assistance in computerization of national and regional human rights offices.

Assistance is also provided to national libraries in acquiring human rights books and documentation, and support can be lent for the establishment and functioning of national or regional human rights documentation centers. Several manuals, handbooks and modules are being produced to support training and other technical cooperation activities.

Existing or planned material targets specific audiences, such as the police, judges and lawyers, prison personnel, national human rights action plans, the armed forces, teachers and human rights monitors involved in United Nations field operations. The material is adapted specifically to the recipient country in order to facilitate the integration of human rights into existing training programmes and curricula.

Peacekeeping and the Training of International Civil Servants

In accordance with the Vienna Declaration and Programme of Action, adopted by the World Conference on Human Rights in June 1993, the Technical Cooperation Programme has recently expanded the scope of its activities to include human rights support within the United Nations system. In the area of peacekeeping, for example, the programme has provided various forms of assistance to major United Nations missions in Cambodia, Eritrea, Mozambique, Haiti, South Africa, the countries of the former Yugoslavia, and Angola. Such assistance

has included, variously, the provision of human rights information, legislative analysis, training and advisory services.

Human Rights Fellowships

The human rights fellowships scheme was initiated in keeping with General Assembly resolution 926 of 14 December 1955 which officially established the advisory services programme. Under the programme, fellowships are awarded only to candidates nominated by their Governments and are financed under the regular budget for advisory services. Each year, the Secretary-General invites Member States to submit nominations for fellowships. Governments are requested to nominate persons directly engaged in functions affecting human rights, particularly in the administration of justice.

The Secretary-General draws their attention to concerns expressed by the General Assembly, in many of its resolutions, with regard to the rights of women, and encourages the nomination of women candidates. The principle of equitable geographical distribution is taken into account and priority is given to candidates from States which have never benefitted from the fellowship programme, or which have not done so in recent years. Participants receive intensive training in a variety of human rights issues. They are encouraged to exchange their experiences and are requested to evaluate the fellowship programme, to present individual oral reports, and to prepare recommendations for their superiors on the basis of knowledge acquired under the programme. In accordance with the policy and procedure governing the administration of United Nations

fellowships, each participant is required to submit a comprehensive final report to OHCHR on subjects directly related to their field of activity.

Human rights education and campaigns Human rights education

The fundamental role of human rights education is to increase the awareness of individuals in order to defend their rights and those of others. Knowledge of human rights constitutes a forceful means of achieving empowerment. Human rights education needs learners and educators working together to translate the language of human rights into knowledge, skills and behaviour. This necessitates developing an understanding of the responsibility each individual has in making those rights a reality at the local, national and international levels: the essence of global citizenship and global responsibility. The relevant provisions of international instruments define human rights education as constituting training, dissemination and information efforts aimed at building a universal culture of human rights by imparting knowledge and skills and moulding attitudes. This entails the strengthening of respect for human rights and fundamental freedoms; the full development of the human personality and a sense of its dignity; the promotion of understanding, tolerance, gender equality and friendship among all nations, indigenous peoples and racial, national, ethnic, religious and linguistic groups; the enabling of all persons to participate effectively in a free society; and the furtherance of the activities of the United Nations for the maintenance of peace.

Human rights education campaigns

The United Nations has initiated and encouraged human rights awareness campaigns in order to promote particular human rights issues. The activities carried out during these campaigns include the development of publications, studies and programmes with the involvement of United Nations bodies, States, other international, regional and local organizations and civil society. The campaigns are intended to highlight specific human rights issues. It is widely acknowledged that awareness and information are vital to respect for human rights and prevention of human rights violations.

World Public Information Campaign on Human Rights (1988-ongoing)

It was only as recently as 1988 that the first concerted international effort was made to promote human rights. Although efforts had been made in the mid fifties to enhance awareness of the drafting work on the international Covenants, the launching of the World Public Information Campaign on Human Rights by the General Assembly in December 1988 represented the first serious attempt at coordinated effort for developing awareness of international norms. It was launched on the 40th Anniversary of the UDHR and is open ended: once launched, it became part of the United Nations human rights programme.

The Campaign includes the publication and dissemination of human rights information and reference material, the organization of a fellowship and internship programme, briefings,

commemorative events, exhibits and external relations activities. The programme has expanded significantly since 1988. The use of the OHCHR website is an important new development. It is, inter alia, a repository of United Nations human rights information in English, French and Spanish relating to international treaties, treaty-body databases, programmes and activities, United Nations reports, resolutions and human rights issues.

Decade for Human Rights Education (1995-2004)

The 1993 Vienna Declaration and Programme of Action concluded that human rights education, training and public information are essential for the promotion and achievement of stable and harmonious relations among communities and for fostering mutual understanding, tolerance and peace. The Conference recommended that States should strive to eradicate illiteracy and direct education towards the full development of the human personality and the strengthening of respect for human rights and fundamental freedoms. It called on all States and institutions to include human rights, humanitarian law, democracy and the rule of law as subjects in the curricula of all learning institutions in formal and non-formal settings.

Pursuant to a suggestion of the World Conference, the UNGA proclaimed the 10-year period beginning on 1 January 1995 the United Nations Decade for Human Rights Education, and welcomed the Plan of Action for the Decade as set out in the report of the Secretary-General. The High Commissioner for Human Rights was called upon to coordinate the implementation of the Plan.

The Plan of Action has five objectives:

- Assessment of needs and formulation of effective strategies for the furtherance of human rights education;
- Building and strengthening of programmes and capacities for human rights education at the international, regional, national and local levels;
- Co-ordinated development of effective human rights education materials;
- Trengthening the role and capacity of the mass media in the furtherance of human rights education;
- Global dissemination of the Universal Declaration of Human Rights. The Plan focuses on stimulating and supporting national and local activities and embodies the idea of a partnership between Governments, international organizations, non-governmental organizations, professional associations, various sectors of civil society and individuals.

In the national context, the Plan provides for the establishment of comprehensive (in terms of outreach), effective (in terms of educational strategies) and sustainable (over the long term) national plans of action for human rights education, with the support of international organizations. Those Plans should constitute an integral part of the national development plan (when applicable) and be complementary to other relevant national plans of action already defined (general human rights plans of action or those relating to women, children, minorities, indigenous peoples, etc.). Specific guidelines have been developed

by OHCHR and endorsed by the General Assembly for the development of national plans of action for human rights education. By its resolution 48/91 of 20 December 1993, the General Assembly proclaimed the Third Decade to Combat Racism and Racial Discrimination, beginning in 1993, and adopted the Programme of Action proposed for the Decade.

The ultimate goals of the Decade are:

- To promote human rights and fundamental freedoms for all, without distinction of any kind on grounds of race, colour, descent or national or ethnic origin, with particular emphasis on eradicating racial prejudice, racism and racial discrimination;
- To arrest any expansion of racist policies, to eliminate the persistence of racist policies and to counteract the emergence of alliances based on the mutual espousal of racism and racial discrimination;
- To resist any policy and practices which lead to the strengthening of racist regimes and contribute to sustaining racism and racial discrimination;
- To identify, isolate and dispel fallacious and mythical beliefs, policies and practices contributing to racism and racial discrimination; and
- To put an end to racist regimes.

In order to achieve these goals, a number of activities are being undertaken including programmes and seminars to ensure respect for the existing standards and instruments to combat racism and xenophobia (including implementation of

international instruments and adoption of revised national legislation); sensitization to racism and xenophobia (including appropriate teaching and education, and systematic use of the mass media to combat racial discrimination); to use all international bodies and mechanisms to combat racism and xenophobia; to review political, historical, social, economic and other factors which lead to racism and xenophobia.

The General Assembly decided to convene a World Conference against racism, racial discrimination, xenophobia and related intolerance, to be held not later than the year 2001. The Conference will be action-oriented and focus on practical measures to eradicate racism, including measures of prevention, education and protection and the provision of effective remedies. One of its aims will be to increase the effectiveness of United Nations programmes aimed at eradicating contemporary forms of racism and racial discrimination.

Human Rights Monitoring

Monitoring is a broad term describing the active collection, verification, and immediate use of information to address human rights problems. Human rights monitoring includes gathering information about incidents, observing events (elections, trials, demonstrations, etc.), visiting sites such as places of detention and refugee camps, discussions with Government authorities to obtain information and to pursue remedies, and other immediate follow-up. The term includes evaluation activities by the United Nations as well as fact gathering firsthand and other work in the

field. In addition, the drawback to monitoring is that it generally takes place over a protracted period of time. The major focus of United Nations monitoring is on carrying out investigations and subsequently denouncing human rights violations as a means of fighting impunity. However, it would be both deceiving and simplistic to identify human rights monitoring as being equivalent to a form of police activity. Human rights monitoring must be seen as the most fool-proof means of assessing a country's situation, and impeding its human rights violations and which, subsequently, could create a basis for institution-building. A stable human rights presence in a given country can be described as an ongoing needs assessment and analysis mission. However, human rights monitoring can also be done on a sporadic basis, as is the case with the so-called fact finding missions.

Some Governments, particularly totalitarian regimes, are reluctant to have an international human rights monitoring presence in their country, as they lack the long-term vision of good governance and see any attempt at cooperation as undue interference in their internal affairs. In such cases, monitoring can be done from a distance, often through the offices of a special rapporteur, which entails a greater effort in information gathering and checking the reliability of available sources.

The direct involvement of people, individually and through nongovernmental organizations and other organs of civil society, is essential to the realization of human rights. The Universal Declaration placed the realization of those rights squarely in the hands of "every individual and every organ of society". Indeed,

the history of human rights protection reflects the collective actions of individuals and organizations. The participation and contribution of all sectors of civil society are vital to the advancement of human rights.

NGOs and ECOSOC

Article 71 of the Charter of the United Nations provides for consultations between the Economic and Social Council and non-governmental organizations. Several hundred international non-governmental organizations have received consultative status under this Article, which permits them to attend public meetings of the Council, the Commission on Human Rights and the Sub-Commission on the Promotion and Protection of Human Rights as observers, and, in accordance with the rules established by the Council, to make oral statements and submit written documents.

NGOs also sit as observers at public working group sessions of these bodies. In their interventions at such meetings, the non-governmental organizations place emphasis on human rights situations requiring action on the part of the United Nations and suggest studies which should be carried out and instruments which should be drafted; they also contribute to the actual drafting of declarations and treaties. Non-governmental organizations may also submit reports alleging violations of human rights, for confidential consideration by the Sub-Commission, treaties bodies and the Commission under the.1503. procedure. The views of non-governmental organizations are also sought on a wide range of issues where such consultation is appropriate and under decisions taken by the General Assembly,

the Economic and Social Council, the Commission on Human Rights and its Sub-Commission on the Promotion and Protection of Human Rights (formerly Sub-Commission on Prevention of Discrimination and Protection of Minorities). The views and information they provide are included in the official reports. Non-governmental organizations also play an important role in promoting respect for human rights and in informing the general public of United Nations activities in the field of human rights through education and public information campaigns.

Indigenous Peoples

The World Conference on Human Rights (June 1993) and the International Decade for the World's Indigenous People (1995. 2004) proclaimed by the General Assembly a year later set three major objectives for the promotion of the human rights of indigenous peoples. The first is to adopt a declaration on the rights of indigenous peoples; the second to create an institutional mechanism for the participation of indigenous peoples in the work of the United. Nations by establishing a permanent forum for indigenous peoples; and the third to strengthen international cooperation for the solution of problems faced by indigenous people in areas such as human rights, the environment, development, education and health.

In the context of the International Decade, current activities are as follows:

- The draft declaration on the rights of indigenous peoples is under consideration by a working group of

the Commission on Human Rights. Several hundred governmental and indigenous representatives are taking part.

- The proposed permanent forum for indigenous peoples within the United Nations is under consideration by another working group of the Commission on Human Rights.

The International Decade of the World's Indigenous People is coordinated by the High Commissioner for Human Rights. The theme is "Indigenous people: partnership in action". The challenge to Governments, the United Nations system and non-governmental actors is to develop programmes to bring about improvements in the living conditions of indigenous peoples worldwide.

In most UN agencies there are designated focal points or units undertaking activities benefiting indigenous peoples:

- OHCHR is focusing on capacity-building for indigenous organizations in human rights, strengthening the participation of indigenous peoples in the UN's work, and improving the information flow to indigenous communities.
- The indigenous fellowship programme offers six months training in human rights within OHCHR to indigenous representatives.
- Two voluntary funds provide travel grants to enable indigenous people to participate in human rights meetings and assistance with projects.

- *The Indigenous Media Network:* through a series of workshops and exchanges, OHCHR is using the indigenous media as the linkage between United Nations activities and indigenous communities.
- The Working Group on Indigenous Populations, open to all indigenous peoples, remains the primary international meeting place for the world's indigenous peoples with nearly 1,000 participants.

Voluntary Funds

The United Nations Voluntary Fund for Indigenous Populations is administered by OHCHR on behalf of the Secretary-General, with the advice of a Board of Trustees. The Fund was established pursuant to General Assembly resolutions 40/131 of 13 December 1985, 50/156 of 21 December 1995 and 53/130 of 9 December 1998. The purpose of the Fund is to assist representatives of indigenous communities and organizations participate in the deliberations of the Working Group on Indigenous Populations, the open-ended inter-sessional Working Group on the. UN Declaration on the Rights of Indigenous Peoples. and the open-ended inter-sessional ad hoc Working Group of the Permanent Forum, by providing them with financial assistance, funded by means of voluntary contributions from Governments, non- governmental organizations and other private or public entities.

The Voluntary Fund for the International Decade of the World's Indigenous People was established pursuant to General Assembly resolutions 48/163 of 21 December 1993, 49/214 of 23 December

1994 and 50/157 of 21 December 1995, all of which concern the International Decade of the World's Indigenous People.

In accordance with resolution 48/163, the Secretary-General was requested to establish a voluntary fund for the Decade and was authorized "to accept and administer voluntary contributions from Governments, inter-governmental and non-governmental organizations and other private institutions and individuals for the purpose of funding projects and programmes during the Decade".

In accordance with paragraph 24 of the annex to General Assembly resolution 50/157, the Coordinator of the Decade, the United Nations High Commissioner for Human Rights, should, "Encourage the development of projects and programmes, in collaboration with Governments and taking into account the views of indigenous people and the appropriate United Nations agencies, for support by the Voluntary Fund for the Decade".

Minorities

In recent years, there has been a heightened interest among members of the international community in issues affecting minorities as ethnic, racial and religious tensions have escalated, threatening the economic, social and political fabric of States, as well as their territorial integrity. The United Nations approach centres on the need to promote and protect the rights of minorities and encourage harmonious relations among minorities and between minorities and the majority population. In addition to the non-discrimination provisions set out in international

human rights instruments, special rights are elaborated for minorities and measures adopted to protect persons belonging to minorities more effectively from discrimination and to promote their identity.

- The United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities addresses the special rights of minorities in a separate document.

The Working Group on Minorities was established in 1995 in order to promote the rights set out in the Declaration and, more particularly, to review the promotion and practical realization of the declaration, examine possible solutions to problems involving minorities, and recommend further measures for the promotion and protection of their rights. The working group is open to Governments, United Nations agencies, non- governmental organizations, minority representatives and members of the academic community and is increasingly becoming a forum for dialogue on minority issues.

- A series of seminars on particular issues have drawn the attention of the international community to specific issues of relevance to the protection of minorities. Seminars have been held on intercultural and multicultural education and the role of the media in protecting minorities.
- Inter-agency cooperation on minority protection has led to an exchange of information on minority-related activities and has focused on specific activities and

programmes which could be elaborated and implemented jointly, as a means of pooling financial, material and human resources.

Support for Victims of Torture

On behalf of the Secretary-General of the United Nations, OHCHR administers a Voluntary Fund for Victims of Torture with the advice of a Board of Trustees. The Fund was established by General Assembly resolution 36/151 of 16 December 1981. It receives voluntary contributions from Governments, non-governmental organizations and individuals for distribution, through established channels of assistance, to non-governmental organizations providing medical, psychological, legal, social, financial, humanitarian or other assistance to victims of torture and members of their families.

If sufficient funding is available, relevant training and seminars for health and other professionals specializing in assisting victims of torture can also be financed. Applications for grants have to be submitted by 31 December for analysis by the secretariat of the Fund. Admissible applications are examined by the Board of Trustees at its annual session in May. The Board adopts recommendations for approval by the High Commissioner for Human Rights on behalf of the Secretary-General. The grants are paid in the July/August period. Beneficiaries are required to provide satisfactory narrative and financial reports on the use of grants by 31 December. Until satisfactory reports on the use of previous grants are received, no new grants can be considered.

Support for Victims of Contemporary Forms of Slavery

On behalf of the Secretary-General, OHCHR also administers the United Nations Voluntary Trust Fund on Contemporary Forms of Slavery with the advice of a Board of Trustees. The fund was established pursuant to General Assembly resolution 46/122 of 17 December 1991.

The Purpose is two Fold:

- To assist representatives of non-governmental organizations, from different regions, dealing with issues of contemporary forms of slavery to participate in the deliberations of the Working Group on Contemporary Forms of Slavery of the Sub-Commission on the Promotion and Protection of Human Rights by providing them with financial assistance (travel grants);
- By extending, through established channels of assistance such as NGOs, humanitarian, legal and financial aid, to individuals whose human rights have been severely violated as a result of contemporary forms of slavery (project grants).

According to the criteria established by the General Assembly in its resolution 46/122, the only beneficiaries of the Fund's assistance shall be representatives of non-governmental organizations dealing with issues of contemporary forms of slavery:

- Who are so considered by the Board of Trustees;
- Who would not, in the opinion of the Board, be able to attend the sessions of the Working Group without the assistance provided by the Fund;
- Who would be able to contribute to a deeper knowledge on the part of the Working Group of the problems relating to contemporary forms of slavery; as well as
- Individuals whose human rights have been severely violated as a result of contemporary forms of slavery.

The Private Sector

The increase in the private sector growth rate, the evolving role of Government and economic globalization have led to increased attention being paid to business enterprises as important actors in the human rights domain. In many ways, business decisions can profoundly affect the dignity and rights of individuals and communities. There is emergent interest on the part of the business community to establish benchmarks, promote best practices and adopt codes of conduct. Governments retain the primary responsibility for human rights and it is not a question of asking business to fulfill the role of Government, but of asking business to promote human rights in its own sphere of competence.

Corporations responsible for human rights violations must also be held to account. The relationship between the United Nations and the business community has been growing in a number of important areas and the Secretary-General has called on the business community. individually through firms and collectively

through business associations. to adopt, support and enact a set of core values in the areas of human rights, labour standards and environmental practices. The Secretary-General has asked the relevant United Nations agencies to be ready to assist the private sector in incorporating those values and principles into mission statements and corporate practice. Each agency has the important task of examining the various ways of responding to corporate concerns for human rights.

United Nations Human Rights Publication

Human rights publications are strategically important to the promotion of human rights. Publications are aimed at: raising awareness about human rights and fundamental freedoms; raising awareness with regard to the existing ways and means at international level for promoting and protecting human rights and fundamental freedoms; encouraging debate on human rights issues under discussion in the various United Nations organs and bodies; serving as a permanent human rights resource for readers. Below is a list of available human rights publications issued by OHCHR.

Publications are free of charge. Human Rights Fact Sheets, Basic Information Kits on the 50th Anniversary of the Universal Declaration of Human Rights and certain ad hoc publications. and are available from the address below. Their reproduction in languages other than the official United Nations languages is encouraged provided that no changes are made to the contents and that OHCHR is advised by the reproducing organization and given credit as being the source of the material. Publications

issued as United Nations sales publication. the Professional Training Series, the Study Series and certain reference and ad hoc publications can be ordered from the United Nations Bookshops listed below, with offices in Geneva and New York. United Nations sales publications are protected by copyright.

OHCHR Human Rights Fact Sheets

The Human Rights Fact Sheets deal with selected questions of human rights under active consideration or are of particular interest. Human Rights Fact Sheets are intended to facilitate better understanding on the part of a growing audience of basic human rights, the United Nations agenda for promoting and protecting them and the international machinery available for realizing those rights. The Fact Sheets are free of charge and distributed worldwide. Their reproduction in languages other than the official United Nations languages is encouraged, provided that no changes are made to the contents and that OHCHR is advised by the reproducing organization and given the credit for being the source of the material.

Professional Training Series

The Professional Training series consists of handbooks and manuals intended to increase awareness of international standards and are directed at a specific target audience selected for its ability to influence the human rights situation at the national level.

Although primarily designed to provide support to the training activities of the Technical Cooperation Programme of the OHCHR, these publications could also serve as practical tools for those organizations involved in human rights education to professional groups. The training manuals in the Professional Training Series are adaptable to the particular needs and experience of a range of potential audiences within the target group, in terms of culture, education and history. Where appropriate, information on effective pedagogical techniques is included to assist trainers to use the manuals as effectively as possible. Each manual or handbook is prepared with the assistance of experts in the relevant fields and is subject to extensive external review and appraisal. Where appropriate, manuals or handbooks are tested in training sessions prior to their finalization.

Human Rights Studies Series

The Human Rights Study Series reproduces studies and reports on important human rights issues prepared by experts of the Commission on Human Rights and the Sub-Commission on the Promotion and Protection of Human Rights (formerly Sub-commission on Prevention of Discrimination and Protection of Minorities) in accordance with their mandates. The ad hoc publications consist mainly of reports and proceedings of conferences, workshops and other particularly important or innovative events held under the auspices of OHCHR. These publications can be issued free of charge.

The basic information kit series is intended as a working tool for agencies, programmes, non-governmental organizations and national institutions as well as individuals to assist in the commemoration of the 50th Anniversary of the Universal Declaration of Human Rights. Basic information kits are published in French, English and Spanish and are distributed throughout the world free of charge.

Chapter 4

The Office of the High Commissioner for Human Rights

The High Commissioner's Functions

The Office of the High Commissioner for Human Rights has prime responsibility for the overall protection and promotion of all human rights. Deriving its mandate from the United Nations Charter, the Vienna Declaration and Programme of Action and the General Assembly, the OHCHR.s mission is to spearhead efforts of people worldwide for the promotion and protection of human rights so that everyone can live in a society shaped and governed in the image of the international human rights standards agreed upon by the United Nations.

In pursing this mission, the OHCHR has four strategic aims:

- To enhance the effectiveness of the United Nations human rights machinery;
- To increase United Nations system-wide implementation and coordination of human rights;
- To build national, regional and international capacity to promote and protect human rights;

- To analyse, process and disseminate reports, recommendations and resolutions of human rights organs and bodies, as well as other relevant human rights information.

OHCHR is mandated to take a leading role in regard to human rights issues and to stimulate and co-ordinate human rights activities and programmes.

The OHCHR is headed by a High Commissioner with the rank of Under Secretary-General who reports to the Secretary-General.

The High Commissioner is responsible for:

- All activities of the OHCHR, as well as for its administration;
- Carrying out the functions specifically assigned by the above-mentioned General Assembly resolution and subsequent resolutions of policymaking bodies;
- Advising the Secretary-General on policies of the United Nations in the area of human rights;
- Ensuring that substantive and administrative support is given to the projects, activities, organs and bodies of the human rights programme;
- Representing the Secretary-General at meetings of human rights organs and at other human rights events; and
- Carrying out special assignments as decided by the Secretary-General.

The incumbent High Commissioner is Ms Mary Robinson, former President of Ireland. The United Nations General Assembly approved her appointment in June 1997 and Ms. Robinson took up her duties as High Commissioner for Human Rights on 12 September 1997.

The High Commissioner is assisted in all activities by a Deputy High Commissioner who acts as Officer-in-Charge during the absence of the High Commissioner. In addition, the Deputy High Commissioner carries out specific substantive and administrative assignments as determined by the High Commissioner.

- To promote and protect the effective enjoyment by all of all civil, cultural, economic, political and social rights;
- To carry out the tasks assigned to him/her by the competent bodies of the United Nations system in the field of human rights and to make recommendations to them with a view to improving the promotion and protection of all human rights;
- To promote and protect the realization of the rights to development and to enhance support from relevant bodies of the United Nations system for this purpose;
- To provide, through the [Office of the High Commissioner for Human Rights] and other appropriate institutions, advisory services and technical and financial assistance, at the request of the State concerned and, where appropriate, the regional human rights organizations, with a view to supporting actions and programmes in the field of human rights;

- To coordinate relevant United Nations education and public information programmes in the field of human rights;
- To play an active role in removing the current obstacles and in meeting the challenges to the full realization of all human rights and in preventing the continuation of human rights violations throughout the world, as reflected in the Vienna Declaration and Programme of Action;
- To engage in a dialogue with all Governments in the implementation of his/her mandate with a view to securing respect for all human rights;
- to enhance international cooperation for the promotion and protection of all human rights;
- To coordinate human rights promotion and protection activities throughout the United Nations system;
- To rationalize, adapt, strengthen and streamline the United Nations machinery in the field of human rights with a view to improving its efficiency and effectiveness;
- To carry out overall supervision of the [Office of the High Commissioner for Human Rights].

OHCHR has its headquarters in Geneva. The Front Office and three major divisions or branches are responsible for the functioning of the Office. The core functions of the Front Office are to assist the High Commissioner in policy-making, external representation, and fund-raising activities.

Research and Right to Development Branch

The core functions of the Research and Right to Development Branch are as follows:

- Promoting and protecting the right to development, particularly by:
- Supporting intergovernmental groups of experts on the preparation of the strategy for the right to development;
- Assisting in the analysis of the voluntary reports by States to the High Commissioner on the progress made and steps taken for the realization of the right to development and on obstacles encountered;
- Conducting research projects on the right to development and preparing substantive contributions for submission to the General Assembly, the Commission on Human Rights and treaty bodies;
- Assisting in the substantive preparation of advisory service projects and educational material on the right to development;
- Providing analytical appraisal and support to the High Commissioner in his or her mandate to enhance system-wide support for the right to development;
- Carrying out research projects on the full range of human rights issues of interest to United Nations human rights bodies in accordance with the priorities established by the Vienna Declaration and Programme of Action and resolutions of policy-making bodies;

- Providing substantive services to human rights organs engaged in standard-setting activities;

- Preparing documents, reports or draft reports, summaries, abstracts and position papers in response to particular requests, as well as substantive contributions to information material and publications;

- Providing policy analysis, advice and guidance on substantive procedures;

- Managing the information services of the human rights programme, including the documentation centre and library, enquiry services and the human rights databases;

- Preparing studies on relevant articles of the Charter of the United Nations for the Repertory of Practice of United Nations Organs.

Support Services Branch

The core functions of the Support Services Branch are as follows:

- Planning, preparing and servicing sessions/meetings of the Commission on Human Rights, the Sub-Commission on the Promotion and Protection of Human Rights (formerly Sub-Commission on Prevention of Discrimination and Protection of Minorities) and related working groups, human rights treaty monitoring bodies and their working groups;

- Ensuring that substantive support is provided in a timely manner to the human rights treaty body

concerned, drawing on the appropriate resources of the human rights programme;

- Preparing lists of issues based on State party reports for review by the treaty body concerned and following up on decisions and recommendations;

- Preparing and co-coordinating the submission of all documents including inputs from other Branches to the activities of treaty bodies and following up on decisions taken at meetings of those bodies;

- Planning, preparing and servicing sessions of boards of trustees of the following voluntary funds: United Nations Voluntary Fund for Victims of Torture, United Nations Voluntary Fund on Contemporary Forms of Slavery, United Nations Voluntary Fund for Indigenous Populations and United Nations Voluntary Fund for the International Decade of the World's Indigenous People, and implementing relevant decisions;

- Processing communications submitted to treaty bodies under optional procedures and communications under the procedures established by the Economic and Social Council in its resolution 1503 (XLVIII) of 27 May 1970 and ensuring follow-up.

Activities and Programmes Branch

The core functions of the Activities and Programmes Branch are as follows:

- Developing, implementing, monitoring and evaluating advisory services and technical assistance projects at the request of Governments;
- Managing the Voluntary Fund for Technical Cooperation in the Field of Human Rights;
- Administering the Plan of Action of the United Nations Decade for Human Rights Education, including the development of information and educational material;
- Providing substantive and administrative support to human rights fact finding and investigatory mechanisms, such as special rapporteurs, representatives and experts and working groups mandated by the Commission on Human Rights and/or the Economic and Social Council to deal with specific country situations or phenomena of human rights violations worldwide, as well as the General Assembly.s Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied Territories;
- Planning, supporting and evaluating human rights field presence and missions, including the formulation and development of best practices, procedural methodology and models for all human rights activities in the field;
- Managing voluntary funds for human rights field presence.

The New York Office

A Director who is accountable to the High Commissioner heads the New York Office.

The core functions of the New York Office are as follows:

- Representing the High Commissioner at Headquarters, at meetings of policy-making bodies, permanent missions of Member States, interdepartmental, inter-agency meetings, non-governmental organizations, professional groups, academic conferences and the media;
- Providing information and advice on human rights issues to the Executive Office of the Secretary-General;
- Providing substantive support on human rights issues to the General Assembly, the Economic and Social Council and other policy-making bodies established in New York.

OHCHR.s offices and human rights operations in the field were established progressively. In 1992 there was one operation; by 1999 OHCHR maintained human rights field offices in Abkhazia Georgia, Afghanistan, Angola, Azerbaijan, Bosnia and Herzegovina, Burundi, Cambodia, Central African Republic, Chad, Colombia, Croatia, the Democratic Republic of Congo, El Salvador, Federal Republic of Yugoslavia, Guatemala, Guinea-Bissau, Indonesia,

Liberia, Madagascar, Malawi, Mongolia, Occupied Palestinian Territory, including East Jerusalem, Sierra Leone, South Africa, Southern African region, Togo and Uganda. While most of these field presences are directly administered by OHCHR, in some countries they are part of United Nations peace-keeping missions. In such cases, they are administered by DPKO or DPA

and OHCHR provides ongoing substantive guidance and support on human rights issues. Human rights field presences have been established in response to a wide variety of human rights concerns, with mandates focused on each particular situation.

Some field presences have focused on technical co-operation activities, providing Governments with assistance in developing their national capacity to protect human rights. These human rights offices typically provide: assistance to national judicial systems; help in the development and reform of national legislation in accordance with a country's international human rights obligations; and human rights education and training for national officials, NGOs, and students.

Other human rights field offices or operations have been established in response to human rights violations in the context of armed conflict. Since human rights violations are frequently at the root of conflict and humanitarian crisis, the United Nations human rights programme recognizes that a critical step in preventing and bringing an end to conflicts is to ensure the respect of human rights.

The mandates and activities of field presences in conflict situations require human rights officers to conduct monitoring and investigations of a range of violations of international human rights law. Regular reports are prepared on the human rights situation in these countries, and these are used by the United Nations in efforts to put an end to impunity, and to protect human rights in the future. Monitoring activities are frequently accompanied by human rights promotion and training

programmes intended to begin constructing a human rights base which will contribute to the end of armed conflict and the establishment of lasting peace.

Further, the High Commissioner has emphasized the need to promote respect for human rights in the context of peacekeeping, peacemaking and post-conflict peace building. While OHCHR.s presence in the field was once perceived as exceptional, it is today a regular and substantial component of the Office's work.

United Nations partners

The United Nations operates through an elaborate structure of specialized agencies and bodies to carry out components of the mandate and objectives of the Organization. While OHCHR has prime responsibility for the overall United Nations human rights programme, most United Nations partners are mandated to some extent to promote or protect particular rights, vulnerable groups or human rights issues. These partners specialize in a wide diversity of human rights issues which include, inter alia, women, refugees, children, health, labour rights, development, education, humanitarian assistance, food, population, the environment and science.

Since the Vienna World Conference on Human Rights, human rights have assumed a more prominent place in the United Nations system. The Secretary-General's Programme for Reform has accelerated this process and expanded the human rights programme throughout the system. Further mainstreaming of

human rights in the United Nations system continues to be one of the major tasks of OHCHR in collaboration with its partners.

United Nations partners work together to co-ordinate activities relating to human rights. Comprehensive human rights training of United Nations staff is indispensable for the further mainstreaming of human rights into the United Nations system and for enhanced co-ordination of related activities.

Establishment of human rights focal points within each component of the United Nations system, as well as development of joint or coordinated programmes addressing human rights issues, will provide the organizational framework for cooperation in this area.

Strengthening cooperation and coordination at national level, with a view to assisting more effectively in implementing human rights standards by Governments and civil society, must be the focus of attention of all those involved.

The human rights dimension should be included in the design and realization of all United Nations coordinated country programmes. The establishment of human rights focal points in United Nations field offices can ensure a continuing focus on these rights. OHCHR provides substantive guidance to partners, with a view to putting in place a consistent approach to human rights system-wide.

Human Rights, Democracy and Freedom

At birth, all human beings are naturally endowed with the qualities we need for our survival, such as caring, nurturing and loving kindness. However, despite already possessing such positive qualities, we tend to neglect them. As a result, humanity faces unnecessary problems. What we need to do is to make more effort to sustain and develop these qualities. Therefore, the promotion of human values is of primary importance. We also need to focus on cultivating good human relations, for, regardless of differences in nationality, religious faith, race, or whether people are rich or poor, educated or not, we are all human beings. When we are facing difficulties, we invariably meet someone, who may be a stranger, who immediately offers us help. We all depend on each other in difficult circumstances, and we do so unconditionally. We do not ask who people are before we offer them help. We help because they are human beings like us.

Closing the Gap Between Rich and Poor

Our world is increasingly interdependent, but I wonder if we truly understand that our interdependent human community has to be compassionate; compassionate in our choice of goals, compassionate in our means of cooperation and our pursuit of these goals. The awesome power that economic institutions have acquired in our society, and the distressing effects that poverty continues to wreak, should make all of us look for means of

transforming our economy into one based on compassion. This form of compassion affirms the principles of dignity and justice for all embodied in the Universal Declaration of Human Rights.

Wherever it occurs, poverty is a significant contributor to social disharmony, ill health, suffering and armed conflict. If we continue along our present path, the situation could become irreparable. This constantly increasing gap between the â•˜haves' and â•˘have-nots' creates suffering for everyone. Concerned not only for ourselves, our families, our community and country, we must also feel a responsibility for the individuals, communities and peoples who make up the human family as a whole. We require not only compassion for those who suffer, but also a commitment to ensuring social justice.

If we are serious in our commitment to the fundamental principles of equality that I believe lie at the heart of the concept of human rights, today's economic disparity can no longer be ignored. It is not enough merely to say that all human beings must enjoy equal dignity. This must be translated into action.

Democracy and Peace

Today, the values of democracy, open society, respect for human rights, and equality are becoming recognized all over the world as universal values. To my mind there is an intimate connection between democratic values and the fundamental values of human goodness. Where there is democracy there is a greater possibility for the citizens of the country to express their basic human

qualities, and where these basic human qualities prevail, there is also a greater scope for strengthening democracy. Most importantly, democracy is also the most effective basis for ensuring world peace.

However, responsibility for working for peace lies not only with our leaders, but also with each of us individually. Peace starts within each one of us. When we have inner peace, we can be at peace with those around us. When our community is in a state of peace, it can share that peace with neighbouring communities and so on. When we feel love and kindness toward others, it not only makes others feel loved and cared for, but it helps us also to develop inner happiness and peace. We can work consciously to develop feelings of love and kindness. For some of us, the most effective way to do so is through religious practice. For others it may be non-religious practices. What is important is that we each make a sincere effort to take seriously our responsibility for each other and the world in which we live.

Human Rights

Providing for equality under law, the declaration states that everyone is entitled to equal rights and freedoms without discrimination of any kind. Peace and freedom cannot be ensured as long as fundamental human rights are violated. Similarly, there cannot be peace and stability as long as there is oppression and suppression. It is unfair to seek one's own interests at the cost of other people's rights. Truth cannot shine if we fail to accept truth or consider it illegal to tell the truth. Where will the

idea of truth and reality be if we push the truth and facts under the carpet and allow illegal actions to triumph?

Human Rights in Tibet

If we accept that others have an equal right to peace and happiness as ourselves, do we not have responsibility to help those in need? The aspiration for democracy and respect for fundamental human rights is as important to the people of Africa and Asia as it is to those in Europe or the Americas. But of course it is often those people who are deprived of their human rights who are least able to speak up for themselves. The responsibility rests with those of us who do enjoy such freedoms.

There has been a sad turn of events in Tibet that must be understood as thoroughly as possible. Since the Chinese Government has accused me of orchestrating these protests in Tibet, I call for a thorough investigation by a respected body, which should include Chinese representatives, to look into these allegations. Such a body would need to visit Tibet, the traditional Tibetan areas outside the Tibet Autonomous Region, and also the Central Tibetan Administration here in India. In order for the international community, and especially the more than one billion Chinese people who do not have access to uncensored information, to find out what is really going on in Tibet, it would be tremendously helpful if representatives of the international media also undertook such investigations.

I believe that many of the violations of human rights in Tibet are the result of suspicion, lack of trust and true understanding of

Tibetan culture and religion. As I have said many times in the past, it is extremely important for the Chinese leadership to come to a better and deeper understanding and appreciation of the Tibetan Buddhist culture and civilization. I absolutely support Deng Xiaoping's wise statement that we must "seek truth from facts." Therefore, we Tibetans must accept the progress and improvements that China's rule of Tibet has brought to the Tibetan people and acknowledge it. At the same time the Chinese authorities must understand that the Tibetans have had to undergo tremendous suffering and destruction during the past five decades.

Despite some development and economic progress, Tibetan culture continues to face fundamental problems of survival. Serious violations of human rights continue throughout Tibet. Yet they are only the symptoms and consequences of a deeper problem. The Chinese authorities have so far been unable to take a tolerant and pluralistic view of Tibet's distinct culture and religion; instead they are suspicious of them and seek to control them. The majority of Chinese "development" plans in Tibet are designed to assimilate Tibet completely into the Chinese society and culture and to overwhelm Tibetans demographically by transferring large numbers of Chinese into Tibet. This unfortunately reveals that Chinese policies in Tibet continue to be harsh, despite the profound changes carried out by the Chinese government and the Party elsewhere in the People's Republic of China. Thus, as a result of deliberate policies, an entire people with its unique culture and identity are facing the threat of being utterly overwhelmed.

It is common knowledge that Tibetan monasteries, which constitute our principal seats of learning, besides being the repository of Tibetan Buddhist culture, have been severely reduced in both number and population. In those monasteries that do still exist, serious study of Tibetan Buddhism is no longer allowed; in fact, even admission to these centres of learning is being strictly regulated. In reality, there is no religious freedom in Tibet. Even to call for a little more freedom is to risk being labelled a separatist. Nor is there any real autonomy in Tibet, even though these basic freedoms are guaranteed by the Chinese constitution.

I believe the demonstrations and protests taking place in Tibet reflect reaction to repression. Further repressive measures will not lead to unity and stability.

Human Rights and China

China needs human rights, democracy and the rule of law because these values are the foundation of a free and dynamic society. They are also the source of true peace and stability. I have no doubt either that an increasingly open, free and democratic China will be of benefit to the Tibetan people too. It is my firm belief that dialogue and a willingness to look with honesty and clarity at the reality in Tibet and China can lead us to a viable solution of our problems. While great progress has been made to integrate China into the world economy, I believe it is equally important to encourage her also to enter the mainstream of global democracy.

Improving Observance of Human Rights

Internationally, our rich diversity of cultures and religions should help to strengthen fundamental human rights in all communities. Underlying this diversity are basic human principles that bind us all together as members of the same human family. The question of human rights is so fundamentally important that there should be no difference of views about it. We all have common human needs and concerns. We all seek happiness and try to avoid suffering regardless of our race, religion, sex or social status. However, mere maintenance of a diversity of traditions should never justify the violations of human rights. Thus, discrimination against persons of different races, against women, and against weaker sections of society may be traditional in some regions, but if they are inconsistent with universally recognized human rights, these forms of behaviour should change. The universal principle of the equality of all human beings must take precedence.

Inalienable Rights

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain inalienable rights, that among these are life, liberty and the pursuit of happiness. That to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed.

In these memorable words of the American Declaration of Independence, Thomas Jefferson set forth a fundamental principle upon which democratic government is founded. Governments in a democracy do not grant the fundamental freedoms enumerated by Jefferson; governments are created to protect those freedoms that every individual possesses by virtue of his or her existence.

In their formulation by the Enlightenment philosophers of the 17th and 18th centuries, inalienable rights are God-given natural rights. These rights are not destroyed when civil society is created, and neither society nor government can remove or "alienate" them.

Inalienable rights include freedom of speech and expression, freedom of religion and conscience, freedom of assembly, and the right to equal protection before the law. This is by no means an exhaustive list of the rights that citizens enjoy in a democracy-- democratic societies also assert such civil rights as the right to a fair trial--but it does constitute the core rights that any democratic government must uphold. Since they exist independently of government, these rights cannot be legislated away, nor are they subject to the momentary whim of an electoral majority. The First Amendment to the U.S. Constitution, for example, does not give freedom of religion or of the press to the people; it prohibits the Congress from passing any law interfering with freedom of speech, religion, and peaceful assembly. A historian, Leonard Levy, has said, "Individuals may be free when their government is not."

The detailed formulation of laws and procedures concerning these basic human rights will necessarily vary from society to society, but every democracy is charged with the task of building the constitutional, legal, and social structures that will ensure their protection.

Speech

Freedom of speech and expression is the lifeblood of any democracy. To debate and vote, to assemble and protest, to worship, to ensure justice for all--these all rely upon the unrestricted flow of speech and information. Canadian Patrick Wilson, creator of the television series *The Struggle for Democracy*, observes: "Democracy is communication: people talking to one another about their common problems and forging a common destiny. Before people can govern themselves, they must be free to express themselves."

Citizens of a democracy live with the conviction that through the open exchange of ideas and opinions, truth will eventually win out over falsehood, the values of others will be better understood, areas of compromise more clearly defined, and the path of progress opened. The greater the volume of such exchanges, the better. American essayist E.B. White put it this way: "The press in our free country is reliable and useful not because of its good character but because of its great diversity. As long as there are many owners, each pursuing his own brand of truth, we the people have the opportunity to arrive at the truth and dwell in the light....There is safety in numbers."

In contrast to authoritarian states, democratic governments do not control, dictate, or judge the content of written and verbal speech. Democracy depends upon a literate, knowledgeable citizenry whose access to the broadest possible range of information enables them to participate as fully as possible in the public life of their society. Ignorance breeds apathy. Democracy thrives upon the energy of citizens who are sustained by the unimpeded flow of ideas, data, opinions, and speculation.

But what should the government do in cases where the news media or other organizations abuse freedom of speech with information that, in the opinion of the majority, is false, repugnant, irresponsible, or simply in bad taste? The answer, by and large, is nothing. It is simply not the business of government to judge such matters. In general, the cure for free speech is more free speech. It may seem a paradox, but in the name of free speech, a democracy must sometimes defend the rights of individuals and groups who themselves advocate such non-democratic policies as repressing free speech. Citizens in a democratic society defend this right out of the conviction that, in the end, open debate will lead to greater truth and wiser public actions than if speech and dissent are stifled.

Furthermore, the advocate of free speech argues, the suppression of speech that I find offensive today is potentially a threat to my exercise of free speech tomorrow--which perhaps you or someone else might find offensive. One of the classic defenses of this view is that of English philosopher John Stuart Mill, who argued in his 1859 essay "On Liberty" that all people are harmed when speech is repressed. "If the opinion is right, they are deprived of

the opportunity of exchanging error for truth," Mill wrote, "if wrong, they lose...the clearer perception and livelier impression of truth produced by its collision with error."

The corollary to freedom of speech is the right of the people to assemble and peacefully demand that the government hear their grievances. Without this right to gather and be heard, freedom of speech would be devalued. For this reason, freedom of speech is considered closely linked to, if not inseparable from, the right to gather, protest, and demand change. Democratic governments can legitimately regulate the time and place of political rallies and marches to maintain the peace, but they cannot use that authority to suppress protest or to prevent dissident groups from making their voices heard.

Freedom and Faith

Freedom of religion, or more broadly freedom of conscience, means that no person should be required to profess any religion or other belief against his or her desires. Additionally, no one should be punished or penalized in any way because he or she chooses one religion over another or, indeed, opts for no religion at all. The democratic state recognizes that a person's religious faith is a profoundly personal matter.

In a related sense, freedom of religion means that no one can be compelled by government to recognize an official church or faith. Children cannot be compelled to go to a particular religious school, and no one can be required to attend religious services,

to pray, or to participate in religious activities against his or her will. By reason of long history or tradition, many democratic nations have officially established churches or religions that receive state support. This fact, however, does not relieve the government of the responsibility for protecting the freedom of individuals whose beliefs differ from that of the officially sanctioned religion.

Citizenship: Rights and Responsibilities

Democracies rest upon the principle that government exists to serve the people; the people do not exist to serve the government. In other words, the people are citizens of the democratic state, not its subjects. While the state protects the rights of its citizens, in return, the citizens give the state their loyalty. Under an authoritarian system, on the other hand, the state, as an entity separate from the society, demands loyalty and service from its people without any reciprocal obligation to secure their consent for its actions.

When citizens in a democracy vote, for example, they are exercising their right and responsibility to determine who shall rule in their name. In an authoritarian state, by contrast, the act of voting serves only to legitimize selections already made by the regime. Voting in such a society involves neither rights nor responsibilities exercised by citizens--only a coerced show of public support for the government.

Similarly, citizens in a democracy enjoy the right to join organizations of their choosing that are independent of

government and to participate freely in the public life of their society. At the same time, citizens must accept the responsibility that such participation entails: educating themselves about the issues, demonstrating tolerance in dealing with those holding opposing views, and compromising when necessary to reach agreement.

In an authoritarian state, however, private voluntary groups are few or nonexistent. They do not serve as vehicles for individuals to debate issues or run their own affairs, but only as another arm of the state that holds its subjects in positions of obedience.

Military service provides a different but equally contrasting example of rights and responsibilities in democratic and non-democratic societies. Two different nations may both require a period of peacetime military service by their young men. In the authoritarian state, this obligation is imposed unilaterally. In the democratic state, such a period of military service is a duty that the citizens of the society have undertaken through laws passed by a government they themselves have elected. In each society, peacetime military service may be unwelcome for individuals. But the citizen-soldier in a democracy serves with the knowledge that he is discharging an obligation that his society has freely undertaken. The members of a democratic society, moreover, have it within their power to act collectively and change this obligation: to eliminate mandatory military service and create an all-volunteer army, as the United States and other countries have done; change the period of military service, as happened in Germany; or, as in the case of Switzerland, maintain reserve military service for men as an essential part of citizenship.

Citizenship in these examples entails a broad definition of rights and responsibilities, since they are opposite sides of the same coin. An individual's exercise of his rights is also his responsibility to protect and enhance those rights--for himself and for others. Even citizens of well-established democracies often misunderstand this equation, and too often take advantage of rights while ignoring responsibilities. As political scientist Benjamin Barber notes, "Democracy is often understood as the rule of the majority, and rights are understood more and more as the private possessions of individuals and thus as necessarily antagonistic to majoritarian democracy. But this is to misunderstand both rights and democracy."

It is certainly true that individuals exercise basic, or inalienable, rights--such as freedom of speech, assembly, and religion--which thereby constitute limits on any democratically based government. In this sense, individual rights are a bulwark against abuses of power by the government or a momentary political majority.

But in another sense, rights, like individuals, do not function in isolation. Rights are not the private possession of individuals but exist only insofar as they are recognized by other citizens of the society. The electorate, as the American philosopher Sidney Hook expressed it, is "the ultimate custodian of its own freedom." From this perspective, democratic government, which is elected by and accountable to its citizens, is not the antagonist of individual rights, but their protector. It is to enhance their rights that citizens in a democracy undertake their civic obligations and responsibilities.

Broadly speaking, these responsibilities entail participating in the democratic process to ensure its functioning. At a minimum, citizens should educate themselves about the critical issues confronting their society--if only to vote intelligently for candidates running for high office. Other obligations, such as serving juries in civil or criminal trials, may be required by law, but most are voluntary.

The essence of democratic action is the active, freely chosen participation of its citizens in the public life of their community and nation. Without this broad, sustaining participation, democracy will begin to wither and become the preserve of a small, select number of groups and organizations. But with the active engagement of individuals across the spectrum of society, democracies can weather the inevitable economic and political storms that sweep over every society, without sacrificing the freedoms and rights that they are sworn to uphold.

Active involvement in public life is often narrowly defined as the struggle for political office. But citizen participation in a democratic society is much broader than just taking part in election contests. At the neighborhood or municipal level, citizens may serve on school committees or form community groups, as well as run for local office. At the state, provincial, or national level, citizens can add their voices and pens to the continuing debate over public issues, or they can join political parties, labor unions, or other voluntary organizations. Whatever the level of their contribution, a healthy democracy depends upon the continuing, informed participation of the broad range of its citizens.

Democracy, Diane Ravitch writes, "is a process, a way of living and working together. It is evolutionary, not static. It requires cooperation, compromise, and tolerance among all citizens. Making it work is hard, not easy. Freedom means responsibility, not freedom from responsibility."

Democracy embodies ideals of freedom and self-expression, but it is also clear-eyed about human nature. It does not demand that citizens be universally virtuous, only that they will be responsible. As American theologian Reinhold Niebuhr said: "Man's capacity for justice makes democracy possible, but man's inclination to injustice makes democracy necessary."

Human Rights and Political Goals

As a principle, the protection of basic human rights is accepted widely: It is embodied in written constitutions throughout the world as well as in the Charter of the United Nations and in such international agreements as the Helsinki Final Act (the Conference on Security and Co-operation in Europe--CSCE).

Distinguishing among different categories of rights is another matter. In recent times, there has been a tendency, especially among international organizations, to expand the list of basic human rights. To fundamental freedoms of speech and equal treatment before the law, these groups have added rights to employment, to education, to one's own culture or nationality, and to adequate standards of living. These are all worthwhile undertakings, but when such entitlements proliferate as rights,

they tend to devalue the meaning of basic civic and human rights. Furthermore, they blur the distinction between rights that all individuals possess and goals toward which individuals, organizations, and governments may reasonably be expected to strive.

Governments protect inalienable rights, such as freedom of speech, through restraint, by limiting their own actions. Funding education, providing health care, or guaranteeing employment demand the opposite: the active involvement of government in promoting certain policies and programs. Adequate health care and educational opportunities should be the birthright of every child. The sad fact is that they are not, and the ability of societies to achieve such goals will vary widely from country to country. By transforming every human aspiration into a right, however, governments run the risk of increasing cynicism and inviting a disregard of all human rights.

Democratic Government and Public Human Rights

For authoritarians and other critics, a common misapprehension is that democracies, lacking the power to oppress, also lack the authority to govern. This view is fundamentally wrong: Democracies require that their governments be limited, not that they be weak. Viewed over the long course of history, democracies do indeed appear fragile and few, even from the vantage point of a decade of democratic resurgence. Democracies have by no

means been immune to the tides of history; they have collapsed from political failure, succumbed to internal division, or been destroyed by foreign invasion. But democracies have also demonstrated remarkable resiliency over time and have shown that, with the commitment and informed dedication of their citizens, they can overcome severe economic hardship, reconcile social and ethnic division, and, when necessary, prevail in time of war.

It is the very aspects of democracy cited most frequently by its critics that give it resiliency. The processes of debate, dissent, and compromise that some point to as weaknesses are, in fact, democracy's underlying strength. Certainly, no one has ever accused democracies of being particularly efficient in their deliberations: Democratic decision-making in a large, complex society can be a messy, grueling, and time-consuming process. But in the end, a government resting upon the consent of the governed can speak and act with a confidence and authority lacking in a regime whose power is perched uneasily on the narrow ledge of military force or an unelected party apparatus.

Checks and Balances

One of the most important contributions to democratic practice has been the development of a system of checks and balances to ensure that political power is dispersed and decentralized. It is a system founded on the deeply held belief that government is best when its potential for abuse is curbed and when it is held as close to the people as possible.

As a general term, checks and balances has two meanings: federalism and separation of powers.

Federalism is the division of government between the national, state or provincial, and local levels. The United States, for example, is a federal republic with states that have their own legal standing and authority independent of the federal government. Unlike the political subdivisions in nations such as Britain and France, which have a unitary political structure, American states cannot be abolished or changed by the federal government. Although power at the national level in the United States has grown significantly in relation to state authority in the 20th century, states still possess significant responsibilities in such fields as education, health, transportation, and law enforcement. In centralized, or "unitary," systems, these functions are administered by the national government. For their part, the individual states in the United States have generally followed the federalist model by delegating many functions, such as the operation of schools and police departments, to local communities. The divisions of power and authority in a federal system are never neat and tidy--federal, state, and local agencies can all have overlapping and even conflicting agendas in such areas as education, for example--but federalism does maximize opportunities for the citizen involvement so vital to the functioning of democratic society.

In its second sense, checks and balances refer to the separation of powers that the framers of the American Constitution in 1789 so painstakingly established to ensure that political power would not be concentrated within a single branch of the national

government. James Madison, perhaps the central figure in the drafting of the Constitution and later fourth president of the United States, wrote: "The accumulation of all powers, legislative, executive, and judiciary, in the same hands...may justly be pronounced the very definition of tyranny."

Separation of powers is in some ways a misleading term, because the system devised by Madison and the other framers of the Constitution is more one of shared rather than separate powers. Legislative authority, for example, belongs to the Congress, but laws passed by Congress can be vetoed by the president. The Congress, in turn, must assemble a two-thirds majority in both the House of Representatives and the Senate to override a presidential veto. The president nominates ambassadors and members of the cabinet, and negotiates international treaties-- but all are subject to approval by the Senate. So is the selection of federal judges. As another example, the Constitution specifies that only the Congress has the power to declare war, although the president is commander-in-chief of the armed forces--a source of tension between the two branches that was apparent during the protracted Vietnam War of the 1960s and early 1970s and in the brief Gulf conflict of 1990- 91. Because of the need for congressional approval to enact a political program, political scientist Richard Neustadt has described presidential power in the United States as "not the power to command, but the power to persuade."

Not all the checks and balances within the federal government are specified in the Constitution. Some have developed with practice and precedent. Perhaps the most important is the

doctrine of judicial review, established in an 1803 court case, which gives the U.S. Supreme Court the power to declare acts of Congress unconstitutional.

The separation of powers in the American system is often inefficient, but it provides an important safeguard against the potential abuse of power by government--an issue that every democracy must confront.

Prime Ministers and Presidents

Among a democracy's most important decisions is the method of electing its leaders and representatives. In general, there are two choices. In a parliamentary system, the majority party in the legislature, or a coalition of parties, forms a government headed by a prime minister. This system of parliamentary government, which first evolved in Great Britain, is today practiced in most of Europe, the Caribbean, Canada, India, and many countries in Africa and Asia (often former British colonies). The other major method is direct election of a president independently of the legislature. This presidential system is practiced today in much of Latin America, the Philippines, France, Poland, and the United States.

The chief difference between parliamentary and presidential systems is the relationship between the legislature and the executive. In a parliamentary system, they are essentially one and the same, since the prime minister and members of the cabinet are drawn from the parliament. Typically, the government's term of office will run for a specified period--four or

five years, for example--unless the prime minister loses a majority in parliament. In that case the government falls and new elections are held. Alternatively, another party leader is offered a chance to form a government by the head of state, either a president or constitutional monarch, whose role is chiefly symbolic.

The separation of powers characteristic of the American-style presidential system is lacking, since parliament is the preeminent governing institution. Instead, parliamentary systems must rely much more heavily on the internal political dynamics of the parliament itself to provide checks and balances on the power of the government. These usually take the form of a single organized opposition party that "shadows" the government, or of competition among multiple opposition parties.

In a presidential system, both the head of government and the head of state are fused in the office of the president. The president is elected for a specified period directly by the people, as are the members of the congress. As one element of the separation of powers, members of the president's cabinet are usually not members of congress. Presidents normally can be removed from office before finishing their terms only for serious crimes or malfeasance in office. A legislative majority for the president's party can ease passage of his political program, but unlike prime ministers, presidents do not depend on such majorities to remain in office.

Representatives

Another important decision of any democracy is how to organize elections. The fundamental choices are again two: plurality elections or proportional representation. Plurality elections, sometimes referred to as "winner-take-all," simply mean that the candidate with the most votes in a given district wins--whether a plurality (less than 50 percent but more than any rival) or a majority (more than 50 percent). Presidents are elected in a similar fashion, but on a nationwide basis. Some systems provide for runoff elections between the top two candidates if no one receives an outright majority in the first round. Plurality systems tend to encourage two broadly based political parties that dominate the political scene.

By contrast, voters in a system of proportional representation, such as that employed in much of Europe, usually cast ballots for political parties, not for individual candidates. Party representation in the national legislature is determined by the percentage, or proportion, of votes received by each party in the election. In a parliamentary system, the leader of the majority party becomes the prime minister and selects the cabinet from the parliament. If no party has received a majority, the parties engage in intensive negotiations to form a ruling coalition of parties. Proportional representation tends to encourage multiple parties that, even though each commands the loyalty of only a relatively small percentage of voters, often find themselves negotiating for a place in a coalition government.

Parliaments and Presidents

A principal claim for parliamentary systems, which today make up the majority of democracies, is their responsiveness and flexibility. Parliamentary governments, especially if elected through proportional representation, tend toward multiparty systems where even relatively small political groupings are represented in the legislature. As a result, distinct minorities can still participate in the political process at the highest levels of government. This diversity encourages dialogue and compromise as parties struggle to form a ruling coalition. Should the coalition collapse or the party lose its mandate, the prime minister resigns and a new government forms or new elections take place--all without a crisis threatening the democratic system itself.

The major drawback to parliaments is the dark side of flexibility and power sharing: instability. Multiparty coalitions may be fragile and collapse at the first sign of political crisis, resulting in governments that are in office for relatively short periods of time. The government may also find itself at the mercy of small extremist parties that, by threatening to withdraw from the ruling coalition and forcing the government to resign, can make special policy demands upon the government. Moreover, prime ministers are only party leaders and lack the authority that comes from being directly elected by the people.

Another concern is the lack of formal institutional checks on parliamentary supremacy. A political party with a large enough majority in parliament, for example, could enact a far-reaching, even anti-democratic political program without any effective

limits to its actions, raising the prospect of a tyranny of the majority. For presidential systems, on the other hand, the principal claims are direct accountability, continuity, and strength. Presidents, elected for fixed periods by the people, can claim the authority deriving from direct election, whatever the standing of their political party in the Congress. By creating separate but theoretically equal branches of government, a presidential system seeks to establish strong executive and legislative institutions, each able to claim its electoral mandate from the people and each capable of checking and balancing the other. Those who fear the potential for executive tyranny will tend to emphasize the role of the Congress; those concerned with the potential abuse of a transient majority in the legislature will assert the authority of the president.

The weakness of separately elected presidents and legislatures is potential stalemate. Presidents may not possess the votes to enact their program, but by employing their veto power, they can prevent the congress from substituting its own legislative program.

Presidents, by virtue of their direct election, may appear more powerful than prime ministers. But they must contend with legislatures that, whether or not controlled by the opposition, possess an election base independent of the president's. Party discipline, therefore, is considerably weaker than in a parliamentary system. The president cannot, for example, dismiss or discipline rebellious party members as a prime minister usually can. A prime minister with a firm parliamentary majority is assured of passage of the government's legislative program; a

president dealing with a congress jealous of its own prerogatives must often engage in protracted negotiations to ensure a bill's passage.

Which system best meets the requirements of a constitutional democracy: parliamentary or presidential? The answer is the subject of continuing debate among political scientists and politicians, in part because each system has unique strengths and weaknesses. It should be noted, however, that both are compatible with constitutional democracy, although neither guarantees it.

Democracy, Human Rights And Freedom Of Expression

Poverty is not just about lack of food, water or a roof over your head. Being poor also implies suffering from lack of power and choice. Democracy, human rights and gender equality are therefore overall targets for all of Sweden's development assistance efforts.

Fair treatment, freedom from discrimination on the basis of gender, sexual preference, age, disability or ethnic background and the ability to affect your own life as well as the society in which you live are basic human and democratic rights that are immensely important in combating poverty.

These rights are by far not fulfilled for millions of people. The overall target for Sweden's development cooperation is to

contribute to improved living conditions for people living under oppression and in poverty. Democracy and human rights including freedom of speech are therefore areas where Sweden is investing most. Strengthened democracy and gender equality, increased respect for human rights and freedom from oppression is also one of the six subsidiary objectives in the Swedish government's aid policy framework.

All our democracy and human rights work has its origins in the Universal Declaration of Human Rights that the UN member states signed more than 60 years ago, and which has later been supplemented with several important conventions. The starting point is that human rights are universal, indivisible and interdependent.

Providing support in these areas is met with some controversy, mainly due to the fact that it involves sharing power in the society, so that women and men living in poverty have a greater say. Sida is therefore working with these issues in many different ways and together with several stakeholders – governments in partner countries, international organisations such as the UN and the World Bank and with popular movements and other civil organisations in Sweden and the partner countries.

Defenders of human rights often live dangerously because they criticise government policies and actions. They are the victims of death threats, kidnappings and arbitrary detentions – and physical attacks including sexual violence, torture and murder. Their public and private lives are heavily controlled and monitored. Actively supporting the struggle against violence and

oppression is an important part of Sida's work for democracy and respect of human rights.

Mainstreaming the rights' perspective

The rights' perspective and poor people's view of their situation should pervade all development assistance efforts. This is about making people more aware of their rights and about creating better conditions for states to live up to their commitments towards their citizens.

Chapter 5

Participatory Democracy and Democratic Human Rights

Role of Democratic rights

Democracy is a shape of government and an ideal, an aspiration and an average. The center unit of democracy is self-rule. The origin of the word democracy can be traced back to ancient Greece. Derived from the Greek term '*demokratia*', it means rule through the people. In the literal sense, it rejects the isolation of the two, i.e., flanked by the ruler and the ruled. It is motivating to note that unlike the words communism and socialism, which has a point of reference in Marxism, democracy has not been associated with a specific doctrinal source or ideology. In fact, it is a byproduct of the whole growth of Western culture and so, tends to be used rather loosely. Therefore, the history of the thought of democracy is rather intricate and is marked through conflicting and confusing conceptions. It is confusing because 'this is still an active history' and also because the issues are intricate. Though, it has been justified and defended on the grounds that it achieves one or more of the following fundamental value or goods like equality, liberty, moral self-growth, the general interest, private interests, social utility etc.

Several Meanings

Varied meanings have been attached to the term 'democracy'. Few of them are since follows:

- A shape of government in which people rule directly;
- A society based on equal opportunity and individual merit, rather than hierarchy and privilege;
- A organization of decision-creation based on the principle of majority rule;
- A organization of rule that secures the rights and interests of minorities through placing checks upon the authority of the majority;
- A means of filling public offices by a competitive thrash about for the popular vote;
- An organization of government that serves the interests of the people regardless of their participation in political life.
- An organization of government based on the consent of the governed.

Linking Government to the People

From the dissimilar meanings that are associated with democracy, one item that becomes clear is that democracy links government to the people. Though, this link can be forged in a number of methods depending upon the superior political civilization of that society. Due to this, there have been ideological differences and political debates concerning the exact nature of democratic rule.

Limitations of Direct Democracy

A distinctive characteristic of direct democracy since practiced in ancient Athens was its exclusivity. The Municipality-State was marked through unity, solidarity, participation and a highly restricted citizenship. There was no isolation flanked by public and private life and even however state and government were inextricably connected with the lives of the citizens, it only involved a little part of the population. It is motivating to note that the Athenian political civilization was an adult male civilization, i.e. only men in excess of the age of 20 years were qualified to become citizens. It was a democracy of patriarchs in which women had no political rights and even their civic rights were strictly limited.

There were also other kinds of residents who were ineligible to participate in formal proceedings; like 'immigrants' who had settled in Athens many generations earlier, but were not the original inhabitants.

Though, the slave population constituted, through distant, the mainly politically marginalized people. Here, what we discover is that 'political equality' since practiced in Athens did not mean 'equal authority' for all. It was rather a shape of equality that was applicable to those having equal status and in the Athenian context, it was meant for only males and Athenian born. Therefore, several were a minority of the superior citizenry. Unquestionably, the politics of ancient Athens rested on a highly undemocratic foundation.

Flaws of Athenian Democracy

What we can conclude from the above account is that democracy practiced through ancient Athens had serious flaws. If contemporary democracy is based on the market economy, Athens was a democracy built on slavery; the labour of slaves created the time for the citizen elite to participate. The lack of permanent bureaucracy contributed to ineffective government, leading eventually to the fall of the Athenian republic after defeat in war. It is motivating to note that the mainly influential critic of this shape of democracy i.e. direct democracy was the philosopher Plato. Plato attacked the principle of political equality on the grounds that the masses are not made equal through nature and so, cannot rule themselves wisely. This is because they possess neither the wisdom nor the experience to do therefore. The solution since stated in his well-known job *The Republic* was that the government be placed in the hands of a class of philosopher-kings, the Guardians, whose rule would be something same to what can be described enlightened dictatorship. At a practical stage, though, the principal drawback of Athenian democracy was that it could operate only through excluding the size of the population from political action. This was possible only in little city-states with limited populations and not in superior contemporary democracies with better populations since they exist today. Despite its flaws, the Athenian model was crucial in establishing the democratic principle. Finer, 'The Greeks invented two of the mainly potent political characteristics of our present age: they invented:

- The extremely thought   of citizen since opposed to subject and
- They invented democracy.

Direct Democracy in Contemporary Times

The classical model of direct and continuous popular participation in political life has been kept alive in sure sections of the world, notably in community meetings of New England in the USA and in communal assemblies which operate in smaller Swiss cantons. The mainly general way used in recent times is referendum since compared to the size meetings of ancient Athens. Referendum is a vote in which the electorate can express a view on a scrupulous issue of public policy. It differs from an election in that the latter is essentially a means of filling a public office and does not give a direct or reliable way of influencing the content of a policy. A device of direct democracy, referendum is used not to replace representative organizations, but to supplement them. They may either be advisory or binding; they may also raise issues for discussions.

Direct Democracy

Direct Democracy is a shape of self-government in which all communal decisions are taken by participation of all adult citizens of the state in the spirit of equality and open deliberations. Deliberations or discussions are significant because decisions arrived at by discussions are bigger informed, logical and rational. This is because discussions allow a group to

reconcile dissimilar interests, inform members in relation to the several issues and attract on the group's expertise. In other terms, debates enable people to both power and to be convinced through the group.

The significant characteristic of direct democracy is the mechanism that 'all command each and each in his turn all'. It was achieved in ancient Athens by a shape of government brought in relation to the since a result of a size meeting. Its contemporary manifestation is the referendum. 'Gram Sabha', since envisaged in the 73rd Constitutional Amendment, is an example of direct democracy in rural India.

Principles Governing Direct Democracy

In a direct democracy, so, the best decisions can never be arrived at by voting. The principle of direct democracy is to govern by consensus, which emerges from cautious deliberations of options or alternatives. In the absence of formal representative organizations, people create decisions themselves by public discussions. In other terms, the following principles apply in direct democracy:

- People are sovereign
- Sovereignty is inalienable and cannot be represented
- People necessity express their common will and create decisions directly by referenda
- Decisions are to be based on majority rule

To sum up direct democracy is based on direct, unmediated and continuous participation of citizens in the tasks of government. It obliterates the distinction flanked by government and the governed and flanked by state and civil society. In direct democracy, state and society become one. It is an organization of popular self-government.

Merits of Direct Democracy

The merits of direct democracy contain the following:

- It heightens manage that citizens can exercise in excess of their own destinies, since it is the only pure shape of democracy.
- It creates a bigger informed and more politically sophisticated citizenry, and therefore it has educational benefits.
- It enables the public to express their own views and interests without having to rely on self-serving politicians
- It ensures that rule is legitimate in the sense that people are more likely to accept decisions that they have made themselves.

Greek Democracy since Direct Democracy

The classic instance of a direct democracy is that of ancient Athens throughout the 4th century BC. It can be measured since the only pure or ideal organization of popular participation recognized therefore distant. It had a specific type of direct

popular rule in which all-important decisions were taken however size meetings. The Assembly or *Ecclesia* to which all citizens belonged made all biggest decisions. This assembly met at least 40 times a year to settle issues put before it. When full time public officials were required, they were chosen on the foundation of lots. This procedure was adapted to ensure that they were a section of the superior body of citizens. The posts were, though, not fixed and were rotated in quite a frequency therefore that all citizens gained experience in the art of governing and therefore, tried to achieve the broadest possible participation. A council consisting of 500 citizens acted since the executive or steering committee of the assembly and a 50 strong committee in turn made proposals to the council.

Athenian Democracy: Causes for its Fame

It is significant to understand what made Athenian democracy therefore extra ordinary. Athens, in fact, symbolized a new political civilization enfranchising the entire citizenry. The citizens not only participated in regular meetings of the assembly, but they were in big numbers, prepared to undertake the responsibilities of public office and decision-making. Formally, citizens were differentiated on the foundation of rank and wealth in their involvement in public affairs. The demos held sovereign authority, i.e., supreme power to engage in legislative and judicial behaviors. The Athenian concept of citizenship entailed taking a share in this function, participating directly in the affairs of the state. Athenian democracy was marked through a common commitment to the principle of civic virtue which actually meant commitment and dedication to the republican

municipality-state, the subordination of private life to public affairs and the attainment of general good. In other terms, there was no isolation of public and private life and individuals could attain self-fulfillment and live an honorable life 'in and by the poleis, i.e. the municipality-state. For instance, citizens had rights and obligations but not since private individuals, rather since members of the political society. There were, therefore, public rights and good life was possible only in the polis. Therefore, 'In the Greek vision of democracy, politics is a natural social action not sharply separated from the rest of life. Rather political life is only an extension of and harmonious with oneself'. It looks that the Athenians whispered in a 'free and open' political life in which citizens could develop and realize their capacities and ability and the *telos* of the general good. And justice meant securing and realization of the citizen's role and lay in the municipality-states.

Aristotle's 'The Politics'

We discover the mainly detailed and extra ordinary explanation of ancient democracy in Aristotle's well-known job *The Politics* which was written flanked by 335 and 323 BC. His job examines the claims, ethical standards and aims of democracy and states distinctly, the key characteristics of a number of Greek democracies. Liberty and equality are connected jointly, particularly if you claim to be a democrat. Without the subsistence of one, the other is hard to achieve. There are two criteria of liberty: a) to rule and in turn being ruled and b) livelihood since one chooses. If one wants to execute the first criterion since an effective principle of government, it is

necessary that all citizens are equal. Without numerical equality, it is not possible for the majority to be sovereign. Numerical equality here means that everyone has an equal share in the art of ruling. The classical or the earlier democrats felt that numerical equality was possible to achieve because a) citizens are paid for their participation in government and so, are not losers because of their political involvement, b) citizens have equal voting authority and c) in principle, everyone has an equal opportunity to hold office. In a nutshell, what we can understand from this is that equality is the practical foundation of liberty and it is also the moral foundation. Therefore, on the foundation of Aristotle's explanation, classical democracy including direct democracy entails liberty and liberty entails equality.

Democracy and Elections

Contemporary democratic states have representative governments. Big mass and population of contemporary democratic states create it hard to practice direct democracy since a shape of government. Hence, all contemporary democracies have indirect or representative governments, which are elected through people. These representatives are chosen through people by elections. Therefore, elections have assumed an extremely significant role in the formation of contemporary representative democracy. An election is a contest flanked by dissimilar political parties for receiving people's support. At times, an individual can also contest an election since a self-governing candidate. The advantages of contesting elections since a party candidate are since follows:

- Political parties follow specific policies; so, when a candidate symbolizes a party, it is easier for voters to know what he stands for.
- Party candidates get funds from political parties to organize election campaigns.
- Party volunteers may be provided through the party to the candidate throughout the procedure of electioneering.
- Familiar leaders of the party canvass for party candidates and address their rallies.

The Election Procedure

Elections in a democratic organization are based on the principle of equality i.e. *one person, one vote.* All persons irrespective of caste, color, creed, sex or religion enjoy sure political rights. In the middle of these rights, the mainly significant right is the right to vote. In politics, everyone is equal-every person has an equal say in the formation of government.

Secret Ballot: The voter casts his vote secretly in an enclosure; therefore that no one comes to know of the choice he has made. In representative democracy, secret voting is preferred; otherwise, the voter may not exercise his true choice openly due to fear of intimidation and undue power.

Constituency: Constituencies are marked in order to carry out the election procedure with efficiency. Constituency is the territorial region from where a candidate contests elections. If only one

person is to be elected from a constituency, it is described a *single member*

Constituency. If many representatives are elected from the similar constituency, then it is described a *multi-member constituency.*

The whole election procedure, e.g. in India, is mannered, controlled and managed through a self-governing body described the *Election Commission.* It ensures free and fair elections. The Election Commission fixes and announces the dates of elections in our country. The Election Commission has another extremely significant responsibility. It makes certain that the party in authority does not get undue advantage in excess of other parties. The procedure of election runs by many formal levels. This procedure includes of:

- Announcement of dates
- Filing of nomination papers
- Scrutiny of applications
- Withdrawal of applications
- Publication of the final list
- Campaigning
- Casting of votes
- Announcement of results

In fact, the moment the Election Commission announces the dates of elections, political parties start their behaviors. The first task of political parties becomes the selection of candidates who are going to contest in elections since their party candidates. Contemporary electioneering is a cumbersome procedure. It

requires a vast system to control it, which is provided through political parties. Moreover, elections need a reasonable amount of finance, which is also provided through political parties.

Selection of Candidates

In the functioning of representative democracy, the role of political parties has become both, indispensable and extremely significant. In fact, political parties have given an organized form to democratic politics. Political parties field and support their candidates, and organize their campaigns. Every political party announces specific programmes and promises to implement these programmes in case it comes to authority. Voters while casting votes for a candidate of a scrupulous party do therefore knowing fully well the programmes and policies of that party.

Nomination

Once election dates are announced, political parties have to choose their candidates by a procedure of selection. Then, candidates have to file their nominations to election offices which are appointed through the Election Commission. There is a last date for filing nomination papers. After all nominations have been filed, there is a procedure of scrutiny. It is done to check whether all information given in nomination papers is correct. If there is a doubt or a candidate is not establishing eligible, his/her nomination paper is rejected. Once the scrutiny is in excess of, candidates are given a date for withdrawal. The withdrawal procedure makes certain that There is since small

wastage of votes since possible and That all names printed on ballot paper are those of serious candidates.

Representations

Political parties have representations which are allotted through the Election Commission (EC). The EC allots representations to each political party and makes certain that they are not same because they can confuse voters. In India, representations are important for the following causes:

- They are a help for illiterate voters who cannot read names of candidates.
- They help in differentiating flanked by two candidates having the similar name.
- They reflect ideology of the concerned political party.

Campaigning

Campaigning is the procedure through which a candidate tries to persuade voters to vote for him rather than for others. Each political party and every candidate tries to reach since several voters since possible. A number of campaign techniques are involved in election procedure. Few of these are:

- Holding of public meetings which are addressed through candidates and a number of regional and national leaders of a party.
- Pasting of posters on walls and putting up big and little hoardings on roadside.

- Distinction of handbills which highlight largest issues of their manifesto.

- Taking out procession in support of dissimilar candidates.

- Door-to-door appeal through influential people in party and locality.

- Broadcasting and telecasting speeches of several party leaders.

Counting of Votes and Declaration of Results

After voting is in excess of, ballot boxes are sealed and taken to counting centers. Throughout counting, the candidate or his representative is present. After counting, a candidate receiving an easy majority is declared elected. At times, easy majority leads to troubles. The elected candidate symbolizes majority when there are only two candidates, but not therefore if there are three or more candidates; e.g. if A gets 40 and B, C and D get 20 votes, then A is declared elected. Now, however A has got 40 votes he does not reflect the majority because 60 votes are actually against him. Elections are an extremely significant section of democracy because the whole fortification of a democratic organization depends on how elections are held.

Representative Democracy

Limited and Indirect

Representative democracy is a limited and indirect shape of democracy: It is limited in the sense that participation in government is infrequent and brief, being restricted to the act of voting every some years. It is indirect in the sense that the public does not exercise authority through itself, but selects those who will rule on its behalf. This shape of rule is democratic only since distant since representation establishes a reliable and effective link flanked by the government and the governed. The strengths of representative democracy contain the following:

- It offers a practicable shape of democracy, since big populations cannot actually participate in the governmental procedure.
- It relieves the ordinary citizen of the burden of decision-creation, therefore creation it possible to have division of labour in politics.
- It maintains continuity through distancing the ordinary citizen from politics thereby encouraging them to accept compromise.

Synonymous with Electoral Democracy

Though, although these characteristics may be a necessary precondition for representative democracy, they should not be mistaken for democracy itself. The democratic content in

representative democracy is the thought of popular consent, expressed by the act of voting. Representative democracy is, therefore, a shape of electoral democracy, in that popular election is seen since the only legitimate source of political power. Such elections necessity respect the principle of political equality based on universal adult franchise, irrespective of caste, color, creed, sex, religion or economic status. The center of the democratic procedure is the capability of the people to call politicians to explanation.

In short, the essence of representative democracy lies in:

- Political pluralism
- Open competition flanked by political philosophies, movements, parties and therefore on

Dissimilar Views on Representative Democracy

There are dissimilar views on representative democracy. The first implies that in representative democracy, political authority is ultimately wielded through voters at election time. Therefore, the virtue of representative democracy lies in its capability of blind elite rule with an important   measure of political participation. Government is entrusted to politicians, but these politicians are forced to respond to popular pressures through the easy information that the public put them there in the first lay, and can later remove them. The voter exercises the similar authority

in the political market since the consumer does in economic markets. Joseph Schumpeter summed it up in *Capitalism, Socialism and Democracy through* describing representative democracy since that institutional arrangement for arriving at political decisions in which individuals acquire the authority to decide through means of a competitive thrash about for people's vote.

Pluralist

Democracy is pluralist in nature. In its broader sense, pluralism is a commitment to variety or multiplicity. In its narrower sense, pluralism is a theory of sharing of political authority. It holds that authority is widely and evenly dispersed in society, instead of being concentrated in some hands since the elitists claim. In this shape, pluralism is usually seen since a theory of 'group politics' in which individuals are mainly represented by their membership of organized clusters, ethnic clusters and these clusters have access to the policy procedure.

Elitist

It refers to a minority in whose hands authority, wealth or privilege is concentrated justifiably or otherwise. Elitism believes in rule through an elite or minority. Classical elitism, urbanized through Mosca, Pareto and Michele, saw elite rule since being inevitable, unchangeable information of social subsistence. What is majority rule? Few view democracy since a majority rule. Majority rule is a practice in which priority is reported to the will

of the majority. What is majoritarionism? Majoritarionism implies insensitivity towards minorities and individuals.

Rival Views

There is a considerable amount of conflict in relation to the meaning and significance of representative democracy. Few questions raised through scholars are since follows:

- Does it ensure a genuine and healthy dispersal of political authority?
- Do democratic procedures genuinely promote extensive-word benefits, or are they self-defeating?
- Can political equality co-exist with economic equality?

In short, representative democracy is interpreted in dissimilar methods through dissimilar theorists. Mainly significant in the middle of these interpretations are advanced through Pluralism, Elitism, the New Right and Marxism. For several political thinkers, representative's democracy is basically larger to every other shape of political system. Few argue that representative democracy is the shape of government that best protects human rights, because it is based on the recognition of the intrinsic worth and equality of human beings.

Others consider that democracy is the shape of government which is mainly likely to take rational decisions because it can count on the pooled knowledge and expertise of a society's whole population. Others claim that democracies are stable and

extensive-lasting because their elected leaders enjoy a strong sense of legitimacy.

Still others consider that representative democracy is mainly conducive to economic development and well being.

Few consider that in representative democracy, human beings are best able to develop their natural capacities and talents. Yet, democracy remnants a job in progress – an evolving aspiration rather than a finished product.

There was consensus that democracy cannot be imposed by external actors, but rather must be pursued organically by a population. It is a path, not a destination. Similarly, countries formulate and express democracy differently based on their unique histories; there is no single model of democracy. Aspiring democratic countries seeking advice from other democracies are increasingly turning to states that have undertaken their own transitions more recently, and they, in turn, are responding positively if and when asked to assist. In fact, the "twinning" model of pairing newer democracies with transitioning states is being prototyped by the Community of Democracies through its project pairing Poland with Moldova, and Slovakia with Tunisia. The G8 has arranged similar pairings through the Deauville Partnership with Arab Countries in Transition, which links leaders in aspiring democracies with G8 partners to build institutional capacity, promote knowledge sharing, and strengthen accountability and good-governance practices. In addition, rising democracies like Indonesia and South Africa have been key players in establishing and utilizing multilateral fora

like the Bali Democracy Forum and the African Peer Review mechanism to share experiences and best practices in this domain.

Although participants agreed that democracy must be demand driven, disagreement emerged regarding the universality of democracy promotion. Some felt strongly that countries on the path of democracy have a responsibility to assist those who seek the same path. Others noted the negative connotations associated with democracy promotion and its perceived application as a post-hoc, faux justification for military intervention aimed at regime change, as with U.S. involvement in Iraq. Some also pointed to its selective application, especially when energy security interests take precedence over influencing, punishing, or removing repressive regimes, as with U.S. passivity in Bahrain and Saudi Arabia.

Some in the global South interpret democracy promotion as a U.S. agenda rather than a universal aspiration and wish to construct a unique brand of support for democracy in contrast to the U.S. and E.U. model. Rising democracies seek their own identity (also referred to as strategic autonomy) in an effort to avoid being seen as tools of more established powers. In one respect, this attitude has prompted emerging powers to act timidly with regards to democracy promotion, hiding behind the fig leaves of sovereignty and non-intervention when asked by the international community to act outside their neighborhoods.

Nonetheless, such powers have actively promoted democracy in their regions through both bilateral and multilateral

mechanisms. Indonesia, for example, was a key player in leveraging ASEAN to encourage Myanmar to undertake political change and in drafting the first ever ASEAN Declaration of Human Rights. However, emerging powers have been as complacent as established powers in indirectly suppressing democracy when other national interests take precedence, as with India's less than decisive response to the political crisis in the Maldives, or Brazil's uncritical support for Cuba. In response to the Arab Spring, rising democracies are for the first time being expected to grapple with the notion of democracy promotion beyond their own regions, an expectation many find difficult to fulfill. The prevalence of extremist ideologies and xenophobia, the increased threat of the tyranny of the majority, and the free and fair election of leaders the international community may dislike all posed significant red flags for emerging (and established) democracies and reinforced their reticence regarding democracy promotion. Other national interests like trade relations, energy dependence, migration and diaspora population concerns present roadblocks to greater international engagement on this issue.

The emergence of other domestic political and economic actors with their own interests and values plays an important role in shaping national interests, especially in emerging democratic powers. Some disagreement concerned which actors had the most influence over the definition of national interests. In Brazil, for example, the private sector may be notably more influential than other domestic players, which complicates a truly national definition of priorities. Parliament plays an uneven and unpredictable role in formulating foreign policy, although legislators in emerging powers have begun taking greater

interest. For example, Brazilian congressmen and senators recently joined a coalition with NGOs to hold the foreign minister accountable on human rights issues. While recognizing the important role legislators can play in inserting human rights into foreign policy, some acknowledged that their contribution could also be a mixed blessing due to nationalist, religious or ethnic political motivations.

Much conversation also involved the balancing of interests that sometimes conflict with human rights, such as national security and the economy. Some argued that human rights and democracy support must be managed in a way that does not jeopardize other national interests or relations with key trading partners like China. In this respect, constant calibration between interests and values is vital. Rising democracies will continue to define their own pace of democratization at home and support for democracy and human rights abroad, leading many observers to predict a continued period of inertia and inaction in responding to or preventing democratic breakdowns or mass human rights violations. The international community is thus tasked to advance a mutually respectful collaborative approach that appeals to both emerging and established powers and that achieves results. To successfully reach such a compromise, it must identify approaches the global South feels comfortable employing and develop strategies to bring those tools to bear in new and challenging contexts.

The Arab Uprisings and the Responsibility to Protect

Although the Responsibility to Protect (R2P) is embraced as within democratic principles, its primary purpose is not democracy promotion. R2P's mission is atrocity prevention, though it is difficult to operationalize the concept. The application of R2P in Libya through military intervention authorized by the UN Security Council and the subsequent failure to exercise it in Syria as of yet has revealed many challenges inherent in current understandings of R2P. It also provided an important venue for conversation between established and emerging powers about humanitarian intervention. It is clear that a fundamental shift has taken place regarding humanitarian intervention and that more and more states embrace the broad values expressed by R2P. For example, most of the 118 states that mentioned Syria at the UN General Assembly in 2012 expressed concern about the population, up from less than a third who invoked Kosovo and East Timor in 1999. In addition, the IBSA Dialogue Forum sent a delegation to Syria, as did Turkey, a new rallying of emerging powers to address threats to human rights both inside and outside their own neighborhoods. This level of attention and the unprecedented advocacy of a policy of intervention by rising powers can be attributed at least in part to the improved quality of democracy in the rising democracies.

With the support of emerging powers like South Africa, UN Security Council Resolution 1973 authorized the use of force in Libya, but elicited rancor from some parties when it resulted in the overthrow of Moammar Gaddafi. Suspicions were voiced that

Resolution 1973 had acted as cover for regime change, and because it was couched in the language of R2P, states began questioning the concept. In response to this breakdown in consensus, Brazil proposed the Responsibility While Protecting (RWP) principle, which emphasized the sequencing of measures to ensure all options were exhausted before using force, and called for greater accountability and reporting to the Security Council. Participants disagreed as to whether RWP served as a useful basis for conversation between the North and South, or if it represented a counterproductive Brazilian political move that merely inflamed rhetoric. Some of the good will engendered by RWP has begun to disintegrate as the situation in Syria continues to fester with no coordinated international response.

Admittedly, Libya and Syria are very different countries, especially in terms of the roles they play in the strategic interests of key actors. Nevertheless, the application of R2P in Libya but not in Syria highlights the phenomenon of selectivity, a topic of debate throughout the workshop. Participants agreed that crisis situations should be examined on a case-by-case basis, but at the same time many reinforced the global responsibility to support all states that are unable to adequately prevent mass atrocities. Some suggested that selectivity is the principled application of R2P but called for transparency in decision making to better understand a state's motivations for supporting or denouncing intervention as an option. Others argued that universalizing the concept to make responsibility an obligation at all times in all cases is a fundamental challenge that the international community should pursue. At the very least,

discourse must recognize that all states engage in some form of selectivity in order to advance the conversation.

It was pointed out that international responses to the Arab uprisings have been uneven not only in atrocity prevention but also democracy support. Emerging powers hesitate to lend support to the application of R2P in Syria lest it be used as a mask for regime change, as some perceive to have been in the case in Libya. However, established and emerging powers alike have not exercised leadership in universally supporting calls for democracy in countries of the Middle East because of overarching security concerns like energy and relations with Israel. And although emerging and established powers share an interest in energy security, they still differ on methodologies; a country may have leverage in a situation short of intervening militarily which might result in strategies that are most cost effective in money and lives. For example, South Africa resisted intervening militarily in Zimbabwe in response to democracy and human rights crises, despite international calls to do so, but was able, in their view, to improve elections there through alternative means. Likewise, it refused to intervene militarily in Sudan, instead employing a triangulation strategy that led to secession. Similarly, Turkey initially prioritized dialogue and consultation with the Assad regime, relying on the relationship it had cultivated with Syria over the last ten years to exhaust all potential peaceful solutions. IBSA also sent a high-level diplomatic mission to Syria to try to negotiate a peaceful solution to the conflict and thereby ward off military intervention. The Arab uprisings have fundamentally challenged the Western idea of the separation of church and state, and Arab democracy

demands a redefinition of secularism that allows religious values, but not rules and regulations, to take root in society. Discussants will continue to have to confront this new reality as the conversation continues regarding democratization in the Arab world.

Current understandings of preventive diplomacy tools like R2P – especially how they relate to and affect emerging democracies – must be improved. The discussion prompted by the Brazilian proposal of RWP highlights the need for further conversation or clarification about R2P as a tool. There is still fear that R2P provides a blank check to pursue national interests rather than prevent atrocities. Therefore, a refocusing on R2P's purpose and intentions is needed, and may reduce objections to its proper application. In addition, a multilateral coalition must be built and maintained to address mass atrocities such as in Syria. This requires ongoing messaging with all partners and the public to maintain support and communicate expectations and mission objectives.

Tools for International Cooperation on Democracy and Human Rights

Recent events show a clear incapacity of international mechanisms to effectively address major threats to democracy and human rights. While established democracies are quicker to

pursue coercive tactics and emerging democracies strongly prefer dialogue and reconciliation, a variety of tools are available and being tested on the world stage. Indonesia seeks to make democracy and human rights foundational concerns at existing institutions like ASEAN, its new Commission on Human Rights (AICHR), and the G20. Indonesia's leadership in the adoption of the ASEAN Declaration of Human Rights and the establishment of the Bali Democracy Forum underscore this commitment. The Community of Democracies creates issue-based working groups to involve government and civil society and maximizes technology through the LEND network, connecting key leaders in transitioning countries with those in transitioned countries.

Another key tool touted by many participants is reliance on regional bodies as antenna in noting potential problems and as early movers in response to crises. The AU and SADC both have provisions to suspend any country that experiences an unconstitutional interruption, ECOWAS recently suspended Mali's membership in response to a coup, and UNASUR recently exercised a similar provision against Paraguay. These and other multilateral mechanisms are critical because they reflect regional ownership without the presence of Northern powers and because such a coalition is less likely than a single nation to create further problems or receive pushback from local actors.

Participants discussed in depth the merits of democracy-inclusive forums and democracy-exclusive forums for discussion of important transnational issues. For example, the Community of Democracies reformed its invitation and governing council selection process in 2010 to ensure leadership consists of

staunchly committed democracies while expanding participation at ministerial meetings to include countries at incipient stages of democracy. The Bali Democracy Forum, however, invites a broader base of participants, including China and Vietnam, in an effort to establish a conversation with more parties. While it was agreed that both style of forums are necessary and beneficial, participants lacked consensus as to when democracies should and should not include others in policy conversations.

Most participants with a global South view asserted that for any country to retain credibility in international cooperation on human rights and democracy, a strong human rights record at home is a vital requisite. Otherwise, the rules-based system that governs behavior is weakened by the perception that great powers write the rules but are not necessarily committed to following them. In this respect, emerging powers emphasize the importance of addressing human rights challenges domestically. For example, Brazil recently established a truth commission to investigate human rights abuses under the military dictatorship and passed a freedom of information law to increase transparency. It has also engaged in international efforts to combat violence against women and encourage open government initiatives, key concerns within Brazil and essential to advancing its own democracy. No consensus was reached on the means by which accountability can be increased on the global level, although the need was clearly articulated. Emerging democratic powers are increasingly held to account by vibrant civil society organizations and media that feature voices from victims of violations and question government's actions abroad. Decision makers have noted this

democratization of foreign policy and it continues to shape their processes and actions.

Words of caution tend to outweigh prescriptive solutions in discussing tools for international cooperation. According to some participants, limiting discussions on transnational issues to an exclusive club of democracies is a false dichotomy that discourse must move past. Engaging with imperfect democracies (like Venezuela and Bolivia) is crucial to encourage their continued development on the path of democracy. The regional dimension of democracy and human rights support should also be strengthened so that neighbors hold each other accountable for advancing democratic practices. Trade and regional economic integration can also be considered as a potentially effective tool for promoting values. States should also leverage their private sectors, which engage in new and different ways with civil society when investigating potential investment opportunities abroad, to take advantage of new avenues for dialogue. In addition, they should encourage business leaders to prioritize their obligations to protect human rights and sustainable development. Finally, the international community must better coordinate its efforts to avoid overwhelming target populations, as has occurred with countries rushing to Tunisia's aid in its transition. It must also ensure that such aid is voluntary and in no way coercive.

The Politics of Foreign Policy in Democracies: The Human Rights Dimension

In the last session, participants articulated the tactics that facilitate action at the global level and the factors preventing further progress, with suggestions for improvement. Agreements at the UN Human Rights Council and other similar international fora are often reached by isolating extremists and working effectively with the middle. Diplomats are also successful when they can effectively navigate their governments in capital to alter a country's position on an issue. Therefore, personalities of the diplomats at the UN, the Human Rights Council, and other relevant bodies can play important roles in shaping the course of negotiations. Similarly, personal priorities of government leaders can influence how much importance is placed on human rights. U.S. Secretary of State Clinton has prioritized women's human rights and LGBT human rights, but Dilma Rousseff, President of Brazil, is a technocrat who prioritizes economic growth and social protections. The foreign policies of the countries reflect these priorities.

Many factors, including the realpolitik interests of emerging powers, resource constraints, political dynamics, personalities and what is politically and procedurally possible at international bodies all combine to explain why more action is not taken on human rights issues at the global level. For example, to highlight

the importance of human rights in foreign policy, one European expert shared that the human rights section of the foreign ministry receives the highest number of parliamentary questions on foreign policy, while about half of the daily statements from the ministry spokesperson pertain to human rights. However, budget constraints and the current state of the economy prevent more robust action at this time. Another participant from an established democracy shared that internal bureaucratic politics limited the policy options available to diplomats which slowed action at the Human Rights Council and limited that country's opportunities to lead. Conversely, domestic politics forced India to change its vote at the Human Rights Council regarding a resolution calling on Sri Lanka to address human rights abuses. India had long resisted such resolutions, but thanks to overt pressure from a coalition partner, it became more active. This represents an unusual but important example of domestic politics prompting rather than impeding action on human rights at the international level.

Emerging democracies face major challenges in addressing their own human rights deficits at home. They largely lack a domestic constituency for a more human rights-oriented foreign policy, meaning the few NGOs advocating for these issues have a small pool of support on which to draw. As a result, economic growth and private interests are usually prioritized over accountability. In Brazil, much of civil society has not been actively engaged on these issues, and in Indonesia, the discussion has traditionally been dominated by think tanks. This has begun to shift and influence on foreign policy has begun to diversify, but in many of the emerging powers this change is still in the nascent phases. In

some cases, emerging democracies still struggle to maintain a high-quality representative system. The process of decentralization in Indonesia has led to a growing oligarchy which threatens the protection of minority rights – especially religious minorities but also women. Turkey has experienced serious backsliding regarding freedom of the press while continuing to wrestle with its own minority rights challenges. Overall, civil society engagement on foreign policy in emerging democracies has been limited but is improving. Attention should be paid to framing the discussion on a case-by-case basis to bring these issues into the public consciousness in the relevant countries.

Despite these challenges, most participants agreed that civil society and NGOs have an enormous role to play in shaping foreign policy regarding human rights. When governments refuse to act on important issues, civil society can apply pressure to prompt action. For example, when South Africa hesitated to broach LGBT rights at the Human Rights Council, South African civil society held the government accountable by bringing public attention to the prioritization of human rights codified in the 1994 constitution. This shamed South Africa into leading on this issue. However, many participants asserted that civil society and NGOs must be more creative in approaching governments. While the foreign ministry is often the lead on foreign policy regarding human rights, many other ministries have equity in these crosscutting issues and shape (or block) the debate. Civil society and NGOs should approach other ministries – ministries concerned with the economy, education, and security, for example – to apply pressure and enact change. In addition, they

can call upon leaders in the executive branch with a personal interest in democracy and human rights matters to apply pressure. For example, in Brazil, NGOs approached an attorney general who had previously worked in the human rights field to question the foreign ministry about an upcoming vote on North Korea. By invoking Article IV of the 1988 Brazilian Constitution, which codifies a commitment to human rights, the attorney general and NGOs were able to elicit a change in Brazil's vote.

While these recommendations may help civil society and NGOs bolster their impact, they must be prepared for pushback from governments. While governments in the global North revert to funding constraints and domestic pressure as motivations for their action or inaction, governments in the global South might rely on arguments that South-South cooperation should be emphasized over naming and shaming tactics and that the system operates under a double standard. Civil society and NGOs should accept and support South-South cooperation, but not complacency. They must demand leadership from their governments to ensure the safeguarding of the global democracy and human rights order.

The Global Human Rights Regime

Scope of the Challenge

Although the concept of human rights is abstract, how it is applied has a direct and enormous impact on daily life worldwide. Millions have suffered crimes against humanity. Millions more toil in bonded labor. In the last decade alone, authoritarian rule

has denied civil and political liberties to billions. The idea of human rights has a long history, but only in the past century has the international community sought to galvanize a regime to promote and guard them. Particularly, since the **United Nations**(UN) was established in 1945, world leaders have cooperated to codify human rights in a universally recognized regime of treaties, institutions, and norms.

An elaborate global system is being developed. Governments are striving to promote human rights domestically and abroad, and are partnering with multilateral institutions to do so. A particularly dynamic and decentralized network of civil-society actors is also involved in the effort.

Together, these players have achieved marked success, though the institutionalization and implementation of different rights is progressing at varying rates. Response to mass atrocities has seen the greatest progress, even if enforcement remains inconsistent. The imperative to provide people with adequate public health care is strongly embedded across the globe, and substantial resources have been devoted to the challenge. The right to freedom from slavery and forced labor has also been integrated into international and national institutions, and has benefited from high-profile pressure to combat forced labor. Finally, the steady accumulation of human-rights-related conventions has encouraged most states to do more to implement binding legislation in their constitutions and statutes.

Significant challenges to promoting human rights norms remain, however. To begin with, the umbrella of human rights is massive.

Freedom from slavery and torture, the imperative to prevent gender and racial persecution, and the right to education and health care are only some of the issues asserted as human rights. Furthermore, nations continue to dispute the importance of civil and political versus economic, social, and cultural rights. National governments sometimes resist adhering to international norms they perceive as contradicting local cultural or social values. Western countries—especially the United States—resist international rights cooperation from a concern that it might harm business, infringe on autonomy, or limit freedom of speech. The world struggles to balance democracy's promise of human rights protection against its historically Western identification.

Moreover, implementing respect for established human rights is problematic. Some of the worst violators have not joined central rights treaties or institutions, undermining the initiatives' perceived effectiveness. Negligence of international obligations is difficult to penalize. The **UN Charter** promotes "fundamental freedoms," for example, but also affirms that nations cannot interfere with domestic matters. The utility of accountability measures, such as sanctions or force, and under what conditions, is also debatable. At times, to secure an end to violent conflict, negotiators choose not to hold human rights violators accountable. Furthermore, developing nations are often incapable of protecting rights within their borders, and the international community needs to bolster their capacity to do so—especially in the wake of the **Arab Spring**. Finally, questions remain over whether the UN, regional bodies, or other global actors should be the primary forums to advance human rights.

In the long term, strengthening the human rights regime will require a broadened and elevated UN human rights architecture. A steady coalition between the global North and South to harmonize political and economic rights within democratic institutions will also be necessary. In the meantime, regional organizations and nongovernmental organizations must play a larger role from the bottom up, and rising powers must do more to lead. Together, these changes are the world's best hope for durable and universal enjoyment of human rights.

Human Rights: Strengths and Weaknesses

The international human rights regime has made several welcome advances—including increased responsiveness in the Muslim world, attention to prevention and accountability for atrocities, and great powers less frequently standing in the way of action, notably at the **UN Security Council** (UNSC). Yet, despite responses to emergency cases demanding action, such as Sudan and Libya, global governance in ensuring human rights has faltered.

Many experts credit intergovernmental organizations (IGOs) for advances—particularly in civil and political rights. These scholars cite the creation of an assortment of secretariats, administrative support, and expert personnel to institutionalize and implement human rights norms. Overall, the **United Nations** (UN) remains the central global institution for developing

international norms and legitimizing efforts to implement them, but the number of actors involved has grown exponentially.

The primary mechanisms include UNSC action, the **UN Human Rights Council**(UNHRC), committees of elected experts, various rapporteurs, special representatives, and working groups. War crimes tribunals—the **International Criminal Court** (ICC), tribunals for the **former Yugoslavia** and **Rwanda**, and hybrid courts in **Sierra Leone** and **Cambodia**—also contribute to the development and enforcement of standards. All seek to raise political will and public consciousness, assess human-rights-related conduct of states and warring parties, and offer technical advice to states on improving human rights.

However, these mechanisms are far from consistent. Generally, when they are effective, they change states' conduct by publicizing abuses rather than by providing technical advice or applying punitive measures. For example, no global body was capable of forcing the United States to stop its **mistreatment of detainees** at the Guantanamo Bay Detention Facility, but mounting international **pressure** [PDF] did encourage fundamental U.S. **reform** of its detention and interrogation policies in 2009. As a result, skeptics also counter that other grassroots movements or organizations hold greater responsibility for rights improvements than global institutions. Furthermore, although progress in condemning and responding to atrocities has been significant, it has been limited in advancing civil and political rights. Many in the international community are reassessing economic, social, and cultural rights as IGOs increasingly link human rights to business practices and public

health. Elsewhere, attention to the rights of women, minorities, and persecuted ethnic groups has steadily increased.

Of all rights-centered UN bodies, the **UN Human Rights Council** receives the most attention. In its former incarnation as the **Commission on Human Rights**, it developed a reputation for allowing the participation—and even leadership—of notorious human rights abusers, undermining its legitimacy. Reconstituted as the UNHRC in 2006, the new forty-seven-member body has a higher threshold for membership as well as a universal periodic review (UPR) process, which evaluates the human rights records of states, including those on the council. Generally, the UPR has been welcomed as encouraging accountability and highlighting progress, and states have largely cooperated. However, Israel became the first state to withdraw from the review panel, breaking the established precedent of collaboration and cooperation. This follows a pattern of disproportionate focus on Israel—**more than half** of resolutions passed since 2006 have focused on Israeli actions in the Palestinian territories—while ignoring major abuses in other states.

The UN Security Council (UNSC) has more power to take action against human rights abusers. It can impose sanctions, mandate peacekeeping operations, and authorize use of force in extreme cases. Furthermore, UNSC deliberations are higher profile than UNHRC meetings and thus substantially elevate international attention to and pressure on rights violators. The UNSC deliberates on countries' abuses when they threaten international peace and security—but only when UNSC politics permit it. The five permanent UNSC members can all veto resolutions. France,

the United Kingdom, and the United States tend to be the most vocal advocates for promoting human rights, though they routinely subordinate such concerns to strategic interests. China and Russia, however, often **veto** human rights interventions. Recently, major powers elected to the UNSC have been ambivalent on human rights, and none of the three seeking permanent membership (Germany, Brazil, and India)**voted** to authorize the mission in Libya.

Increasingly, the locus of activity on human rights is moving to the regional level, but at markedly different paces from place to place. Regional organizations and powers contribute to advancing human rights protections in their neighborhoods by bolstering norms, providing mechanisms for peer review, and helping countries codify human rights stipulations within domestic institutions. Regional organizations are often considered the first lines of defense, and better able to address rights issues unique to a given area. This principle is explicitly mentioned in the **UN Charter**, which calls on member states to "make every effort to achieve pacific settlement of local disputes through such regional arrangements or by such regional agencies" before approaching the UNSC.

Major regional organizations in the Western Hemisphere, Europe, and Africa—such as the **Organization of American States** (OAS), the **European Union** (EU), and the **African Union** (AU)—have integrated human rights into their mandate and established courts to which citizens can appeal if a nation violates their rights. This has led to important rulings on **slavery in Niger** and **spousal abuse in Brazil**, for example, but corruption

continues to hamper implementation throughout Latin America and Africa, and a dearth of leadership in African nations has slowed institutionalization.

Meanwhile, organizations in the Middle East and Asia, such as the **Association of Southeast Asian Nations** (ASEAN) and the **South Asian Association for Regional Cooperation**, focus primarily on economic cooperation and have historically made scant progress on human rights. The **Arab League**, however, broke with its precedent of disengagement by **backing** UN action against Libya and **sanctioning** Syria, and may prove more committed to protecting human rights in the wake of the Arab Spring.

Civil society efforts have achieved the most striking success in human rights, though they often interact with international institutions and many national governments. Nongovernmental (NGOs) provide valuable data and supervision, which can assist both states and international organizations. NGOs also largely rely on international organizations for funding, administrative support, and expert assistance. Indeed, **more than 3,000 NGOs** have been named as official consultants to the **UN Economic and Social Council** alone, and many more contribute in more abstract ways. Domestic NGOs understand needs on the ground far better than their international counterparts. That international NGOs are beginning to recognize this is clear in two recent developments. The first is financier-philanthropist George Soros's **$100 million donation** to **Human Rights Watch** to develop field offices staffed by locals, which enabled the organization to increase its annual operating budget to $80

million. Second, the number of capacity-building partnerships between Western-based NGOs and NGOs indigenous to a country is increasing. That said, NGOs have to date been more successful in advocacy—from achieving passage of the **Anti-Personnel Mine Ban Convention** to calling attention to governments' **atrocities** against their own citizens. Yet NGOs devoted to implementing human rights compliance have been catching up—on issues from democratic transitions to gender empowerment to protecting migrants.

Norm and treaty creation: prodigious but overemphasized

The greatest strength of the global governance architecture has been creating norms. Myriad treaties, agreements, and statements have enshrined human rights on the international community's agenda, and some regional organizations have followed suit. These agreements lack binding clauses to ensure that action matches rhetoric, however, and many important violators have not signed on. In addition, states often attach qualifiers to their signatures that dilute their commitments.

The array of treaties establishing standards for human rights commitments is broad—from **political and civil liberties** to **economic, social, and cultural rights** to **racial discrimination** to the rights of **women**, **children**, **migrant workers**, and more recently **the disabled**. Other global efforts have focused on areas such as **labor rights** and **human trafficking**. Regional organizations, most notably the **Council of Europe** and the **Organization of American States**, have also

promulgated related instruments, although less uniformly. In addition, member states have articulated declarations and resolutions establishing human rights standards, and increasingly so in economic affairs. The **United Nations Human Rights Council**, in a departure from the premise that states are to be held accountable for human rights conduct, in 2011 even passed formal **guidelines for related business responsibilities**.

On the other hand, states are under are no binding obligation to observe or implement rights resolutions unless passed—without a veto—through the **UN Security Council** or one of the few regional bodies with binding authority over member states. Similarly, although the proliferation of treaties, conventions, and protocols over the past fifty years implies significant advances in human rights norms, the true impact of these measures is questionable.

First, many of the conventions, such as the **Rome Statute** or the **Convention on the Rights of Migrant Workers and Their Families**, have not been ratified by central players, such as the United States. Second, although calls for enhanced human rights norms have increased, consensus over implementation and compliance has not kept pace. In particular, whereas the global North has largely focused on advancing civil and political rights, the global South has tended to defend economic, social, and cultural rights. Third, even if a rights document is ratified, states often use reservations, understandings, and declarations (RUDs) to evade obligations, especially those of legally binding documents. They do so to avoid negative press or the potential for imbroglios from even moderately intrusive monitoring mechanisms.

Saudi Arabia is an apt example. The country has ratified the **Convention on the Elimination of All Forms of Discrimination against Women** (CEDAW), but one RUD states that the convention is not applicable when it conflicts with sharia law, which allows Riyadh to continue denying basic rights to women. Similarly, many have argued that the United States has undermined its already limited commitments on human rights by invoking complex RUDs. For example, Washington ratified the **Convention on the Elimination of All Forms of Racial Discrimination**, but with the qualifier that it would not trump U.S. constitutional protection for freedom of speech, and therefore not require banning hate groups such as the Ku Klux Klan.

The international community thus remains at serious risk of overemphasizing the creation of international norms. For these to be effectively implemented, the language in international treaties must be transplanted directly into domestic legal structures, but this process is often quite slow. Furthermore, rather than pursuing broader protections, the international community should at times focus on securing transparency guarantees from governments and assurance that nongovernmental organizations and UN rapporteurs can freely monitor human rights within national borders. Implementation of existing rights treaties and agreements might have more concrete effect than expanded protection on chapter.